

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Wednesday, 11 September 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting:	Mr C. Winneke QC Mr A. Woods Ms M. Tittensor
Counsel for Victoria Police	Ms R. Enbom
Counsel for State of Victoria	Mr T. Goodwin
Counsel for Nicola Gobbo	Mr P. Collinson QC Mr R. Nathwani
Counsel for DPP/SPP	Mr K. O'Gorman
Counsel for CDPP	Ms R. Avis
Counsel for Police Handlers	Mr G. Chettle Ms L. Thies
Counsel for John Higgs	Ms C. Dwyer
Counsel for Faruk Orman	Ms C. Lloyd
Counsel for Pasquale Barbaro	Mr C. Wareham
Counsel for AFP	Ms I. Minnett

09:21:54 1 COMMISSIONER: Yes, I understand the appearances are as
09:35:10 2 they were yesterday. There's no changes.
09:35:14 3
09:35:14 4 MR WOODS: Mr Winneke is not with us this morning, he
09:35:17 5 perhaps will be later on.
09:35:19 6
09:35:20 7 COMMISSIONER: And we're in open hearing.
09:35:23 8
09:35:24 9 MR WOODS: We are in open hearing, Commissioner.
09:35:26 10
09:35:26 11 COMMISSIONER: We have the witness on the line and you can
09:35:28 12 hear me, Mr Smith?---Yes, Commissioner.
09:35:30 13
09:35:31 14 <PETER SMITH, recalled:
09:35:33 15
09:35:33 16 COMMISSIONER: Of course you're on your former oath?---I
09:35:36 17 understand.
09:35:36 18
09:35:37 19 Yes.
09:35:37 20
09:35:38 21 MR WOODS: Thanks Commissioner. Now, Mr Smith, just before
09:35:40 22 we finished yesterday I was asking you some questions about
09:35:46 23 the request that was made of you to determine whether or
09:35:49 24 not there was the formal document, Acknowledgement of
09:35:53 25 Responsibility that had been completed by Ms Gobbo back at
09:35:58 26 the time that she was, or at any time during her
09:36:01 27 registration with the SDU. Do you recall those
09:36:04 28 questions?---Yes, I think it was in the, focusing on the
09:36:08 29 early part of that.
09:36:09 30
09:36:09 31 I understand. The person that asked you was a Mr John
09:36:14 32 O'Connor to undertake that task?---That's my memory, yes.
09:36:18 33
09:36:19 34 It seems to have happened after you left the SDU and were
09:36:25 35 in your next suburban position. Were you asked to come
09:36:32 36 back from that role for a period of time to undertake that
09:36:37 37 task?---I don't recall that. I mean I was mostly, I was
09:36:44 38 only at a suburban position for some months afterwards and
09:36:48 39 ultimately I took long service and resigned. I stayed on
09:36:54 40 at the SDU for a little while to do a course.
09:36:56 41
09:36:56 42 Yes?---I guess it depends on the dates of that, I don't
09:36:59 43 know.
09:37:00 44
09:37:02 45 The documents appear to demonstrate that it was a few
09:37:06 46 months after you'd left the SDU and it was in 2013 that you
09:37:12 47 were asked to come back. The reason that I'm asking the

09:37:15 1 questions, I'm interested as to whether the search for the
09:37:19 2 Acknowledgement of Responsibility was anything to do with
09:37:22 3 the construction of the Loricated database that came out of
09:37:27 4 the Comrie review. Do you understand what I'm talking
09:37:30 5 about there?---I think I do but the answer is I don't know.
09:37:34 6
09:37:35 7 Were you asked to do anything more broadly than look for
09:37:38 8 that Acknowledgement of Responsibility to your
09:37:42 9 memory?---No, not that I recall, no. That was the
09:37:46 10 specifics of it.
09:37:46 11
09:37:47 12 Once that task was completed, although as I understand it
09:37:50 13 you didn't get a chance to complete it, they said, "All
09:37:53 14 right, you've done enough searching you can go back to your
09:37:56 15 other role", is that how it finished?---As far as I was
09:38:00 16 looking for those four or five questions in a particular
09:38:03 17 order as per form.
09:38:05 18
09:38:05 19 Yes?---And at a certain point I was told, again I presume
09:38:07 20 by Inspector O'Connor, that that was enough.
09:38:10 21
09:38:10 22 Okay, thanks for that. The other thing, where we finished
09:38:14 23 yesterday was I was talking about, I was asking you some
09:38:18 24 questions about the process of managing Nicola Gobbo as a
09:38:22 25 human source during the period of time that she was
09:38:25 26 registered. Having looked at the standard operating
09:38:29 27 procedure as it stood in 2005, and indeed as it was changed
09:38:33 28 throughout the period, there's no mention in that document
09:38:37 29 of there being such thing as a verbal dissemination of
09:38:42 30 information provided by a human source. Do you accept that
09:38:46 31 as correct? I'm not asking in a practical sense how things
09:38:53 32 worked, I'm just asking whether or not in the standard
09:38:56 33 operating procedure that was the case?---I'd have to read
09:38:59 34 it but I don't know. Does it define how that information
09:39:03 35 should be disseminated?
09:39:05 36
09:39:06 37 It does. It talks about the recording in ICRs and it talks
09:39:09 38 about the dissemination in IRs. What it doesn't do, quite
09:39:14 39 clearly the short document we were looking at yesterday, is
09:39:17 40 mention anything about verbal dissemination. You can
09:39:20 41 certainly have a look at that document during one of the
09:39:24 42 breaks but would it surprise you that it didn't mention
09:39:28 43 anything about verbal dissemination?---Yes, because it was
09:39:33 44 a common practice, it was necessary.
09:39:35 45
09:39:35 46 I understand. I assume it was necessary because things
09:39:38 47 were happening often quickly and that information needed to

09:39:43 1 be handed over, the sterile corridor quickly in order for
09:39:48 2 the investigators to utilise the information?---Timeliness
09:39:51 3 was ultimately an issue, exactly.
09:39:55 4
09:39:56 5 In a general sense the process was firstly to record in
09:40:00 6 your diary, secondly to take from your diary the relevant
09:40:05 7 information and to put it into an ICR, so far have I got
09:40:10 8 that right?---Yes, as thoroughly and with as much detail as
9 possible.
10
09:40:16 11 I can see from reviewing the diaries it's often verbatim,
09:40:20 12 it seems to be a lot of information written in the diary,
09:40:24 13 but then certainly when it was electronic diaries it's a
09:40:28 14 cut and paste from the diary into the ICR, but prior to
09:40:31 15 that it's a very close match between the handwritten notes
09:40:34 16 and what's put into the ICR, was that your
09:40:36 17 experience?---That was my experience. It was part of the
09:40:38 18 regime that everything goes into the ICR and nothing's
09:40:43 19 sanitised or hidden.
09:40:45 20
09:40:46 21 The process of face-to-face meetings, where there was a
09:40:50 22 recording of those, I take it some of these recordings the
09:40:54 23 Commission has been listening to go for five hours, some of
09:41:00 24 them more than that, of face-to-face meetings with
09:41:03 25 Ms Gobbo. I assume that there were notes taken during
09:41:06 26 those meetings as well, is that right?---Yes, I think when
09:41:13 27 we first started out, I can't even remember whether it was
09:41:18 28 this source or another source, it became quickly apparent
09:41:22 29 it was far too labour intensive to go back and review a
09:41:26 30 recording, unless there was some really specific thing that
09:41:29 31 you'd missed and made a note of. As I say, extensive notes
09:41:33 32 were made during the meeting, yes.
09:41:34 33
09:41:34 34 It would be those notes rather than going over laboriously
09:41:39 35 the five hour sometimes conversation with the
09:41:43 36 audio?---That's right. It became more, what's the word,
09:41:48 37 efficient once the electronic diary came in because we were
09:41:52 38 able to make notes on a laptop and then tidy that up in
09:41:58 39 real time. Tidy that up for the contact report and diary.
09:42:04 40
09:42:04 41 So we've spoken about the reality of the situation which
09:42:08 42 was the phone call to the investigators when that was
09:42:12 43 required but there was also this creature called the
09:42:15 44 information report and the standard operating procedure
09:42:18 45 talks about there being a sanitised information report and
09:42:23 46 it talks about the form, which is a 291A, in which the
09:42:27 47 source of the information has been concealed. "In regard

09:42:30 1 to informer sourced information the report is sanitised in
09:42:34 2 order to protect the anonymity of the informer. By
09:42:36 3 sanitising the IR members can disseminate the information
09:42:38 4 more widely without compromising the source." That's the
09:42:43 5 situation as you recall it?--Yes, I can probably add a
09:42:51 6 little bit of detail to that, but I don't know if it's
09:42:54 7 appropriate right now.
09:42:55 8
09:42:55 9 If the reason is you need do so in closed session then we
09:43:01 10 can do that in a little while?--Okay.
09:43:03 11
09:43:03 12 Jason Kelly gave evidence to the Commission some time ago
09:43:07 13 about his experience of dealing with the information that
09:43:10 14 was obtained by Purana from the SDU which had come from
09:43:14 15 Ms Gobbo. He said sometimes there are information reports,
09:43:20 16 sometimes there was a phone call without an information
09:43:23 17 report and that would have been the case from time to time
09:43:25 18 I assume?--Yes, and I always recorded on the contact
09:43:32 19 report when that was the case.
09:43:34 20
09:43:34 21 It might be where we see, for example, verbally
09:43:37 22 disseminated to and then the name of someone from Purana,
09:43:41 23 that might happen in the place of an IR being disseminated
09:43:45 24 down the track?--Yes.
09:43:47 25
09:43:47 26 On occasion or was that always in place of an IR?--My
09:43:53 27 practice was to clearly indicate in the contact report
09:43:57 28 whether an IR was submitted or not.
09:43:59 29
09:43:59 30 Yes, I see. And Mr Kelly also gave evidence that often the
09:44:04 31 SDU members that he would speak to would tell him that the
09:44:10 32 information came specifically from Ms Gobbo and would use
09:44:13 33 her name. Sometimes they'd use Ms Gobbo's number in
09:44:19 34 explaining where it came from and sometimes they wouldn't
09:44:22 35 say what the source was, but he was aware because of the
09:44:26 36 nature of the information that it came from Ms Gobbo, do
09:44:29 37 any of those three things surprise you? I can break them
09:44:33 38 down if you'd like?--I think I understand. My practice
09:44:36 39 was not, was never to use the source's name or number to
09:44:42 40 anyone outside the SDU. I wouldn't have done it.
09:44:45 41
09:44:45 42 Would it trouble you that others within the SDU would pick
09:44:48 43 up the phone to someone in the position of Mr Kelly and
09:44:52 44 say, "This one is from Ms Gobbo and this is the information
09:44:56 45 she's given us"?--It was never (indistinct) if I had a
09:45:01 46 conversation on the phone I'd be totally surprised and
09:45:05 47 remember it, but I can't believe that someone did that.

09:45:07 1
09:45:08 2 What about the use of her number, this is someone talking
09:45:10 3 to Mr Kelly and saying, "This one's from 3838 or 2958"?---I
09:45:16 4 guess I can't speak for others. I never heard of anyone
09:45:20 5 else do that. It would be strange because that's, within
09:45:24 6 the SDU that's what we used, we never used names. It goes
09:45:27 7 against all the protocols of not tending to identify any
09:45:32 8 source.
09:45:33 9
09:45:33 10 Because it's important in your view that the identity of
09:45:36 11 the source is not handed over to, or is not made known to
09:45:42 12 those investigating criminal activity, is that right?---Not
09:45:45 13 even hinted at, and of course sometimes investigators in
09:45:49 14 fact know who the source is for a number of reasons.
09:45:52 15
09:45:52 16 Here of course the source was handed to the SDU by
09:45:55 17 investigators so this might be one of those times, is that
09:45:58 18 right?---Yes, but protocol, and my personal regime would
09:46:05 19 still not be not to refer to the source by anything that
09:46:09 20 would identify them.
09:46:09 21
09:46:10 22 Mr Ryan's evidence was along a similar line. He said that,
09:46:17 23 in fact he didn't receive IRs and I assume that's because
09:46:22 24 of the particular position that he held at the top of the
09:46:25 25 tree in Purana from time to time. Would that be correct?
09:46:32 26 Did the IRs go further down the tree to other people is
09:46:36 27 what I'm asking?---Yes, they would have been sent to, I'm
09:46:39 28 trying to remember, probably the analytical area of that
09:46:43 29 unit. It wouldn't be addressed to him, no.
09:46:46 30
09:46:47 31 And he and Mr O'Brien, in fact their diaries and their oral
09:46:51 32 evidence were replete with situations where they received
09:46:55 33 phone calls and they note that the information had come
09:46:58 34 from 3838. I understand what your practice was in relation
09:47:02 35 to that identification of the source but you're not able to
09:47:07 36 say otherwise, what their evidence was was that they often
09:47:13 37 received phone calls and the source of the information
09:47:16 38 being Ms Gobbo was identified to them?---Okay.
09:47:20 39
09:47:20 40 That comes as a surprise to you or - - - ?---Well they may
09:47:25 41 well have known or certainly believed and in fact been
09:47:29 42 correct that that's where it came from, but if the question
09:47:33 43 is did I make a phone call and say, "3838 just told me
09:47:39 44 this", well that's the antithesis of how I would express
09:47:46 45 myself.
09:47:47 46
09:47:47 47 O'Brien's diaries as an example, I can show them to you,

09:47:52 1 for example, when information is received from a member of
09:47:54 2 the SDU that comes from Ms Gobbo he writes, "Information
09:47:58 3 from 3838"?--Oh. He may well have known, he probably did
09:48:09 4 know that it was her, but as I say when I was getting
09:48:16 5 information from this source or any source my practice was
09:48:18 6 not to mention them. Now I'm just trying to analyse that
09:48:22 7 situation.
09:48:23 8
09:48:24 9 Were they told perhaps because the information needed to be
09:48:28 10 used to obtain a warrant and the source of the information
09:48:31 11 needed to be known by those investigating and seeking the
09:48:35 12 warrants?--Actually, I think at some stage, yes.
09:48:38 13 Certainly at some stage - - -
09:48:41 14
09:48:41 15 To put into an affidavit for a warrant is what I'm asking
09:48:44 16 about?--At some stage I think that's right. I can't
09:48:51 17 remember when that occurred. Your question prompted me to
09:48:56 18 think about how that happened. Sorry, I'm not trying to be
09:49:03 19 difficult, I just can't remember.
09:49:04 20
09:49:04 21 I understand, I understand. Looking through the SMLs, and
09:49:11 22 look largely these documents speak for themselves, I don't
09:49:16 23 think I need to take you through lots of examples. In the
09:49:19 24 two SMLs and the two lots of ICRs, 3838 and 2958, there's
09:49:26 25 examples, I'll give you one, this is at p.109 of the 3838
09:49:31 26 ICR, just so you can see the nature of the document I'm
09:49:36 27 talking about and that might be brought up on yours and
09:49:41 28 mine and the Commissioner's screen. That should be,
09:49:59 29 there's a phrase "nil IR submitted" somewhere on this page
09:50:08 30 that I should be able to show you. Page 1700 is my note.
09:50:18 31 1700 are the VPL numbers at the top. Just while we're
09:50:25 32 coming to it, this was a situation where Ms Gobbo, this is
09:50:29 33 in January, was representing Mr Mokbel in relation to the
09:50:34 34 trial that he was appearing in before Justice Gillard in
09:50:38 35 the Supreme Court and Ms Gobbo was explaining to the
09:50:46 36 handlers, including you, one of the things he was going to
09:50:50 37 run for his defence was to attack the veracity and other
09:50:57 38 aspects of tapes that had been made by the investigators
09:51:02 39 and he was getting a US tape transfer, do you remember
09:51:07 40 that?--I do remember that, yes. Is it possible for that
09:51:10 41 document to be made larger, please?
09:51:12 42
09:51:12 43 Yes, I think it is?--Yes.
09:51:14 44
09:51:17 45 I don't see there's any reason why it shouldn't be up on
09:51:21 46 the other screens. Perhaps not on the public screen. So
09:51:26 47 that you can see there is talking about the organisation

09:51:31 1 for the tape expert, there's a couple of associates,
09:51:35 2 Mr Mokbel's money man and some others?---H'mm.
09:51:39 3
09:51:39 4 Who are there. And down the bottom it says "nil IR
09:51:43 5 submitted". I take it that means in this particular
09:51:47 6 situation O'Brien is advised, it says, "Re [REDACTED] at
09:51:54 7 [REDACTED] IR submitted"?---Yeah.
09:51:57 8
09:51:58 9 Do I understand that to mean that's the only thing O'Brien
09:52:01 10 was told or - - - ?---That's how I would have, I'm sure, I
09:52:08 11 can't remember that part of it. I basically remember this,
09:52:12 12 the person from overseas and what have you.
09:52:15 13
09:52:15 14 Yes?---But that's, that's how I would have written it to
09:52:20 15 mean. Beg your pardon, the way I've written it, that's
09:52:24 16 what it means. It's about the [REDACTED] at [REDACTED]
09:52:26 17
09:52:28 18 Here, for example, there's a phone call about that issue
09:52:31 19 but you don't submit an IR because I assume it's redundant
09:52:35 20 because you've already told Mr O'Brien this was information
09:52:39 21 that needed to be passed on quickly?---Yes.
09:52:41 22
09:52:42 23 All right. In fact I won't take you to other examples of
09:52:46 24 it but you accept that from time to time that was the
09:52:49 25 situation, there'd be a phone call to whoever it was at
09:52:53 26 Purana and an IR wouldn't necessarily be
09:52:57 27 submitted?---That's right, but it would be recorded on the
09:53:00 28 ICR that that had occurred.
09:53:02 29
09:53:02 30 As it is on this ICR that's in front of you now?---Yes.
09:53:05 31
09:53:05 32 I understand. That can be taken off the screen. We were
09:53:09 33 discussing a moment ago the reason for the IRs and the
09:53:14 34 sanitised version being to protect the identity of a source
09:53:19 35 and it probably goes without saying, the reason you wanted
09:53:24 36 to protect the identity of the source was because if they
09:53:28 37 were compromised that was a threat to any source's life
09:53:32 38 that they were assisting the police, is that generally why
09:53:34 39 the source's identity was protected?---Of course.
09:53:38 40
09:53:38 41 There's been some discussion in both oral evidence that's
09:53:43 42 been given before the Commission and a number of documents
09:53:46 43 that the Commission's been provided about the sterile
09:53:51 44 corridor and what that in fact means, that's a phenomenon
09:53:56 45 that you're familiar with, the sterile corridor?---Yes.
09:53:58 46
09:53:59 47 It's essentially a method, as I understand it, of

09:54:02 1 separating those who are obtaining information from a
09:54:04 2 source, in this situation the SDU, separating that part of
09:54:08 3 it from the receipt and use of that information on the
09:54:12 4 other side of the corridor, is that right?---Well if I can
09:54:18 5 put it in my own words.
09:54:20 6
09:54:20 7 Go ahead?---It's a separation of the management of the
09:54:24 8 source and information from conducting the investigation so
09:54:28 9 that, so that those managing the source are more attuned to
09:54:33 10 the, to the source's, what's the word I'm looking for, to
09:54:41 11 managing the source in an appropriate manner, i.e. for
09:54:45 12 those very reasons, so compromise, et cetera, whereas the
09:54:48 13 investigators worry about the investigation. I believe
09:54:51 14 that came from - the theory that came from quite rightly in
09:54:55 15 the past where say an investigator had managed a source at
09:55:00 16 the same time as being involved in his investigation might
09:55:03 17 not always, might, when receiving the information might not
09:55:09 18 consider all the implications of the use of that
09:55:12 19 information because he wanted the further investigation,
09:55:16 20 the further investigation, us handlers being separate.
09:55:20 21
09:55:20 22 In fact the reason things were sanitised from one side of
09:55:24 23 the corridor before they were handed over to the other side
09:55:27 24 of the corridor was to protect the anonymity of the
09:55:33 25 informer?---You talk about that corridor like - the SDU
09:55:39 26 handler source obtained the information and handed it over
09:55:42 27 and then that's, so the separation is there. The
09:55:48 28 investigators then do whatever they then like to do with
09:55:50 29 the information but they don't have any influence on how
09:55:53 30 the source is managed or the extent of compromise, those
09:55:59 31 sorts of things.
09:56:00 32
09:56:00 33 Do I understand your answer to be it actually didn't have
09:56:03 34 anything to do with protecting the anonymity of the
09:56:07 35 informer, it was for other reasons?---It did but it did
09:56:09 36 have other reasons. Anonymity of the informer is always
09:56:13 37 the prime objective.
09:56:14 38
09:56:15 39 In fact if the identity of the informer is known to the
09:56:18 40 investigators, that poses risks which might be realised,
09:56:24 41 might not be realised, but it's a situation that is not
09:56:26 42 optimal from an SDU point of view, do you agree with
09:56:29 43 that?---That's right, and I can talk further about that if
09:56:33 44 you like. But if you're putting that in the context of the
09:56:36 45 sterile corridor, that's actually a different issue.
09:56:39 46 That's a management issue of who knows who the source is,
09:56:42 47 if you like.

09:56:43 1
09:56:45 2 So you're saying that the sterile corridor and who knows
09:56:48 3 who the source is are not the same issue, they're different
09:56:52 4 issues?---I believe they are, exactly, yes.
09:56:55 5
09:56:56 6 Isn't the very sterility of this corridor about protecting
09:57:00 7 the identity of the informer? Otherwise isn't it a
09:57:03 8 corridor that's not sterile, things are just handed over?
09:57:07 9 Isn't that what the word sterile means?---In this context,
09:57:12 10 it's a separation of the management of the informer and
09:57:14 11 obtaining information.
09:57:15 12
09:57:15 13 To protect the identity of the informer?---No, no, no.
09:57:19 14 It's conducting the investigation, it's a separation of
09:57:21 15 those two things. One side, the management of informers is
09:57:27 16 done by set individuals and they are separate from anyone
09:57:32 17 conducting the investigation so that influences that an
09:57:37 18 investigator might be inclined to get the source to do
09:57:41 19 more, for example, that might compromise them, whereas the
09:57:46 20 handler is in a position to say, "No, we won't do that
09:57:49 21 because it could be dangerous" or a number of reasons, so
09:57:51 22 it's a separation of the management of the source. That
09:57:56 23 was my understanding of it, yes.
09:57:57 24
09:57:58 25 That's one aspect of it, and I think you accepted a little
09:58:02 26 while ago that another aspect of it was to protect the
09:58:05 27 anonymity of the informer?---I actually believe you are
09:58:10 28 mistaken as far as this term of sterile corridor. The main
09:58:18 29 thrust of it is, and probably Officer White would be more
09:58:24 30 articulate about it, but my understanding was it was the
09:58:28 31 separation of the management of the informer from the
09:58:32 32 management of the investigation. Of course, yes, the
09:58:38 33 source's identity is always an issue and never wants to be
09:58:42 34 compromised, but the main thrust of the sterile corridor is
09:58:47 35 separating those two things, management of the informer to
09:58:49 36 conducting the investigation as I understood it back then.
09:58:53 37
09:58:53 38 The word sterile goes in your understanding no further than
09:58:56 39 that aspect of it, it's not about the anonymity?---That is,
09:59:03 40 that is the bonus, if you like, and I'm not trying to
09:59:07 41 mitigate, trying to play down that, because of course the
09:59:10 42 source's identity, I mean that's what we did, that was very
09:59:14 43 important, but in the context of this term I see it as a
09:59:18 44 different thing.
09:59:19 45
09:59:19 46 COMMISSIONER: Do I understand you to be saying it's the
09:59:23 47 protection of the identity but also other benefits flow

09:59:28 1 from the sterile corridor, the protection of - can I just
09:59:32 2 finish the question?---I beg your pardon.
09:59:33 3
09:59:33 4 The protection of the informer generally and also
09:59:38 5 protecting the quality of the investigation by having a
09:59:42 6 sterile corridor?---If I may clarify it. I would put it in
09:59:48 7 a different order. I would say the main thing is the
09:59:51 8 separation of the management of the informer, as I said
09:59:55 9 earlier, to the investigation and of course keeping the
10:00:00 10 source anonymous is certainly part of our role, but when
10:00:05 11 you talk about the sterile corridor, the reasons, as I
10:00:09 12 said, the example I gave earlier was sometimes
10:00:11 13 investigators conducted their investigation and also
10:00:16 14 handled the source and sometimes didn't always consider the
10:00:21 15 safety and other aspects of the source, so better to have
10:00:24 16 someone independent of the investigation to do that and
10:00:27 17 then pass on the information. So investigators could just
10:00:31 18 concentrate on the investigation, didn't worry themselves
10:00:35 19 with the management of the source, any other issues, the
10:00:42 20 compromise issues were mainly handled by the handlers. You
10:00:46 21 know, I'm not sure I put that clearly enough, I'm sorry.
10:00:49 22
10:00:49 23 I think, Mr Smith, we're saying the same thing. So you're
10:00:54 24 saying the sterile corridor was the separation, but it was
10:00:59 25 this reason for a reason and the reason was that it would
10:01:01 26 result in a better investigation and it would also result
10:01:08 27 in better protection for the informer?---Ultimately yes,
10:01:12 28 but it was mainly about the informer, about separating the
10:01:18 29 investigator from handling the source where the issues
10:01:23 30 might become murky. When it's separated it's clear that
10:01:29 31 the source's priorities and safety are a prime in the minds
10:01:32 32 of the handlers, and the investigator doesn't have to worry
10:01:37 33 about that at all and doesn't have to think about whether
10:01:40 34 he is doing the best for the investigation. All he has to
10:01:43 35 worry about is receiving the information and acting on it.
10:01:47 36
37 Thank you.
38
10:01:47 39 MR WOODS: I want to ask you some questions about the
10:01:49 40 procedures put in place to manage the risks that were posed
10:01:55 41 to Ms Gobbo by her role as a human source and you talk
10:01:58 42 about this at p.6 of your first statement. Just a couple
10:02:04 43 of general propositions. It's the case that from the
10:02:08 44 inception of the relationship between Ms Gobbo and the SDU
10:02:12 45 she was a person who was very close both personally and
10:02:18 46 professionally to a number of people who were understood to
10:02:20 47 be dangerous criminals?---Clearly, yes.

10:02:23 1
10:02:24 2 And she was providing legal advice to a number of those
10:02:29 3 criminals?---Some of them, yes.
10:02:31 4
10:02:32 5 It's the case I think you say somewhere in your statement,
10:02:35 6 had her identity become known by those individuals that it
10:02:39 7 was somewhat inevitable that she would be murdered?---As is
10:02:44 8 the case with a lot of high risk sources, yes.
10:02:47 9
10:02:51 10 Mr Purton gave evidence to the Commission a few months ago
10:02:55 11 now that to his recollection Ms Gobbo's identity as a human
10:03:02 12 source or the work that she was, the information she was
10:03:05 13 providing was fairly well-known within Victoria Police from
10:03:09 14 the start of that relationship. Does that surprise you,
10:03:13 15 that evidence?---Yes.
10:03:15 16
10:03:16 17 There's a document that's been tendered to the Commission
10:03:19 18 previously and this is Exhibit 112 and version A of that,
10:03:25 19 the unredacted version might be brought up on the
10:03:28 20 Commissioner's, Mr Smith's and my screen. The evidence
10:03:31 21 that's been received is that this was a precautionary
10:03:36 22 measure, this document that was taken by the SDU because it
10:03:41 23 was a bit unusual that others outside the SDU knew the
10:03:45 24 identity of Ms Gobbo and that it should be, as a human
10:03:49 25 source, and that it should be recorded who knew or might
10:03:52 26 have known about her work as a source. Firstly, have you
10:03:55 27 seen this document before?---I think I've seen a different
10:03:59 28 version but I understand what it is, yes.
10:04:01 29
10:04:01 30 Is that your recollection that that's the reason this
10:04:05 31 document was put together?---I think it was probably
10:04:08 32 because of the numbers that it was unusual.
10:04:12 33
10:04:12 34 Numbers were unusual and good to monitor them I take
10:04:16 35 it?---The idea was to monitor them, yes, and as you say, it
10:04:21 36 included people who we believed would notice who the source
10:04:23 37 was for a number of reasons, whether they had been involved
10:04:28 38 investigatively or earlier. We can't go and ask someone,
10:04:33 39 do "You know who the source is?"
40
10:04:35 41 No, I understand?---This is just from our understanding of
10:04:37 42 what may have occurred.
10:04:38 43
10:04:38 44 I see on the left-hand side of the column there's the
10:04:42 45 source's identification. Am I right to understand that
10:04:45 46 this was, not a document that was peculiar to Ms Gobbo, but
10:04:50 47 you'd keep these for any source or was this one, is this

10:04:55 1 the only time such a document has been prepared to your
10:04:58 2 memory?---I don't know. I think there have been others, I
10:05:02 3 think this is the first time we realised there was a few
10:05:08 4 and we thought if we're going to do it for this one we
10:05:13 5 should do it for all of them.
10:05:14 6
10:05:15 7 Yes, okay. Was this a longer list than would be usual?---I
8 can't remember the other list but the reason this was done
10:05:20 9 I think was because of the growing numbers.
10:05:21 10
10:05:22 11 Yes, I see. Do you have any recollection of when this was
10:05:24 12 prepared or began to be prepared?---No, but I may be
10:05:33 13 assisted by scrolling down.
10:05:36 14
10:05:36 15 Sure. I think unfortunately it's alphabetical?---The
10:05:43 16 reason why I asked, I was wondering whether the identifier
10:05:47 17 of the source number changed because that would indicate a
10:05:50 18 date.
19
10:05:51 20 Yes, I see?---No, I don't I guess.
10:05:52 21
10:05:53 22 Some time within the 3838 registration number period
10:05:56 23 though?---Yeah, probably not early on though.
10:06:01 24
10:06:04 25 It's the case that you were aware - well firstly, no, I
10:06:10 26 withdraw that. Mr Kelly's statement, he talks about
10:06:14 27 Operation Gosford. You understand what Gosford was?---I
10:06:20 28 believe I do, yes, yes.
10:06:21 29
10:06:22 30 It was investigating threats that had been received by
10:06:26 31 Ms Gobbo. He says that those threats to his recollection
10:06:30 32 first arrived around 2006 and they were text message
10:06:35 33 threats that were made against her and Flynn and Rowe were
10:06:42 34 investigating those and the investigation was under the
10:06:44 35 umbrella of Operation Gosford. Does that ring true with
10:06:49 36 you?---That's my recollection of what Gosford was about.
10:06:53 37 The dates I would have to be guided by what the documents
10:06:56 38 say.
10:06:56 39
10:06:59 40 Sure. I don't necessarily need to take you to each of
10:07:03 41 these. The source management log has threats from, for
10:07:10 42 example, April 2007 that the source, Ms Gobbo, is receiving
10:07:14 43 text message threats. It later says in December 2007 she's
10:07:20 44 receiving a text, you might bring that one up, p.135. The
10:07:27 45 Commission has had tendered to it a document which
10:07:30 46 summarises some of the more significant threats, Mr Smith,
10:07:33 47 but I'll just show you a couple of those. It should be 135

10:07:40 1 of the SML. So you'll see the yellow one there. It has
10:07:46 2 your initials and it's information that's been received by
10:07:49 3 you?---Yes.
10:07:50 4
10:07:50 5 That she's received four more telephone threats overnight,
10:07:57 6 "You will be dead soon, slow and painful you cop lover" and
10:07:57 7 "die you dog" and then - - -?---Yes.
10:08:00 8
10:08:01 9 - - - a pretty rude word?---Yes.
10:08:03 10
10:08:04 11 So your position is that the threats against Ms Gobbo,
10:08:07 12 including this sort of threat, were constantly assessed and
10:08:11 13 discussed at length amongst the SDU, is that right?---Yes.
10:08:17 14
10:08:19 15 And you'd accept though that given this and the other
10:08:23 16 threats specifically using the word dog, which I'm right to
10:08:29 17 understand that that's identifying someone who is assisting
10:08:32 18 police, is that right?---Yes, it is. It's a word I detest.
10:08:40 19
10:08:40 20 Because of that the risks to Ms Gobbo, certainly when the
10:08:43 21 threats that use the word dog commenced, the risks to
10:08:47 22 Ms Gobbo were in the extreme at that stage, weren't
10:08:51 23 they?---I wouldn't call anonymous text messages in the
10:08:58 24 extreme.
10:08:59 25
10:08:59 26 You've accepted that she was representing some very
10:09:02 27 dangerous criminals and socialising with them. That's
10:09:07 28 right?---Yes.
10:09:07 29
10:09:08 30 She was assisting the police by providing information about
10:09:11 31 those individuals, that's right?---Yes, but people didn't
10:09:16 32 know that.
10:09:16 33
10:09:16 34 Well these anonymous texts seem to indicate they people did
10:09:21 35 know that because they were calling her a dog and the
10:09:24 36 police didn't know where they were coming from?---My
10:09:26 37 recollection of all those, those threats, and there were a
10:09:30 38 number for sure, is that there was never anything specific
10:09:34 39 about the source talking to police as a source. We
10:09:40 40 believed, certainly I believed, that it was to do with her
10:09:44 41 having had clients who had made statements in their own
10:09:53 42 best interests to assist police and that, and because of
10:09:58 43 that some other criminals considered that she was acting
10:10:04 44 against their interests, some thinking that they could
10:10:08 45 control what other witnesses did, and therefore that put
10:10:11 46 her in that category, not because specifically - and these
10:10:15 47 are my perceptions.

10:10:16 1
10:10:16 2 Yes?---And the reason I come to that conclusion is there
10:10:20 3 was never anything that specifically stated or any hint
10:10:25 4 that, you know, we were involved or any specific leaking of
10:10:31 5 an information report or a specific piece of information of
10:10:34 6 that nature. I haven't made myself clear why I come to
10:10:42 7 that conclusion.
10:10:43 8
9 I understand what your position is but what I'm saying is
10:10:43 10 that ultimately even though that's what your construction
10:10:46 11 of these messages and the police's understanding was, even
10:10:49 12 though that might be very well-founded, the fact is you
10:10:53 13 didn't know?---That's right. You can only go on the
10:10:56 14 evidence that you have and the intel that you have.
10:10:58 15
10:10:59 16 And one of the possibilities is that this was coming from
10:11:02 17 people who knew she was talking to the police and providing
10:11:05 18 information herself rather than her clients, that was a
10:11:08 19 possibility, wasn't it?---Yeah, but I didn't believe it.
10:11:11 20
10:11:12 21 I know you didn't believe it. It was one of the
10:11:14 22 possibilities that you had to consider when she was
10:11:17 23 explaining to you she was receiving these texts?---To
10:11:20 24 consider, absolutely, when a source gets threats,
10:11:23 25 absolutely you consider that.
10:11:24 26
10:11:25 27 Whether because of these text messages or just because of
10:11:28 28 her relationship with the individuals that she had
10:11:31 29 relationships with, the risks to her were in the extreme
10:11:35 30 from the very moment she started talking to the SDU, you'd
10:11:38 31 have to agree with that?---They were very high, that's in
10:11:43 32 fact why she was talking to us and not anybody else.
10:11:46 33
10:11:46 34 Mr Ryan's position was that he thought from the first
10:11:49 35 moment she was bound to be killed?---If she was exposed?
10:11:53 36
10:11:53 37 If she was exposed?---So what's your question to me, I'm
10:12:02 38 sorry?
10:12:02 39
10:12:03 40 Do you agree that that was the outcome had Ms Gobbo been
10:12:05 41 exposed as a source?---Had the source been exposed as such?
10:12:12 42
10:12:12 43 Yes?---As in giving information to us?
10:12:14 44
10:12:15 45 Yes?---The likelihood is that she would have been killed,
10:12:17 46 yes.
10:12:17 47

10:12:17 1 Even though you don't think these text messages, it was
10:12:20 2 your view the text messages weren't identifying her as a
10:12:24 3 source, you can't exclude that possibility, you couldn't
10:12:27 4 exclude it then and you can't exclude it now, do you accept
10:12:30 5 that?---Um, yes, but if I can add, I think if criminals had
10:12:43 6 known, and when I say known, 100 per cent known that the
10:12:48 7 source was acting as such, that she would be dead.
10:12:52 8
10:12:52 9 So there wouldn't be an entry in the SML with the threat,
10:12:56 10 she'd just be dead?---No, no, I'm not trying to be flippant
10:13:00 11 about it. What I'm saying is I believe, I don't believe
10:13:04 12 these threats were in relation to her specifically talking
10:13:07 13 to us. I'm not saying they're not serious threats, they
10:13:10 14 are and of course we recorded them and considered them and
10:13:13 15 took certain courses of action where we could.
10:13:16 16
10:13:16 17 And nor are you saying that it's not a possibility that
10:13:19 18 they were identifying her as a source, you just say that
10:13:22 19 was a much smaller possibility than the possibility that
10:13:25 20 you understand it to be, which was that people were
10:13:27 21 concerned about her assisting people who were assisting the
10:13:31 22 police in a professional capacity?---I do believe that.
10:13:35 23 That's also from experience with other sources where it's
10:13:38 24 quite common for criminals to accuse, accuse others of
10:13:42 25 being sources, it's quite, in fact quite would you believe
10:13:46 26 a clever tactic to do so.
10:13:47 27
10:13:48 28 Yes. No, I understand?---Yes.
10:13:50 29
10:13:51 30 There were two risk assessments conducted in relation to
10:13:57 31 Ms Gobbo. That can be taken off the screen, thank you.
10:14:00 32 And I just want to ask you some questions about those.
10:14:03 33 Firstly you conducted the two - I should say two formal
10:14:07 34 risk assessments, as in the formal document entitled "risk
10:14:12 35 assessment", two of those were conducted?---Yes.
10:14:14 36
10:14:15 37 You conducted both of them?---Yes, I would have. I
10:14:19 38 submitted the paperwork, correct. I would have consulted
10:14:24 39 the controller I'm sure.
10:14:26 40
10:14:26 41 Of course. I'm just saying as in you were the person who
10:14:28 42 compiles them, that's all?---Yes.
10:14:30 43
10:14:31 44 The risk assessment, just on reading those risk
10:14:34 45 assessments, is clearly a formal document that requires the
10:14:38 46 person who's compiling it to think broadly about any nature
10:14:44 47 of risks that might pertain to a particular human source

10:14:47 1 and to think quite broadly about that, is that
10:14:53 2 correct?---That's correct. That's what we tried to do and
10:14:56 3 that's what I did try to do in this particular case. This
10:14:59 4 was a very new thing for Victoria Police at the time to do
10:15:04 5 such a document in such a broad and fairly comprehensive
10:15:07 6 way. It took a while to sort of, for me to get my head
10:15:12 7 around that document, yeah.
10:15:13 8
10:15:14 9 There wasn't a formal process prior to the SDU for things
10:15:16 10 like risk assessments is my understanding of the situation,
10:15:19 11 is that right?---No, no. My understanding was there or my
10:15:23 12 memory from operating in that old way then, there was zero,
10:15:29 13 but yeah, that's enough, yeah, sorry.
10:15:33 14
10:15:33 15 The risk assessment, it's importance is that it becomes
10:15:38 16 part of the formal records of the SDU, that someone coming
10:15:40 17 into the management of Ms Gobbo or someone auditing the
10:15:46 18 SDU's management of Ms Gobbo can go to that document and it
10:15:49 19 can explain to them what the current situation vis-a-vis
10:15:53 20 the risks to the person are, is that a fair
10:15:57 21 assessment?---Yes, that would be part of it and also it's
10:16:00 22 to, well I guess there's more to it than that. It
10:16:07 23 indicates that the handler and controller considered the
10:16:10 24 risks, thought about ways to mitigate them, if that can be
10:16:16 25 done, but then probably the most important aspect of it is
10:16:21 26 reporting it upwards ultimately to the source management
10:16:24 27 unit so that there's a record of the considerations that
10:16:28 28 were made at the time that source is being handled and then
10:16:32 29 their role is to, what's the word, sign off on it. They
10:16:36 30 have to agree that the measures in that document are
10:16:39 31 appropriate in the circumstances and have been reported.
10:16:42 32
10:16:42 33 Another use, I assume, would be for, because as we see with
10:16:46 34 Ms Gobbo, there's from time to time handlers change or a
10:16:49 35 handler might go on holidays and someone else step in.
10:16:52 36 It's a document that the new handler or the temporary
10:16:56 37 handler could look at and understand aspects of this
10:17:02 38 particular source, is that another use for the
10:17:03 39 document?---Yes, probably within the SDU it would be less
10:17:06 40 of an issue because they'd probably know about it anyway.
10:17:09 41
10:17:10 42 They would know about it anyway because if they review ICRs
10:17:13 43 and things like that they'll be able to determine what
10:17:15 44 other risks were posed to a particular source, is that
10:17:18 45 right?---Yes, and just from the, I forget weekly meetings
10:17:23 46 or fortnightly meetings, just from the general debriefs we
10:17:28 47 had about all sources.

10:17:29 1
10:17:30 2 The two risk assessments, the first of them is 15 November
10:17:33 3 2005. I'm not 100 per cent sure whether these two have
10:17:42 4 been tendered yet. We're just checking that. They were
10:17:46 5 tendered, everyone is nodding at me. 184 is the first of
10:17:51 6 them. 184 and 185. The first of those is 15th of the 11th
10:17:58 7 2005. The second doesn't need to be brought up on the
10:18:01 8 screen at the moment, but that's about seven months later
10:18:03 9 on 20 April 2006. The title of both documents, it says,
10:18:11 10 "Refer to s.23 of the informer management policy". These
10:18:15 11 are a creature of that informer management policy, is that
10:18:19 12 right?---That would be right. I just can't remember what
10:18:22 13 it was right now.

10:18:24 14
10:18:25 15 Gobbo is registered on 16 September 2005 and she's
10:18:28 16 deregistered in January of 2009. I understand, and we'll
10:18:33 17 talk a bit about the difference between a formal risk
10:18:36 18 assessment and informal risk assessments which might be
10:18:40 19 recorded in ICRs and elsewhere. But there's a period of
10:18:42 20 about three and a half years where no formal risk
10:18:45 21 assessment is conducted on behalf of Ms Gobbo. You agree
10:18:50 22 with that?---My recollection was there was two, yes, that's
10:18:55 23 right, yep.

10:18:55 24
10:19:03 25 Given the threats that we're talking about that I've taken
10:19:06 26 you to, they began, there's early ones in 2006 and they
10:19:13 27 travel really through the rest of Ms Gobbo's period as a
10:19:17 28 human source. Is it this sort of place that you would find
10:19:23 29 reference to those threats had there been risk assessments
10:19:28 30 continually updated for Ms Gobbo down the track, would they
10:19:31 31 be identified in a document like this?---They would, I
10:19:35 32 suppose they would be, but it was a constant - the risk
10:19:39 33 assessment was a constantly ongoing, almost, I thought
10:19:44 34 about this a little bit, I understand why you're asking the
10:19:47 35 question.

10:19:47 36
10:19:48 37 Yes?---I think the risk assessment was almost at every
10:19:52 38 contact and reported to the controller and - - -

10:19:58 39
10:19:59 40 Before you go on, I can see very clearly in the ICRs and
10:20:03 41 the Commission's aware that risks to Ms Gobbo were
10:20:09 42 recorded?---Yes.

10:20:09 43
10:20:10 44 In the ICRs, and that's really a separate matter to what
10:20:14 45 I'm wanting to talk about at the moment. I should say I
10:20:17 46 absolutely accept that's the case. You can see various
10:20:19 47 risks to Ms Gobbo being recorded throughout the

10:20:23 1 ICRs?---Right.
10:20:23 2
10:20:23 3 What I'm wanting to focus on here is this particular
10:20:27 4 document being the risk assessment. Let's just say the
10:20:31 5 hypothetical, had there been continual updating of the
10:20:34 6 formal risk assessment document, is it the sort of document
10:20:37 7 that would record threats that had been received to a
10:20:41 8 source?---Yes.
10:20:42 9
10:20:48 10 It's the case, if you could bring up the second - - -
10:20:52 11
10:20:52 12 COMMISSIONER: Could I just mention that's Exhibit 285A
10:20:56 13 that we've just been looking at.
10:20:58 14
10:20:58 15 MR WOODS: It might be 286A I'd like to have brought up
10:21:02 16 now.
10:21:02 17
10:21:02 18 COMMISSIONER: The next one is 286A, that's right.
10:21:05 19
10:21:06 20 MR WOODS: Here we go, there's the two documents. Just so
10:21:09 21 I can be sure about this. I've just done a side by side
10:21:14 22 review of the documents and it seems to me that what
10:21:16 23 happens between the November risk assessment and the April
10:21:20 24 the next year risk assessment is that you consider what's
10:21:26 25 already in essentially the template that the risk
10:21:30 26 assessment was done early on in the process, and then you
10:21:33 27 update it by putting in bold and underlined text to say
10:21:37 28 where these particular issues are at now, is that
10:21:42 29 right?---That's my memory I think. I was asked to do it.
10:21:48 30
10:21:48 31 My review seems to be that all of the words, despite, for
10:21:52 32 example, on the first page you can see the bottom lines
10:21:55 33 don't match up but I think the text is the same and as you
10:21:59 34 scroll through - - - ?---That's my recollection. The
10:22:03 35 second one is identical with additions.
10:22:05 36
10:22:05 37 Yes, okay, that's what I wanted to know. Essentially for a
10:22:15 38 risk assessment to be conducted certainly at this time, we
10:22:18 39 might talk about it a bit later in a moment, but it was a
10:22:18 40 process of getting the base document, thinking broadly
10:22:21 41 about the risks early on in the relationship with the
10:22:24 42 source, putting them all down into a document and then
10:22:27 43 updating that as those risks developed or as you had time
10:22:31 44 to sit down and have another think and have another draft
10:22:35 45 of the next version of the risk assessment, is that how it
10:22:38 46 worked?---I think essentially yes. I recall that there was
10:22:46 47 an incident that triggered the thinking around that and I

10:22:52 1 think I was then asked to submit a second one.
10:22:54 2
10:22:54 3 So there was a particular moment when the second one was
10:22:57 4 asked for because of something that had occurred?---Yes,
10:23:00 5 that's my recollection, yes.
10:23:02 6
10:23:02 7 And you don't recall being asked to submit another one any
10:23:05 8 time before January 2009, after this April 2006 one?---I
10:23:13 9 guess no, but nor did I volunteer to do one I guess. But
10:23:20 10 having said that, I wasn't always handling this source, I
10:23:26 11 only did the two.
10:23:27 12
10:23:28 13 Let's go to p.7 of 9 in the second of those risk
10:23:32 14 assessments. There's some text there, "Because of the
10:23:35 15 source's occupation and particular position, if
10:23:38 16 compromised" - I should say this is the same text that's in
10:23:41 17 the first one because it doesn't have any bold or
10:23:43 18 underlined additions to it, "If compromised the handling of
10:23:47 19 this source would come under extreme scrutiny. This would
10:23:51 20 cause embarrassment and criticism of the Force. This must
10:23:55 21 be considered and balanced against the proposition of not
10:23:58 22 utilising the source and the potential resultant harm to
10:24:00 23 the public that may occur through lack of intelligence
10:24:04 24 against very large scale drug traffickers". They're your
10:24:08 25 words?---Yes.
10:24:09 26
10:24:15 27 As I read that there was attention in your mind on the one
10:24:20 28 hand between using Ms Gobbo, the difficulty with using
10:24:26 29 Ms Gobbo because of her occupation and particular position
10:24:30 30 because of the scrutiny that would, that Victoria Police
10:24:33 31 would come under, that's on the one hand. On the other
10:24:39 32 hand the potential for very significant information and the
10:24:42 33 ability to bring down large scale drug traffickers, that's
10:24:49 34 really what you're saying in this paragraph, isn't
10:24:52 35 it?---Yes, I think so. I think a key word is balance in
10:24:56 36 that sentence. I re-read it now and it's an intention - or
10:25:00 37 the reason I put that in there is this has to get - some of
10:25:06 38 that HMSU, the management of the source's area will have to
10:25:11 39 read this and they decide whether this is suitable or not
10:25:14 40 and I'm sure they knocked back risk assessments at various
10:25:20 41 times but they had to be fully aware of the situation. So
10:25:23 42 I think that was my thinking at the time. Again, keeping
10:25:26 43 in mind, I think this is the first one, I've been told this
10:25:31 44 was at the time the most comprehensive risk assessment
10:25:35 45 they'd ever had on a source, ever. I'm not saying I got it
10:25:39 46 right but this was a new thing to us.
10:25:41 47

10:25:42 1 I'm not even saying you got it wrong, you are identifying
10:25:45 2 there that there will be extreme scrutiny of Victoria
10:25:48 3 Police because of her occupation as a barrister if it comes
10:25:52 4 out. There will be scrutiny, embarrassment and criticism
10:25:55 5 of the Force. That was inevitably going to be the case,
10:25:58 6 wasn't it?---Because of the perceptions, yes, that that was
10:26:02 7 a possibility, that's what I've said.
10:26:04 8
10:26:05 9 That's because of her occupation, as you say in that first
10:26:08 10 sentence there, do you agree with that?---That's what I've
10:26:10 11 written, yes.
10:26:11 12
10:26:11 13 And the reason there's going to be that embarrassment and
10:26:14 14 that scrutiny is because it was in your view, as you were
10:26:19 15 drafting this, potential wrongdoing on the part of the SDU
10:26:22 16 to use someone of that occupation as a source?---No.
10:26:26 17
10:26:27 18 Why would there be extreme scrutiny otherwise, why would
10:26:31 19 there be embarrassment, why would there be criticism?---If
10:26:33 20 a source was compromised, that would cause Victoria Police
10:26:38 21 embarrassment. That's what I was thinking.
10:26:41 22
10:26:41 23 I put it to you you weren't thinking that. You say because
10:26:45 24 of the source's occupation and particular
10:26:48 25 position?---That's what I was thinking.
10:26:50 26
10:26:50 27 Because she's a barrister?---No, no, because if a source is
10:26:56 28 compromised and because she's high profile, it would be
10:27:01 29 very, regardless of her, I have put the occupation there
10:27:04 30 obviously, but regardless of the occupation, if a high
10:27:06 31 profile person is exposed as a source that's very
10:27:11 32 embarrassing for Victoria Police, the whole way we do
10:27:14 33 business and confidence in the system to handle sources.
10:27:17 34 That's what I was worried about.
10:27:19 35
10:27:19 36 You didn't express in this sentence any sensitivity
10:27:22 37 whatsoever about the potential corruption of the legal
10:27:28 38 system or the perception of that were it to come out that
10:27:32 39 the Source Development Unit were using a practising
10:27:35 40 barrister as a human source?---That's not my recollection
10:27:41 41 at the time looking at how I've written this document.
10:27:48 42
10:27:51 43 And the embarrassment and criticism of the Force, again you
10:27:55 44 say that's got nothing to do with her being a
10:27:59 45 barrister?---It would be in the sense that she's a high
10:28:02 46 profile person. I understand where we're sitting today,
10:28:05 47 I'm clearly not ignoring that, but I'm just saying at the

10:28:11 1 time I wrote it that's what was in my mind as I recall.
10:28:14 2
10:28:14 3 That's why I'm interested. There's a lot of, many
10:28:18 4 witnesses and, you know, to your credit including you, have
10:28:22 5 said things are pretty different in 2019 now knowing what
10:28:25 6 we know about all of this and we probably would have done
10:28:29 7 things differently?---Yeah.
10:28:30 8
10:28:31 9 But what I'm saying here in 2006, or 2005 in fact, November
10:28:35 10 2005, you were identifying that particular problem, that
10:28:39 11 her occupation and her position would come under extreme
10:28:43 12 scrutiny and there would be embarrassment and criticism for
10:28:47 13 the Force, and what I'm putting to you is what you're
10:28:50 14 identifying there was that the thing that would cause
10:28:52 15 embarrassment and criticism was the potential wrongdoing of
10:28:56 16 using someone in that occupation?---I definitely wasn't
10:29:01 17 thinking in terms of wrongdoing, no.
10:29:04 18
10:29:04 19 But in your early meetings with Ms Gobbo, you and Mr White
10:29:07 20 were finding your way and talking to Ms Gobbo in some
10:29:11 21 detail about how you would navigate those issues of her
10:29:16 22 being a barrister or what information she would and
10:29:19 23 wouldn't be able to provide to you, you agree you had those
10:29:22 24 conversations?---Yes, and navigate's exactly right, yes.
10:29:26 25
10:29:27 26 Just to round it off, your clear position is that you
10:29:33 27 weren't saying in this document that there was going to be
10:29:36 28 any issue that could come out about the compromise of the
10:29:39 29 legal process by using a barrister as a source?---That was
10:29:42 30 absolutely not in my mind at the time and may I say, it
10:29:47 31 shouldn't have.
10:29:49 32
10:29:50 33 Thank you. Another thing about the risk assessment that I
10:29:58 34 suggest should have been there is the potential for there
10:30:05 35 being breaches of legal professional privilege and
10:30:07 36 conflicts of interest from Ms Gobbo and I want to ask you a
10:30:12 37 couple of questions about that, but I take it that your
10:30:15 38 answer would be the same, which is that yeah, those are
10:30:18 39 things that probably should have been in this document as
10:30:21 40 well?---Sitting here today, of course. But back then I
10:30:27 41 just had no, I had no, what's the word I'm looking for, I'm
10:30:34 42 trying to be accurate here, I had no consideration that
10:30:37 43 that would ever occur.
10:30:38 44
10:30:38 45 In fact as I said to you yesterday and you agreed, there
10:30:41 46 were plenty of occasions, we can see them in the ICRs,
10:30:46 47 where Ms Gobbo was told not to act for people or not to

10:30:51 1 provide particular information or information that she
10:30:53 2 insisted on providing anyway wasn't handed over and that's
10:30:58 3 something that happened from time to time as well, wasn't
10:31:00 4 it?---That's right, yes.
10:31:03 5
10:31:03 6 We talked yesterday about the significant - that can come
10:31:06 7 off the screen, thank you - the significant task that
10:31:11 8 Ms Gobbo as a human source posed for the SDU. She was
10:31:17 9 particularly labour intensive as a source, is that
10:31:20 10 right?---Yes.
10:31:23 11
10:31:23 12 And she rang many, many times a day according to the ICRs.
10:31:31 13 Some days only once or twice, but other days we can see
10:31:35 14 upward of 15 phone calls to her handler, would you agree
10:31:38 15 with that?---That's right.
10:31:39 16
10:31:39 17 And the phone calls were talking sometimes about matters
10:31:44 18 that might be useful information, a lot of times were about
10:31:48 19 her personal matters or her health or gossip, do you agree
10:31:52 20 that there was a range of topics that she spoke
10:31:57 21 about?---Well, yeah, that's part of the role of a handler
10:32:00 22 is to develop some sort of rapport with the source and it
10:32:04 23 covers a whole range of what's going on in their life, so
10:32:08 24 that's right.
10:32:08 25
10:32:09 26 I assume there's no such thing as a usual source but can
10:32:13 27 you compare the volume of contact to Ms Gobbo to the volume
10:32:18 28 of contact you would have if there is such thing as a usual
10:32:22 29 source?---There's no such thing as a usual source, so
10:32:28 30 volume - well of course I can only talk about my
10:32:33 31 experience. But this was the most, most sort of labour
10:32:36 32 intensive and highest number of contacts but I'm just
10:32:40 33 thinking of the SDU experience. There may have been others
10:32:43 34 that were quite high at certain things, higher than this
10:32:47 35 possibly.
10:32:48 36
10:32:48 37 Was it that volume that was one of the reasons why handlers
10:32:52 38 were rotated with Ms Gobbo?---Yes.
10:32:56 39
10:32:56 40 Because I can see from the ICRs or the Commission as we
10:33:01 41 look down the left-hand side, we see that the date in the
10:33:04 42 far left column, next to that is the time, and we see, well
10:33:12 43 for example, phone calls that were made very late at night
10:33:15 44 consistently, was that your experience?---Yes.
10:33:17 45
10:33:17 46 And we also see face-to-face meetings that went, I was
10:33:21 47 mentioning one before, that went for five hours, there was

10:33:24 1 then others that went for similar amounts of time, that was
10:33:27 2 your experience?---Yes, it was.
10:33:29 3
10:33:35 4 You talk a bit in your statement about the oversight of the
10:33:39 5 SDU by senior officers. As I understand it those people
10:33:44 6 were Calishaw, McWhirter, Hardy and Glow at different
10:33:49 7 times, is that correct?---That's my recollection but if
10:33:53 8 there are others I can't remember.
10:33:54 9
10:33:54 10 Above them was the Superintendent of the CSD which was
10:34:00 11 Superintendent Biggin?---That's right, but early days was
10:34:07 12 there someone before him?
10:34:09 13
10:34:09 14 There might well have been. You remember Mr Biggin having
10:34:12 15 that role?---Certainly, yes.
10:34:14 16
10:34:14 17 And there was a Local Source Registrar and their
10:34:18 18 responsibility was to basically acquit the formal
10:34:26 19 registration of each registered source within the SDU, is
10:34:30 20 that correct? Were they the one who had to give the okay
10:34:37 21 is what I'm asking?---Yes, when you submitted an
10:34:40 22 application for registration, for example, it would go to
10:34:44 23 them, that's right, and they would make comment whether it
10:34:48 24 went any further, yeah.
10:34:49 25
10:34:49 26 Did they then meet with you or was it a rubber stamp, do
10:34:53 27 you remember any occasions when they were knocked back,
10:34:56 28 what was the situation from your memory with the Local
10:35:02 29 Source Registrar?---As far as the registration process, I
10:35:04 30 don't remember much contact with the LSR, but that would be
10:35:08 31 between the controller. He would, I would perhaps submit
10:35:12 32 the registration application but then the controller would
10:35:18 33 take it from there and deal with it in like a chain of
10:35:22 34 command situation.
10:35:22 35
10:35:23 36 I should have asked this as a separate question perhaps.
10:35:23 37 Do you remember any human sources being knocked back by the
10:35:26 38 Local Source Registrar as being not appropriate for one
10:35:29 39 reason or another?---Not that I recall, no, but we were
10:35:40 40 probably a bit different because we got handed some of the
10:35:45 41 more difficult sources. So they were already registered
10:35:51 42 when we got them a lot of the time.
10:35:53 43
10:35:53 44 You talk also about those who you understand were involved
10:35:57 45 in the authorisation and use of Ms Gobbo and you say
10:36:01 46 Mr Biggin as officer-in-charge of the division?---H'mm.
10:36:06 47

10:36:06 1 So is it your understanding that he sat at the top of the
10:36:10 2 tree when it came to the authorisation and use of
10:36:15 3 Ms Gobbo?---I don't know about the top of the tree, I don't
10:36:22 4 know. He was certainly in charge of us and I believe he
10:36:26 5 had a good understanding of what we did on a day-to-day
10:36:29 6 basis with all the sources.
10:36:31 7
10:36:31 8 He in fact conducted an audit early on in Ms Gobbo's
10:36:35 9 registration period, he was particularly looking at has
10:36:40 10 Gobbo and another person, Nolan, was looking at other
10:36:45 11 registered sources at the time. Do you have a recollection
10:36:48 12 of that occurring?---Someone pointed that document out to
10:36:51 13 me I think earlier this year, yes.
10:36:53 14
10:36:54 15 Pointed out to you earlier this year, did that lead to a
10:36:57 16 recollection of it occurring at the time?---Vaguely.
10:36:59 17
10:37:00 18 Do you know if he was spoken to as part of that
10:37:04 19 process?---I think the report says I was or Mr Biggin was
10:37:10 20 present for something I did.
10:37:12 21
10:37:12 22 It does. I'll bring it up on the screen briefly. It's
10:37:16 23 VPL.2000.0002.0017. 277 that one is, the exhibit. The
10:37:31 24 last page, you don't need to go to this now, it indicates
10:37:35 25 it was [REDACTED] 2006, it was not long after the last
10:37:39 26 document we were looking at, being the risk assessment. It
10:37:53 27 says at the top it was requested by Commander Moloney and
10:37:58 28 what Mr Biggin did was to attend the DSU as it was then and
10:38:03 29 conduct that audit specifically in relation to 3838. And
10:38:09 30 the last page shows that his attendance was the day before,
10:38:13 31 he says he spoke to yourself, Mr Smith, Mr Green and I
10:38:23 32 think it's Mr Black were the individuals he spoke
10:38:28 33 to?---Yes.
10:38:29 34
10:38:29 35 I might have missed your answer before, do you have a
10:38:32 36 recollection of speaking to Mr Biggin at this stage?---No.
10:38:36 37
10:38:37 38 What he says is he used the Force policy at the time and I
10:38:41 39 won't bring that up. And he inspected the records. And he
10:38:47 40 says also that he'd been with both you and Mr White the
10:38:51 41 weekend before with Ms Gobbo. Now, I might just scroll
10:38:57 42 down to that. "I have also had the opportunity to observe
10:39:02 43 yourself and Mr White interact with the source in an
10:39:05 44 operational setting over the last weekend." It's the case,
10:39:10 45 as I understand that, that he came to a face-to-face
10:39:12 46 meeting with Ms Gobbo?---I don't remember that at all. I
10:39:17 47 don't - I actually don't think that's right but if it is -

10:39:22 1 - -
10:39:22 2
10:39:22 3 It might be he sat in on a phone call or something like
10:39:26 4 that instead?---That's what I was about to say. If he was
10:39:29 5 present in a meeting it would be in a contact report 100
10:39:32 6 per cent. I really don't remember. Even with my bad
10:39:35 7 memory I think I would remember that.
10:39:37 8
10:39:37 9 That's why I was asking, I thought it was an interesting
10:39:40 10 thing he said?---It's got the word "interact" in it so I
10:39:43 11 think - well, I don't want to guess. I don't think it was
10:39:51 12 a meeting.
10:39:51 13
10:39:52 14 You don't have a memory?---The only thing it could be is a
10:39:55 15 phone call, how else would he interact?
10:39:58 16
10:39:58 17 I assume face-to-face would be interacting with her, had he
10:40:02 18 attended he would have watched that interaction. But also
10:40:04 19 equally, as you say, he might have observed that
10:40:07 20 interaction, the two of you speaking to Ms Gobbo over the
10:40:11 21 phone?---That's right. It's one or the other, isn't it?
10:40:14 22
10:40:14 23 My interest was from the words "in an operational setting
10:40:19 24 over the last weekend and his observation". That's all
10:40:21 25 right, I understand your evidence to be you don't have any
10:40:24 26 memory of him attending and you probably would remember it
10:40:27 27 if he did actually turn up?---At a meeting?
10:40:31 28
10:40:31 29 To a face-to-face meeting I should say, yes?---I mean he
10:40:34 30 was, I was going to say regular. He was often in the
10:40:38 31 office but, yeah, a meeting, I'm really, I would be really
10:40:44 32 surprised if that's right.
10:40:44 33
10:40:45 34 Are you aware of whether Mr Biggin, I assume from your
10:40:50 35 memory, your lack of memory of these events given the
10:40:56 36 passing of time, you might not be, but are you aware
10:40:59 37 whether Mr Biggin matched up ICRs and IRs as part of his
10:41:06 38 audit, to see what had been disseminated and how it had
10:41:10 39 been disseminated specifically?---No, but knowing Mr Biggin
10:41:14 40 - well I don't know, no, I don't.
10:41:15 41
10:41:15 42 You don't know. He'll be giving evidence in due
10:41:19 43 course?---I found him to be a very thorough individual.
10:41:22 44
10:41:23 45 Perhaps he can let us know about that in due course. The
10:41:32 46 last entry in the report, the last contact report that he
10:41:35 47 perused, according to the document we had on the screen a

10:41:39 1 moment ago, was ICR 21 which has an entry that says, "Tony
10:41:44 2 Mokbel, trial general discussion. He has possible case of
10:41:46 3 acquittal due to a clever no case submission". At this
10:41:51 4 stage Ms Gobbo was still acting for Mr Mokbel, Mr Mokbel
10:41:56 5 was soon to but hadn't yet left the jurisdiction. He
10:42:02 6 doesn't make any mention of that information being
10:42:04 7 disclosed by Ms Gobbo as potentially being an issue. Do
10:42:09 8 you remember him having any conversation with you about her
10:42:13 9 status as a barrister acting for various people and the
10:42:17 10 information potentially being problematic for that
10:42:22 11 reason?---No.

10:42:25 12
10:42:25 13 He says in his assessment, in his audit, "The risk
10:42:30 14 associated with the source continues to remain high but the
10:42:33 15 risk is being managed at an appropriate level by the right
10:42:36 16 people with the necessary training and attributes", and I
10:42:39 17 take it you'd agree with that assessment?---I think I'll
10:42:50 18 let others be the judge of that.

10:42:52 19
10:42:55 20 He also says, "The relationship between the source and
10:42:57 21 Victoria Police is changing. The initial purpose for
10:43:00 22 assisting police has been achieved. Further deployment of
10:43:03 23 the source will need to be carefully planned". Now, given
10:43:10 24 the date of that document being [REDACTED], there was - I
10:43:17 25 don't want to talk about this person in detail but there
10:43:19 26 was an arrest that had happened a [REDACTED] that. Do
10:43:23 27 you understand who I'm talking about?---I do.

10:43:26 28
10:43:28 29 And do you understand what he's - I know this isn't your
10:43:32 30 document, but my reading of it, and I want to see what your
10:43:35 31 view is, what he's saying there is that initial phase,
10:43:40 32 being the arrest of that person, has now occurred, is that
10:43:43 33 right, is that your understanding?---If those dates match
10:43:46 34 up, yes.

10:43:46 35
10:43:48 36 That arrest was on the [REDACTED] of the same month?---Yes.

10:43:53 37
10:43:53 38 This report was on the [REDACTED] of that same month. So it
10:43:57 39 seems - - - ?---I suppose you'd have to ask him, you know,
10:44:00 40 the date it was submitted may not indicate when it was - I
10:44:03 41 don't know, but certainly the dates match up, yes.

10:44:06 42
10:44:06 43 He also says, "The accurate number of police" - this is on
10:44:10 44 p.2, halfway down of the second-last document on the screen
10:44:15 45 audit, "The accurate number of police that are aware of the
10:44:18 46 identity of the source is not known but it is clear it is
10:44:23 47 many. On reading the file it's clear that at least two

10:44:26 1 teams and management from the MDID, Task Force Purana
10:44:31 2 staff, ACC staff, State Intelligence Division staff and
10:44:35 3 management, Ethical Standards Department, State
10:44:39 4 Surveillance Unit and Undercover Unit who either know the
10:44:41 5 identity or could give an educated guess as to the true
10:44:45 6 identity. It's also clear that the Informer Management
10:44:49 7 Unit are all aware of the identity. It is questionable
10:44:52 8 that all need to know. This knowledge is a risk and should
10:44:55 9 be considered before any further deployment". We talked a
10:45:02 10 little while ago and I showed you the list, we're not sure
10:45:04 11 of the date of the document but the document that was
10:45:06 12 produced to record who knew Ms Gobbo was a source.
10:45:12 13 Mr Biggin here is identifying a number of those people in a
10:45:16 14 general sense. Do you know if that particular risk was
10:45:21 15 considered before any further deployment after [REDACTED]
10:45:24 16 2006?---I'm sure it was because the controllers knew of it
10:45:31 17 and I think had probably initiated the creating of the
10:45:36 18 list, yeah. It was, the number of people that know about a
10:45:39 19 source is always a risk.
10:45:42 20
10:45:43 21 Yes. Do you believe, and again as you sit here in 2019,
10:45:49 22 that it was responsible - let's just take it from [REDACTED]
10:45:55 23 onwards 2006 - to continue to use Ms Gobbo as a source?
10:46:06 24 Can I restrict - I might make it a bit simpler?---Yes.
10:46:09 25
10:46:10 26 Just in relation to the risks that were posed to Ms Gobbo
10:46:13 27 for a start?---H'mm.
10:46:14 28
10:46:14 29 Was it responsible to continue to use her as a source,
10:46:17 30 after, let's say after that person was arrested in [REDACTED]
10:46:21 31 2006?---Um, well the risks were identified and recorded and
10:46:34 32 addressed.
10:46:35 33
10:46:35 34 They certainly were?---I think so because, for example, the
10:46:39 35 risks you're talking about with the number of police
10:46:42 36 members that knew, that's a risk but of course it's a risk
10:46:47 37 if they're, if any of those members are corrupt or, the
10:46:55 38 word I used in the risk assessment was obtuse, in other
10:47:00 39 words if they spoke about it when they shouldn't have. And
10:47:03 40 of course as numbers increased that potentially becomes
10:47:07 41 worse, but only if one does it.
10:47:12 42
10:47:13 43 What about the risk to the legal system and the risk to the
10:47:16 44 sanctity of convictions? Do you agree that that risk is
10:47:20 45 something that made it irresponsible to keep using Ms Gobbo
10:47:25 46 after, let's just say from the beginning it was a risk that
10:47:29 47 meant she should never have been used as a source?---No,

10:47:32 1 because we were, we were targeting the ongoing criminality,
10:47:37 2 not what people had been charged with.
10:47:39 3
10:47:39 4 I understand that was your target but what I'm saying is
10:47:44 5 given what you now know and the position that Ms Gobbo has
10:47:50 6 found herself in and that the announcement of this
10:47:55 7 Commission and the evidence that's been given to it, that
10:47:58 8 it was an irresponsible act in the first place to register
10:48:03 9 her as a human source?--Well, at the time no, we went
10:48:10 10 through the process as it was at the time and it was
10:48:16 11 approved and we did use the source. I mean looking back
10:48:21 12 now, clearly I understand why you ask that question and
10:48:29 13 courts have made certain decisions and I'm not au fait with
10:48:33 14 the details nor would I be capable of understanding all of
10:48:36 15 them, but the courts have made certain decisions so in
10:48:39 16 light of that, you know, I understand why you ask the
10:48:43 17 question, but back then we believed we acted appropriately
10:48:49 18 because we weren't looking for that sort of material and
10:48:52 19 that's what, and that was approved for us to do so.
10:48:56 20
10:48:56 21 All right. So if you had your time again?---Um, I would
10:49:08 22 probably, I would have delved deeply into the legal
10:49:16 23 implications.
10:49:17 24
10:49:17 25 Firstly, how would you do that?---Probably by consulting,
10:49:27 26 well this wouldn't be off my own bat, but I think as a
10:49:32 27 group consult a legal person about it, which I was loath to
10:49:36 28 do back then because we thought, probably rightly, it may
10:49:41 29 have leaked out that the source was acting as such, but in
10:49:44 30 light of where we sit today, do I wish we had done that?
10:49:48 31 Yes, I do.
10:49:49 32
10:49:51 33 Ms Gobbo's motivations I want to ask a few questions about.
10:49:56 34
10:49:56 35 COMMISSIONER: I'll just mention, that was Exhibit 277.
10:50:03 36
10:50:03 37 MR WOODS: Yes, thank you. Early on it was her motivations
10:50:10 38 and she says this very plainly on 16 September 2007 at that
10:50:16 39 meeting, 16 September 2005, sorry, meeting that she wanted
10:50:21 40 to rid herself of Tony Mokbel, is that correct?---Yes.
10:50:27 41
10:50:30 42 After Mr Mokbel left the jurisdiction a few months later,
10:50:37 43 there was no indication of Mr Mokbel's whereabouts for a
10:50:42 44 significant period of time, do you agree with
10:50:46 45 that?---That's my recollection.
10:50:47 46
10:50:49 47 So restricting it at least to Tony Mokbel, and I understand

10:50:51 1 the Mokbel group is bigger than just Mr Mokbel, but as at
10:50:57 2 March 2006, ridding herself of Tony Mokbel was no longer an
10:51:04 3 operating motivating factor at that stage, do you accept
10:51:07 4 that?---No, no, I don't.
10:51:10 5
10:51:10 6 Did you have any indication that she knew of his
10:51:13 7 whereabouts in the intervening period?---That's a different
10:51:18 8 question, but no.
10:51:19 9
10:51:19 10 Any indications she was having any conversations with him
10:51:22 11 in the intervening period?---No.
10:51:23 12
10:51:25 13 So ridding herself of Tony Mokbel, can you explain how it
10:51:28 14 was that that continued to be a motivating factor after
10:51:32 15 March 2006 and before he was returned to Australia?---I
10:51:38 16 believe he still had an influence from where he was and
10:51:41 17 later on it was known where he was, but at the time, and it
10:51:46 18 wasn't just Tony Mokbel, it was his whole group including
10:51:49 19 his brothers, that were exerting influence and trying to
10:51:53 20 control what the source said to the clients and what have
10:51:55 21 you, and I think that is documented.
10:51:57 22
10:51:58 23 Yes?---That didn't stop. It wasn't, like you didn't flick
10:52:03 24 a switch and say that suddenly stopped, it kept going.
10:52:07 25
10:52:07 26 I understand. You say one of her motivations was that she
10:52:11 27 wanted to be perceived by others as a person who did the
10:52:14 28 right thing and that's your recollection of one of her
10:52:17 29 motivations as she explained them to you?---Yes.
10:52:22 30
10:52:22 31 By the others, because of the anonymity of human sources, I
10:52:29 32 assume the others are only members of the SDU?---It's quite
10:52:33 33 a bizarre motivation. I still felt it was right, it was,
10:52:37 34 if I can sort of paraphrase, "I want to be seen to be doing
10:52:43 35 the right thing but I can't tell anybody", but we would
10:52:47 36 know. That's something identified, I recorded it. And of
10:52:50 37 course there are other motivations as well and you never -
10:52:54 38 yeah.
10:52:54 39
10:52:55 40 You'd accept though that given the small number of human
10:52:59 41 source handlers that she would be dealing with and the fact
10:53:01 42 that she expected that other people wouldn't know about her
10:53:04 43 assistance, it's quite a strange motivation to want to be
10:53:10 44 perceived by these individuals who are new in her life as
10:53:13 45 someone who was doing the right thing? You'd accept that's
10:53:17 46 a strange motivation?---Yeah, there are often strange
10:53:22 47 motivations involved.

10:53:23 1
10:53:24 2 Can I suggest that might be an early indication that all
10:53:29 3 may not be right with Ms Gobbo's psychological or emotional
10:53:33 4 stability?---No, no, I wouldn't agree with that. It was
10:53:38 5 just different. We had many high risk sources who had many
10:53:44 6 weird and wonderful, if you like, motivations. I could
10:53:49 7 probably also add I'm sure the motivations, and I was
10:53:55 8 always conscious of the fact that there would be
10:53:57 9 motivations we were not aware of, but in this instance, no,
10:54:01 10 I don't agree with that.
10:54:02 11
10:54:03 12 What about her motivation to use her contact with the
10:54:07 13 handlers as a form of self-therapy and stress relief? Was
10:54:12 14 that a motivation that caused you any concerns about her
10:54:16 15 emotional stability?---No, I felt that she was ultimately
10:54:24 16 probably certainly at one stage quite a lonely person as
10:54:28 17 far as being able to vent what's really going on in her
10:54:35 18 life. As in a lot of the other people she was dealing with
10:54:38 19 on a day-to-day on a social basis were criminals, so she
10:54:42 20 had to be very careful who she spoke to and who she talked
10:54:46 21 about what. I think she knew we would listen to anything
10:54:50 22 and be quite empathetic about what's going on in the
10:54:55 23 criminal world and the like.
10:54:56 24
10:54:56 25 It might be said by other or it might be thought by others
10:54:57 26 that it's extraordinary that a barrister would seek to use
10:55:01 27 human source handlers as a form of psychological therapy.
10:55:05 28 You wouldn't argue against that, would you?---I suppose
10:55:11 29 it's hard to but in this case, I mean anything's on the
10:55:17 30 cards with a high risk human source.
10:55:19 31
10:55:19 32 Mr Rowe gave evidence that he was upset with a question
10:55:24 33 that was asked of him from memory about Ms Gobbo coming to
10:55:27 34 the SDU in the first place, he said they weren't running a
10:55:31 35 daycare centre for wayward barristers. Would it sometimes
10:55:35 36 feel to you that in fact you were providing that kind of
10:55:39 37 emotional support for a wayward barrister?---Well I
10:55:43 38 wouldn't use those terms, a wayward barrister, but
10:55:47 39 certainly were we supplying emotional support? Yes, and
10:55:52 40 that happened to a number of, a number of high risk sources
10:55:56 41 at various times in quite, what I would suggest, others
10:55:59 42 would be quite surprising circumstances also.
10:56:02 43
10:56:02 44 We don't need to go into those thankfully. You talk about
10:56:07 45 at p.9 of your statement, your second statement, you say,
10:56:14 46 "Whilst handling this source I was mindful of not seeking
10:56:17 47 out and disseminating information which had been obtained

10:56:20 1 from her clients regarding current criminal charges. I
10:56:25 2 never endeavoured to ascertain any information that was
10:56:27 3 clearly LPP" and that seems to be consistent with the
10:56:30 4 evidence you've given yesterday and today, is that
10:56:34 5 right?---That was in my mind, yes.
10:56:35 6
10:56:35 7 So you had a specific focus on avoiding anything that might
10:56:38 8 be legally professionally privileged?---Yes, when I
10:56:43 9 reviewed the contact reports, it was, not remembering it
10:56:50 10 all back then, but it reinforced me it must have been
10:56:54 11 because there's several examples of her talking about
10:56:59 12 current clients and I specifically shut that conversation
10:57:03 13 down and not ask any questions. In the context of a
10:57:07 14 handler, what a good handler should do, that's the opposite
10:57:10 15 of what a good handler should do.
10:57:11 16
10:57:12 17 All right. But your position with Ms Gobbo though was
10:57:14 18 there was in fact nothing you didn't want to hear from her,
10:57:18 19 do you accept that?---That's the case with any source and
10:57:21 20 that's to do with knowing or part to do with her safety,
10:57:25 21 the source has to feel confident that they can divulge
10:57:30 22 anything that's going on so the handler can make a proper
10:57:34 23 assessment of what's going on in the big picture.
10:57:36 24
10:57:37 25 Within that concept of there being nothing you didn't want
10:57:41 26 to hear, that included legally professionally privileged
10:57:45 27 material that Gobbo might be wanting to give you?---If she
10:57:52 28 told us that we shut it down.
10:57:53 29
10:57:54 30 But it's part of the nothing that you didn't want to hear
10:57:57 31 though, isn't it?---Yes, I suppose it is but she didn't
10:58:04 32 actually divulge a lot of that. She mentioned sometimes
10:58:08 33 who she was representing, but we didn't always even know
10:58:12 34 that but I'm just trying to give you a more accurate
10:58:15 35 picture of how it worked. That question is an overarching
10:58:20 36 question about, "Tell us everything you know. That
10:58:23 37 includes what's going on in your life and also interaction
10:58:27 38 with people". If she told us anything about LPP we
10:58:31 39 actually didn't care about it, and the content, but
10:58:33 40 probably we cared about how it affected her.
10:58:37 41
10:58:37 42 When you say you never endeavoured to ascertain any
10:58:40 43 information that was clearly LPP, and you also say in the
10:58:44 44 same paragraph you were mindful of not seeking out and
10:58:48 45 disseminating information from her clients, it's in fact
10:58:55 46 the case that the breach or potential risk of breaching
10:58:59 47 legal professional privilege is something that just didn't

10:59:01 1 occur to you at the start, isn't it?---No, I wouldn't say
10:59:09 2 that. I say we're aware of it and I think the whole
10:59:13 3 concept of it evolved as we dealt with it. I would agree
10:59:21 4 was it clearly spelt out from day one? No, it was not, but
10:59:24 5 we had in our mind we were not going to get information
10:59:27 6 about her current cases.
10:59:29 7
10:59:29 8 There is a document that the solicitor in the room who is
10:59:32 9 assisting the Commission who is there with you has with
10:59:35 10 them. I'd like them to take you to p.51 of that document.
10:59:45 11
10:59:45 12 COMMISSIONER: What's the document? Are you able to tell
10:59:48 13 us what the document is?
10:59:49 14
10:59:50 15 MR WOODS: I'm not without disclosing the provenance of it,
10:59:54 16 which might be problematic. Certainly Mr Chettle is
10:59:59 17 entitled to know.
11:00:03 18
11:00:03 19 COMMISSIONER: Perhaps I might be entitled to know.
11:00:10 20
11:00:11 21 MR WOODS: Yes, I'll hand it up.
11:00:29 22
11:00:29 23 COMMISSIONER: Yes, all right. Thank you.
11:00:32 24
11:00:32 25 MR WOODS: Page 51 of that document. Firstly, your
11:00:37 26 attitude being there was nothing you didn't want to
11:00:40 27 hear?---H'mm.
11:00:41 28
11:00:42 29 That's correct, and as I understand it that's the evidence
11:00:46 30 that you've given so far today, you agree with that?---Yes.
11:00:49 31
11:00:50 32 And that included legally professionally privileged
11:00:54 33 information, you were happy, you wanted to hear that
11:00:58 34 information as well?---I didn't want to hear but it came
11:01:03 35 out. She knew what LPP was, but I wasn't seeking it out to
11:01:08 36 act on it. I was trying to get a big picture of what was
11:01:11 37 going on in her life.
11:01:12 38
11:01:18 39 But surely your answer to that question though is that the
11:01:22 40 nothing you didn't want to hear included legally
11:01:25 41 professionally privileged information?---We were not
11:01:29 42 seeking that information out, that's the best way I can put
11:01:32 43 it in my mind.
11:01:35 44
11:01:36 45 I should say and I think I've said to you already, there
11:01:39 46 are certainly references to the fact that you were telling
11:01:42 47 her from time to time that you didn't want particular

11:01:45 1 information and some handlers would write down that they
11:01:49 2 specifically wouldn't pass something over because it was
11:01:53 3 defence tactics and that's something that you're aware
11:01:55 4 of?---Yes.
11:01:56 5
11:01:56 6 Despite that situation, she would nevertheless attempt to
11:02:01 7 give you such information from time to time?---It would
11:02:05 8 come up, yes.
11:02:05 9
11:02:12 10 Just over the next page, p.52 - - - ?---Sorry, was there a
11:02:23 11 question about p.51 that I missed?
11:02:26 12
11:02:26 13 No, that's right, I just wanted to show you the information
11:02:29 14 there. Now I want to show you p.52. What I want to ask
11:02:36 15 you now is whether you had any reservations or concerns
11:02:39 16 about investigators using privileged information,
11:02:45 17 potentially privileged information against a person who
11:02:50 18 provided such information and whether or not that was
11:02:52 19 something that occurred to you at the time of dealing with
11:02:54 20 Ms Gobbo?---So you've got me looking at this document and
11:03:01 21 asking me that question so I'm just looking for - - -
11:03:04 22
11:03:05 23 Page 52 halfway down, I'd like you to read those words and
11:03:09 24 then I want to ask you a question about it?---Right. In my
11:03:12 25 second statement to the Commission I've indicated that some
11:03:14 26 of, some of the contents of this document, I'm sure it's
11:03:21 27 recorded accurately, but what I said in fact was wrong.
11:03:24 28
11:03:24 29 Is this one of those occasions where you say LPP or the
11:03:30 30 potential use of LPP is something that occurred to you that
11:03:33 31 was going to be an issue?---Yes, it was and probably I
11:03:37 32 didn't even think of it in terms of LPP, but certainly in
11:03:41 33 that, in the sense of, you know, I put it in layman's
11:03:47 34 terms, you know, what was going on in the current court
11:03:50 35 case. If I could elaborate on this - we're not allowed to
11:03:56 36 talk about this - - -
11:03:58 37
11:03:58 38 I'd prefer you didn't talk about the source of the
11:04:01 39 document. I'd like to talk about what you said?---Okay.
11:04:07 40 When I said that, I'd had zero chance to review any
11:04:13 41 documents. It was some years later. I in fact had just
11:04:18 42 resigned from Victoria Police. I was not even really clear
11:04:24 43 on the purpose of this process. I was not allowed to
11:04:31 44 discuss it with anybody else before these things were said.
11:04:35 45 As I say, I didn't have any chance to look at documents and
11:04:38 46 I hadn't turned my mind to it. And also - - -
11:04:41 47

11:04:42 1 Just pausing there, on reflection you say that the
11:04:46 2 situation is, and it might be a quicker way to do this, the
11:04:50 3 situation is in fact it did occur to you that the use of
11:04:53 4 LPP information might be an issue, it occurred to you at
11:04:56 5 the time that you were handling Ms Gobbo?---I was mindful
11:04:59 6 of it I think is a better way to put it. I think what I
11:05:03 7 said in this is actually wrong and other things I've said
11:05:06 8 are demonstrably wrong.
11:05:08 9
11:05:09 10 Okay, I understand. So in fact your evidence as you
11:05:14 11 provide it to the Commission is as per that paragraph in
11:05:16 12 your second statement, "I was mindful of not seeking out
11:05:20 13 and disseminating information which had been obtained from
11:05:23 14 her clients regarding current criminal charges"?---That's
11:05:27 15 right.
11:05:27 16
11:05:27 17 "I never endeavoured to ascertain any information that was
11:05:30 18 clearly LPP"?---That's my recollection, yes.
11:05:33 19
11:05:34 20 It specifically did occur to you at the time that it might
11:05:37 21 be an issue and it was an issue to be avoided?---It was an
11:05:41 22 issue to be avoided is a good way to put it.
11:05:44 23
11:05:44 24 In the document I've shown you it was a pretty
11:05:46 25 straightforward proposition that was put to you and a
11:05:50 26 pretty straightforward answer, do you accept that?---No,
11:05:53 27 because of the reasons I just said to you, that there was -
11:05:58 28 - -
11:05:58 29
11:05:58 30 You didn't have a chance to discuss it with others, you
11:06:02 31 didn't have a chance to prepare?---I've done a lot of
11:06:07 32 things since then, this is many, many years ago, and even
11:06:09 33 within this process, if I can say I was, I was shown a
11:06:14 34 small amount of documents. They were, they were almost
11:06:19 35 unreadable. During that time, how should I term it, in
11:06:25 36 this place where this occurred, the documents were in a
11:06:28 37 font that was almost unreadable. Whilst I was reading them
11:06:31 38 I was offered a magnifying glass to see if I could make
11:06:36 39 them more clear so - - -
11:06:38 40
11:06:39 41 Okay, I understand. I understand. And in fact I should,
11:06:44 42 as a matter of fairness, tell you that on 1 October 2005, a
11:06:50 43 meeting you and Mr White had with Ms Gobbo, there is in the
11:06:54 44 ICRs a note that says, "Human source warned re privilege -
11:07:00 45 ethics and advised that if privilege issues arise, human
11:07:05 46 source is to advise handlers and this will not be a
11:07:08 47 problem". And you recall conversations along those lines

11:07:13 1 with Ms Gobbo?---I don't recall them but if they're in a
11:07:21 2 contact report I'm sure they're right. Thank you for
11:07:24 3 pointing that out, that obviously goes to the opposite of
11:07:28 4 what I've said in this document that you're referring to.
11:07:30 5
11:07:30 6 The risk of breach of privilege was something then that was
11:07:34 7 considered from a very early stage with Ms Gobbo in other
11:07:38 8 words?---I think it was always there, it sort of evolved
11:07:46 9 quite quickly.
11:07:47 10
11:07:47 11 You say the same statement, p.12, that your understanding
11:07:53 12 of legal professional privilege is not to divulge matters
11:07:58 13 that are the subject of charges and are pending
11:08:00 14 determination by a court. You used a phrase a moment ago
11:08:05 15 to describe what I understood you were saying was your
11:08:09 16 limited understanding, maybe not an expansive understanding
11:08:13 17 of what legal professional privilege is, is that your
11:08:17 18 position?---What did I say?
11:08:18 19
11:08:19 20 I can't remember the phrase unfortunately. Maybe there's
11:08:23 21 an easier way to ask the question. Do you accept that
11:08:27 22 legal professional privilege is in fact broader than as you
11:08:30 23 say there, not divulging matters that are the subject of
11:08:36 24 charges and are pending determination by a court, or is
11:08:38 25 that still your understanding of the extent of legal
11:08:42 26 professional privilege?---I think I've read a few things
11:08:45 27 that are maybe more clear than that, but still in my mind,
11:08:48 28 I know I'm not in Victoria Police, but that was the general
11:08:53 29 application of how, the application of it back then.
11:08:57 30
11:08:57 31 I understand back then. Do you have a broader
11:08:59 32 understanding of it now, of what privilege might
11:09:07 33 be?---Probably not. I've read it, I can't remember. I
11:09:10 34 have read it in some detail but I can't remember those
11:09:13 35 things.
11:09:14 36
11:09:14 37 I might just put a couple of brief propositions to you. If
11:09:18 38 you were, for example, buying a house and you had a
11:09:21 39 solicitor assisting you in the process, you told the
11:09:25 40 solicitor your top price and asked them to conduct
11:09:28 41 negotiations on your behalf, you wouldn't expect the
11:09:31 42 solicitor to go and tell the other side what your top price
11:09:35 43 is?---No.
11:09:37 44
11:09:37 45 If you're making a will and you're potentially cutting out
11:09:44 46 or giving someone slightly less than someone else in the
11:09:47 47 will and you were using a solicitor to assist you in that

11:09:50 1 process, you wouldn't expect the solicitor to go to those
11:09:53 2 individuals and tell them what the basis of your
11:09:55 3 instructions were, you agree with that?---Yes, this is
11:10:01 4 fairly hypothetical situations.
11:10:03 5
11:10:03 6 That's exactly what they are. So you know that in a
11:10:07 7 lawyer/client relationship other than when there are
11:10:12 8 matters the subject of charges and pending determination by
11:10:15 9 the court, which is your phrase, you know that there are
11:10:18 10 broader issues that can arise between a lawyer and a
11:10:21 11 client. But whether we call them privilege or whether we
11:10:23 12 don't, there are things that clients would not expect their
11:10:27 13 lawyers to be telling other people about, do you accept
11:10:31 14 that?---Well what if I'm acting in a criminal fashion?
11:10:36 15
11:10:36 16 I'm not asking about acting in a criminal fashion, I'm
11:10:40 17 asking about the two examples that I've just given
11:10:45 18 you?---Um - - -
11:10:46 19
11:10:46 20 And specifically I should say, Mr Smith, I'm asking about
11:10:49 21 your phrase, you say your understanding is not to divulge
11:10:54 22 matters that are subject of charges and are pending
11:10:57 23 determination by a court?---Yes.
11:10:58 24
11:10:58 25 What I'm suggesting to you is that is a very restrictive
11:11:01 26 but also carefully worded understanding of what privilege
11:11:04 27 is?---It was not meant to be carefully worded, that's just
11:11:08 28 how I think about it. So the two examples you gave, yeah,
11:11:12 29 I agree with your proposition about those two examples,
11:11:15 30 yes.
11:11:16 31
11:11:16 32 A person who hasn't yet been charged but is expecting to be
11:11:21 33 charged who goes to lawyers representing them and gives
11:11:25 34 them instructions and seeks legal advice from them, you'd
11:11:29 35 accept that those communications in relation to those
11:11:33 36 expected charges, I'm not talking about potential criminal
11:11:37 37 activity here, I'm just talking about in a benign sense,
11:11:41 38 you wouldn't expect the lawyers to be disclosing the
11:11:44 39 contents of those conversations more broadly?---That's
11:11:46 40 right, I would include that, yes.
11:11:49 41
11:11:50 42 And that's a situation where the matters aren't yet subject
11:11:54 43 to charges that are pending determination by a court?---I
11:11:59 44 guess I'm saying pending, I mean if someone goes to a
11:12:00 45 lawyer saying, "I've been interviewed about this, I might
11:12:04 46 be charged with that", I would include that of course.
11:12:07 47

11:12:08 1 You give some examples of when legal professional
11:12:12 2 privileged obligations were discussed with Ms Gobbo and -
11:12:16 3 in fact just before we move to that, there's another issue
11:12:21 4 that arises and to some degree it's more acute in the ICRs,
11:12:32 5 which is that in a situation where a lawyer, and we'll
11:12:37 6 speak hypothetically first, but a lawyer who is
11:12:40 7 representing a particular individual, and let's say the
11:12:43 8 individual is divulging continuing criminal activity to
11:12:47 9 their lawyer and as you've said you don't see that as a
11:12:50 10 privilege issue and that's something that can and should be
11:12:53 11 disclosed in the sort of relationship you had with
11:12:56 12 Ms Gobbo, that's your position?---Yes.
11:12:57 13
11:12:57 14 What about the propriety in your view of that individual,
11:13:03 15 that lawyer, continuing to act on behalf of that individual
11:13:06 16 when they've doing something that is clearly against that
11:13:09 17 individual's interests, whether or not it was
11:13:12 18 privileged?---Yes.
11:13:13 19
11:13:14 20 Are you able to comment on that?---Um, I believe I know
11:13:19 21 what you're talking about.
11:13:21 22
11:13:21 23 Yes?---And yes, I have reservations about that now, I
11:13:27 24 understand that. But - sorry, go on.
11:13:30 25
11:13:31 26 You have reservations about it because it's clearly
11:13:33 27 improper, isn't it?---Okay, so we're talking about
11:13:39 28 specifics here or - - -
11:13:40 29
11:13:40 30 No, we're going to move to some specifics in a closed
11:13:44 31 hearing in a little while. I just want to talk about the
11:13:47 32 hypothetical at this stage. You can certainly use what I
11:13:50 33 understand to be the specific that's in your mind at the
11:13:52 34 moment to think about it?---Yes.
11:13:54 35
11:13:54 36 But it's nothing but improper, isn't it, in that situation
11:14:00 37 to continue to act for an individual? I'm not talking
11:14:02 38 about your obligations here, I'm talking about the lawyer's
11:14:06 39 obligations?---In some ways I suppose it depends how the
11:14:10 40 lawyer acts.
11:14:12 41
11:14:13 42 So not necessarily is your answer?---Well I keep thinking
11:14:18 43 of this particular case and, yeah, certainly there are some
11:14:24 44 questions there, I'm not denying that.
11:14:26 45
11:14:27 46 And some significant discomfort that would arise for
11:14:29 47 someone in your position if you saw that happening?---Yes,

11:14:34 1 particularly in hindsight.
11:14:35 2
11:14:37 3 You talk about some examples of conversations with Ms Gobbo
11:14:44 4 about LPP. The first conversation you mention was on 1
11:14:48 5 October 2005. I should say in your first - you also say
11:14:54 6 you'll be able to elaborate on these details after you've
11:14:58 7 reviewed some further material but this is
11:15:08 8 VPL.0005.0087.0068 at p.0143 onwards. This is an exchange
11:15:15 9 that you mention as being one that was had with Ms Gobbo
11:15:19 10 about LPP and Mr White says, "We don't want to put you in a
11:15:26 11 position where you might ..." She says, "That's right".
11:15:29 12 He says, "Breach some confidentiality, so I guess what I'm
11:15:32 13 saying", Mr White goes on to say, "Saying to you, there
11:15:36 14 was, you're going to take your own counsel about what's a
11:15:40 15 problem, what's not a problem and don't feel that that
11:15:44 16 would try and question you about those sorts of matters or
11:15:47 17 if it gets to that point where you don't want to talk about
11:15:50 18 it, well cool". Ms Gobbo says, "H'mm". Mr White says,
11:15:55 19 "You tell us anyway". You say, "Yeah". Ms Gobbo says,
11:15:59 20 "H'mm. Anyway, so he was being". You say, "Yeah".
11:16:03 21 Ms Gobbo says, "He's been advised that not to discuss his
11:16:07 22 case any length on the phone which is, I don't really, I
11:16:11 23 don't necessarily think the way the affidavit's raised
11:16:14 24 means that somebody's heard him say that on the phone". So
11:16:18 25 what I want to say to you is the example you've given, you
11:16:23 26 firstly - it's said to Ms Gobbo that it's really in her
11:16:27 27 hands and that you guys, you two don't want to breach, have
11:16:32 28 her breach any confidentiality obligations, you agree with
11:16:35 29 that?---Yeah, yep.
11:16:38 30
11:16:39 31 And a moment later she goes on to identify advice that's
11:16:43 32 been given to her client about not discussing particular
11:16:47 33 things on the phone. Do you agree with that?---That's how
11:16:52 34 it reads. I just haven't got my head around the context of
11:16:56 35 this whole conversation though.
11:16:58 36
11:16:58 37 I'm using the example that you give to say that this is an
11:17:02 38 example of when you told her not to. I suppose what I'm
11:17:08 39 saying isn't necessarily something sinister against you,
11:17:11 40 what I'm saying is despite her being told what she was told
11:17:14 41 at the start of that, nevertheless she goes on and says,
11:17:18 42 "Well, here's a conversation that was had with Tony
11:17:25 43 Mokbel"?---Yeah, well that did occur sometimes, yes.
11:17:27 44
11:17:28 45 The second thing you sight is 28 October 2005, and this is
11:17:33 46 VPL.0005.0051.0336. I should say, Commissioner, I tender,
11:17:42 47 if it's not tendered, the 1 October 2005 transcript, at

11:17:48 1 least that portion of it. I'll find out whether that's
11:17:52 2 been tendered. The transcript's been tendered as a whole
11:17:59 3 so I won't bother you with that.
11:18:01 4
11:18:02 5 COMMISSIONER: Unless you want it done separately so it can
11:18:04 6 be PIIed and released publicly?
11:18:08 7
11:18:08 8 MR WOODS: The more efficient way might simply be to say
11:18:11 9 that we'd expect that would become part of the public
11:18:14 10 record and the other bits that I'm referring to so they
11:18:17 11 might need to be PII reviewed.
11:18:19 12
11:18:19 13 COMMISSIONER: It might be easier to tender it I think.
11:18:22 14
11:18:22 15 MR WOODS: I tender that portion of that statement,
11:18:25 16 Commissioner.
11:18:25 17
11:18:25 18 COMMISSIONER: That's 1 October 05?
11:18:27 19
11:18:28 20 MR WOODS: Yes, it is and it's at p.0413.
11:18:36 21
11:18:37 22 COMMISSIONER: Where is that numbering? Is that at the
11:18:39 23 bottom of the page?
11:18:41 24
11:18:41 25 MR WOODS: Sorry, the numbering that I'm referring to there
11:18:44 26 is the top right-hand side, the Ringtail relativity number.
11:18:53 27
11:18:53 28 COMMISSIONER: The VPL number is 0144 and 145? It starts
11:19:03 29 at 144.
11:19:06 30
11:19:07 31 #EXHIBIT RC489A - (Confidential) Transcript on 1/10/05
11:19:19 32 between Victoria Police handlers and
11:19:09 33 Nicola Gobbo VPL.0005.0087.0144 to 0145.
11:19:09 34
11:19:11 35 #EXHIBIT RC489B - (Redacted version.)
11:19:24 36
11:19:31 37 MR WOODS: There's another transcript that you sight being
11:19:36 38 28 October 2005, which I referred to a moment ago which is
11:19:41 39 VPL.0005.0051.0336. I should say I've gone through this
11:19:53 40 second transcript, Mr Smith, and I think this is, it's not
11:19:57 41 completely clear in the statement, the exchange that you're
11:20:01 42 talking about, but this is the one that refers to privilege
11:20:03 43 so I think it might be the correct one. I don't know
11:20:12 44 whether that is on the screen yet. Yes, it is. This is
11:20:18 45 0474 to 0475. You say, "Yeah, I think I said to you last
11:20:22 46 time if you wish to talk that we're more than happy to
11:20:25 47 listen but we're here in your interests as well so you can

11:20:29 1 ..." Ms Gobbo says, "I know. But I can say that when
11:20:33 2 stuff gets privileged I'm, I can't", and the sentence ends.
11:20:38 3 You say, "I'll, that's right, that's fine, I've got no
11:20:42 4 problem with that". Ms Gobbo says, "And things that are,
11:20:46 5 you know, hearsay upon hearsay, what's nothing, completely
11:20:50 6 and it's fuckin' hearsay". You say, "But if you're happy
11:20:55 7 regardless of the privilege issue". Ms Gobbo says, "H'mm.
11:20:58 8 You can make that call on your own without any assistance
11:21:01 9 from us, no problem". Ms Gobbo says, "H'mm". You accept
11:21:05 10 firstly that that exchange took place?---Yes, but with the
11:21:14 11 proviso that this is a transcript of an audio obviously.
11:21:19 12
11:21:19 13 It is. I understand what you say about those, which is
11:21:21 14 it's not always clear whether the words have been
11:21:25 15 transcribed correctly, is that right?---That's right, and I
11:21:28 16 did correct one of them and clearly a small error and the
11:21:32 17 one I corrected had many errors, can change a yes to a no
11:21:37 18 quite easily.
11:21:38 19
11:21:39 20 I understand?---If we keep that in mind.
11:21:41 21
11:21:42 22 Keeping that in mind, other than there being potential
11:21:48 23 words here or there. What you were in fact saying to
11:21:53 24 Ms Gobbo, whether there were some words that might be
11:21:55 25 incorrectly transcribed, is that you were leaving the call
11:21:57 26 about privilege to her without any assistance from you. I
11:22:00 27 assume that's the case because she was the barrister and
11:22:02 28 you weren't?---Well there were privileged issues. I
11:22:07 29 actually felt she knew far more about it than I did.
11:22:12 30
11:22:12 31 Can I suggest to you that that is another example of what
11:22:16 32 your evidence was earlier, it was really you were prepared
11:22:21 33 to accept anything, whatever she said as information
11:22:24 34 whether or not it was privileged in the first instance from
11:22:26 35 Ms Gobbo? I'm not talking about whether or not it was
11:22:34 36 passed on, I'm saying you were leaving it to her about what
11:22:38 37 she would and wouldn't tell you as it related to privilege
11:22:42 38 issues?---That passage you just pointed out to me, that's
11:22:47 39 what that indicates, yes.
11:22:47 40
11:22:48 41 The third transcript you sight is 12 January 2006?---There
11:22:51 42 were other occasions when she was told not to.
11:22:53 43
11:22:53 44 Of course, I understand that, I'm just talking about, and
11:22:56 45 I'll find the references in your statement in a moment to
11:22:59 46 where I've got these from. These are occasions that you
11:23:03 47 identify where - - - ?---Okay.

11:23:05 1
11:23:06 2 - - - privilege was discussed with Ms Gobbo. That's what
11:23:08 3 I'm saying?---Yeah, yeah.
11:23:09 4
11:23:10 5 The third one that's sighted is 12 January 2006. This is
11:23:14 6 VPL.0005.0051.0548. In fact, because, as you say, there is
11:23:24 7 some ambiguity at times, and this is probably not a bad
11:23:28 8 example of it, the quality of the audio is not always
11:23:31 9 fantastic, you agree with that?---It is quite difficult to
11:23:36 10 decipher but the one I checked, because I was present it
11:23:40 11 was probably easier for me to do so.
11:23:43 12
11:23:44 13 COMMISSIONER: That one you want to tender?
11:23:49 14
11:23:49 15 MR WOODS: Yes.
11:23:50 16
11:23:50 17 #EXHIBIT RC490A - (Confidential) Audio clip 28/10/05.
11:23:50 18
11:23:50 19 #EXHIBIT RC490B - (Redacted version) Transcript.
11:23:52 20
11:23:54 21 MR WOODS: 28 October 2005 was the one a moment ago about
11:23:58 22 making that call on your own.
23
24 COMMISSIONER: That the 490A and B one.
25
11:24:01 26 MR WOODS: The next one, in fact there's an audio clip that
11:24:03 27 might be easier and more efficient to play than me reading
11:24:08 28 it. The next one which I'll tender before I do so, 12
11:24:12 29 January 2006, the transcript reference is
11:24:20 30 VPL.0005.0051.0548. And the reference is, the page
11:24:24 31 reference is 0434 to 0837. What we have here, Mr Smith, is
11:24:32 32 the transcript will be able to be read by you so we should
11:24:36 33 be able to determine any serious issues with it. I just
11:24:41 34 want to play one of those examples of where you were saying
11:24:47 35 to Ms Gobbo, where there was a conversation with Ms Gobbo
11:24:51 36 that touched on legal professional privilege. If that
11:24:54 37 could be played, please.
11:24:56 38
11:24:57 39 (Audio played to the hearing.)
40
11:26:39 41 If that could stay on at least the witness's screen
11:26:41 42 for a moment. You accept at the start of that exchange -
11:26:47 43 it can stay on all the screens actually. There's no issues
11:26:50 44 with this one. At the start of the exchange - so firstly
11:26:53 45 you understand she's talking about Tony Mokbel
11:26:55 46 there?---Yes.
47

11:26:56 1 And he was a known client of hers at the time this exchange
11:26:59 2 with Ms Gobbo took place?---That's how it looks, yes.
3
11:27:06 4 You can see that in that first passage she says, "And look,
11:27:10 5 I, forget about privilege for a minute". So she's
11:27:14 6 indicating to you quite clearly there that she is
11:27:18 7 forgetting about privilege for a minute, do you agree with
11:27:20 8 that?---Yes, but I think it's to give an example of
11:27:24 9 something, isn't it?
10
11:27:26 11 Well, she then says, "Let's say hypothetically his lawyers
11:27:30 12 sat him down and forget the basic issues", et cetera, et
11:27:34 13 cetera. We then go down and she talks about all of the
11:27:38 14 things that Mr Mokbel is being told by his lawyers that
11:27:41 15 he'll be slammed for a judge for if he doesn't plead, and
11:27:45 16 then towards the end she says, "Anyway, he's been told".
11:27:51 17 Can I suggest to you she's indicating there very clearly
11:27:53 18 and very precisely what her advice to Mr Mokbel has been in
11:27:59 19 relation to pleading in the matters that he's appearing
11:28:02 20 before the court in?---That may be right.
21
11:28:11 22 The word "hypothetically" in the context she uses it has to
11:28:16 23 be read, doesn't it, in the context of firstly her saying,
11:28:19 24 "Forget about privilege for a minute", and then lastly her
11:28:22 25 saying, "Anyway, he's been told", do you accept
11:28:26 26 that?---Well you'd have to ask her that I guess. Yeah,
11:28:30 27 that's - it does look like - - -
28
11:28:31 29 You come back and remind her after she said, "Anyway, he's
11:28:35 30 been told", you remind her that she's meant to be speaking
11:28:39 31 hypothetically, you accept that?---That's right, yes.
32
11:28:41 33 She says, "Huh?" She's forgotten that it's hypothetical at
11:28:47 34 that stage, hasn't she?---You'd have to ask her that but
11:28:54 35 that's how it looks.
36
11:28:56 37 Can I suggest to you that this is one of the examples of
11:28:59 38 Ms Gobbo putting to one side the requests that have been
11:29:06 39 made of her not to provide privileged information?---If she
11:29:25 40 said that's the, you know, this hypothetical thing at the
11:29:29 41 end, in what you're saying is it wasn't hypothetically, if
11:29:33 42 that's right, yes.
43
11:29:36 44 Well it's the clear implication of the document, isn't it,
11:29:44 45 Mr Smith?---I think so, yeah.
46
11:29:46 47 Do you accept that - firstly, have you ever been an

11:29:49 1 informant in criminal matters?---Yes.
2

11:29:52 3 You accept that knowing that an accused person's counsel
11:29:57 4 are putting significant pressure on them to plead guilty
11:30:02 5 can give the prosecution a significant advantage?---I
11:30:12 6 haven't been in that position. I mean - - -
7

11:30:15 8 It's a pretty unusual position, isn't it, really?---Sorry,
11:30:19 9 are you asking me what position I found myself in?
10

11:30:23 11 What I'm saying is that the information that she was
11:30:29 12 providing on this occasion wasn't insignificant because it
11:30:31 13 was disclosing to Victoria Police that Tony Mokbel had his
11:30:35 14 lawyers essentially screaming at him to plead guilty?---I
11:30:40 15 guess it's up to the lawyer if they think it's in the best
11:30:44 16 interests of the client.
17

11:30:47 18 Hang on. This was a lawyer who was acting in Victoria
11:30:52 19 Police's interests at this stage because she was dealing
11:30:53 20 with her human source managers?---Yeah, but we're not - as
11:30:58 21 far as I recall we're not doing anything with this
11:31:01 22 information. She's venting.
23

11:31:03 24 Do you accept that it was improper for her to be telling
11:31:06 25 you, as you've accepted she was doing here, the advice that
11:31:12 26 she was giving to her client, Mr Mokbel?---As I said just
11:31:20 27 then, I think she was venting about the whole - and she
11:31:24 28 sometimes did - about this whole situation and we were not
11:31:27 29 going to do anything with the information.
30

11:31:32 31 So - - - ?---In fairness I'll answer your question. Should
11:31:36 32 she have done it? I don't know.
33

11:31:38 34 You simply don't know the answer to that?---Well, as I say,
11:31:42 35 she would know in her mind that we're not going to do
11:31:45 36 anything with this information, so, you know, it's a
11:31:50 37 handler/source covert relationship that this comes out of.
38

11:31:57 39 The handlers are part of Victoria Police, aren't
11:32:00 40 they?---Yes.
41

11:32:02 42 You're not a separate organisation, are you?---Absolutely
11:32:05 43 not. I'm not trying to say that.
44

11:32:07 45 MR CHETTLE: Can I just inquire, Commissioner, this says
11:32:10 46 the 21st of January on it, I think the date's wrong. There
11:32:15 47 is no meeting on the 21st. There is a meeting on the 12th.

11:32:19 1
11:32:19 2 MR WOODS: It might be the 12th.
11:32:21 3
11:32:21 4 MR CHETTLE: It's just important we get the right - - -
5
11:32:23 6 COMMISSIONER: Of course it is, yes. You think it
11:32:25 7 corresponds with the 12th?
11:32:28 8
11:32:29 9 MR CHETTLE: There's a meeting on the 12th but this says
11:32:31 10 the 21st.
11
11:32:32 12 COMMISSIONER: That can be looked at.
11:32:32 13
11:32:33 14 MR WOODS: It might be my typographical error and I'll have
11:32:36 15 a look at it over the break.
16
11:32:37 17 COMMISSIONER: Thanks Mr Chettle, we'll look into that at
11:32:39 18 the mid-morning break.
11:33:14 19
11:33:15 20 MR WOODS: We might do that now?
21
11:33:16 22 COMMISSIONER: Yes, we'll have the mid-morning break now.
23
24 (Short adjournment.)
25
11:53:51 26 COMMISSIONER: Yes Mr Woods.
11:53:52 27
11:53:53 28 MR WOODS: Thank you. Mr Smith, can you hear me?---Yes.
29
11:53:56 30 We were talking a moment ago about information that
11:54:00 31 Ms Gobbo was providing and we were talking around the
11:54:04 32 issues of LPP. I should say, the Commission is in receipt
11:54:08 33 and has had tendered before it your statements and for the
11:54:12 34 sake of the record I want to make it clear that what you do
11:54:15 35 there is you go a lot more broadly than I would ever have
11:54:19 36 time to do in examining you as to particular entries as to
11:54:23 37 where privilege, conflict and all of those sorts of issues
11:54:28 38 were addressed with Ms Gobbo, so you shouldn't take it that
11:54:31 39 just because I haven't taken you to a particular entry that
11:54:34 40 it's not very clear to the Commission what your position
11:54:38 41 is, all right?---Oh, okay, I understand.
42
11:54:41 43 I'm sure that your counsel will bring to the Commission's
11:54:45 44 attention in re-examination anything that's of any
11:54:49 45 particular importance that's not clear in any of those
11:54:53 46 documentary records. So I just want you to understand that
11:54:56 47 because there'll no doubt be things where you think you'd

11:54:59 1 like me take you to a particular thing but I haven't
11:55:03 2 necessarily taken you there, all right?---Okay, I think I
11:55:07 3 understand that, yes.
4
11:55:09 5 Just to finish off a couple of issues to do with privilege.
11:55:16 6 I should say firstly I don't think I tendered that
11:55:18 7 transcript and audio of 12 January 2006.
8
11:55:21 9 COMMISSIONER: So you've checked it is 12 January 2006?
11:55:25 10
11:55:25 11 MR WOODS: Yes, it is 12 January 2006.
12
11:55:27 13 COMMISSIONER: Thank you.
11:55:28 14
11:55:30 15 #EXHIBIT RC491A - Audio of 12/01/06.
11:55:34 16
11:55:35 17 #EXHIBIT RC491B - Transcript.
18
11:55:38 19 COMMISSIONER: No need for any redactions or anything.
11:55:42 20
11:55:43 21 MR CHETTLE: The transcript will have names on it,
11:55:45 22 Commissioner.
11:55:45 23
11:55:46 24 MR WOODS: It's only that portion of the transcript.
25
11:55:47 26 COMMISSIONER: The names aren't on the transcript?
11:55:49 27
11:55:49 28 MR WOODS: Sorry, I think the one that was on the screen
11:55:52 29 had the pseudonyms applied.
30
11:55:53 31 COMMISSIONER: The pseudonyms had been applied already.
11:55:55 32 It's ready to go on to the website.
11:55:57 33
11:55:58 34 MR WOODS: Yes, thank you.
35
11:56:00 36 COMMISSIONER: Yes, thank you.
11:56:01 37
11:56:01 38 MR WOODS: Just on that issue - I should say, because of
11:56:05 39 the exchange that we've just had there's some even things
11:56:11 40 that I might have taken you to today that I might not go
11:56:15 41 through all of them in detail because, as I've put to you
11:56:18 42 and you've agreed, there were certainly times where the
11:56:23 43 handlers, including yourself, made it clear that you wanted
11:56:26 44 to avoid privileged information and there were times when
11:56:29 45 Ms Gobbo seemed to ignore that instruction, you'd accept
11:56:34 46 that that's the case?---That's right.
47

11:56:37 1 As to whether or not they were handed over the corridor to
11:56:43 2 the investigators, that is something that's a matter of the
11:56:48 3 records as far as you're concerned, if it's recorded in the
11:56:51 4 records as something that was handed over, it was?---That's
11:56:54 5 right, if it's in an ICR I wrote, that's what occurred.
6

11:56:58 7 Yes, okay. A clip that you might have already heard but is
11:57:02 8 only very quick to play, that was clip 19 that's formally
11:57:09 9 been tendered, it was a meeting that you were at with
11:57:15 10 Ms Gobbo and I just want to play that now if I can.

11:57:18 11
11:57:48 12 (Audio recording played to hearing.)

11:57:48 13
11:57:48 14 You can leave that on the screen for a moment. This
11:57:51 15 was face-to-face meeting that you attended, do you accept
11:57:53 16 that?---Yes.

17
11:57:55 18 You're not captured in this exchange but what Ms Gobbo was
11:58:01 19 saying was that in her dealings with - at this stage it was
11:58:06 20 pretty much you and Mr White - was that in the things that
11:58:13 21 she was disclosing to you she'd thrown legal professional
11:58:21 22 privilege out the window. That was her view of things at
11:58:24 23 that stage, do you accept that?---Yes, it appears that it's
11:58:26 24 a bit of a, without knowing all of it, it sounds like a bit
11:58:31 25 of a rant, but that's the words she's saying for sure.

26
11:58:35 27 And insofar as privilege and the determination of what
11:58:40 28 might be privileged and what might be disclosed by her to
11:58:43 29 the SDU was in her hands, she was making it clear here that
11:58:47 30 at least on some occasions she had provided privileged
11:58:51 31 information to you and was telling you that specifically,
11:58:53 32 you accept that? She's not saying the specific information
11:59:01 33 that it is?---Yes.

34
11:59:02 35 I think that might be what you're about to say?---No, no.
11:59:05 36 What I'm saying is I think she's saying this in some sort
11:59:08 37 of rant, so does she really mean that, I don't know?
11:59:12 38 Because I don't think it's right. But I guess reading
11:59:15 39 those words that's definitely what it says.

40
11:59:17 41 She's the barrister though and she's the one who's
11:59:23 42 trained?---Some people go on a rant and say something
11:59:24 43 that's, you know, off - I don't know whether you'd say off
11:59:25 44 topic but, you know, not exactly right, so I don't know
11:59:28 45 what was in her mind when she said that. On the face of it
11:59:31 46 that's how it reads.
47

11:59:32 1 On the face of it that's how it reads and she's clearly
11:59:38 2 upset, you can hear from the tone in her voice, you agree
11:59:41 3 with that?---That's what I'm getting at, yes.
11:59:43 4
11:59:44 5 But also she's the legally qualified participant in this
11:59:47 6 conversation, isn't she, it's not you or Mr White who's
11:59:51 7 able to determine these issues to the extent that she is,
11:59:58 8 do you accept that?---I think that's probably right, yes.
12:00:01 9
12:00:01 10 I should say as well, Officer Fox, who will be giving
12:00:03 11 evidence next, you know that he provides a number of
12:00:05 12 examples as well, more expansive examples as to when
12:00:11 13 particular issues were raised with Ms Gobbo. You were
12:00:13 14 aware that's what he was doing in his witness
12:00:16 15 statement?---Yeah, I haven't read the statement but from
12:00:18 16 talking to him you know some months ago I know that's what
12:00:21 17 he was doing. He had far more time to find things that I
12:00:25 18 just didn't have the time to do.
19
12:00:29 20 That's right and that's all I'm asking, that you had an
12:00:31 21 understanding of that. I should say, one of the things
12:00:33 22 that he points out on the issue of conflict of interest,
12:00:36 23 which we touched on briefly before, rather than just
12:00:40 24 privilege, is he provides details that he's found in the
12:00:43 25 ICRs as to when Ms Gobbo was instructed not to act for
12:00:48 26 particular people. So I'm just bringing that to your
12:00:50 27 attention because it's something that the Commission has
12:00:53 28 before it but will be formally tendered soon?---Okay, thank
12:00:58 29 you.
30
12:00:58 31 You've got a document there called Exhibit 81 that has
12:01:02 32 names of particular individuals with pseudonyms on
12:01:09 33 it?---Yes.
34
12:01:09 35 COMMISSIONER: Just before you go to that, could I ask the
12:01:11 36 witness to have a look at the ICR for 12 January 2006.
12:01:18 37 It's p.117 of the bundle. It's VPL.2000.0003.1703. It
12:01:31 38 starts at 1702. Under the heading "Tony Mokbel". So we've
12:01:39 39 got the date 12 January 06 under the heading "Tony Mokbel",
12:01:45 40 and then there's a lot of information. If we could flow on
12:01:48 41 to 173.
12:01:49 42
12:01:50 43 MR WOODS: If that could be just on the screens of those at
12:01:52 44 the Bar table and the Commissioner and the witness, if
12:01:55 45 that's all right, Mr Skim. Thank you.
46
12:01:57 47 COMMISSIONER: The last entry is "HS and Heliotis want

12:02:02 1 Mokbel to plead guilty but he won't, he's too stubborn".
12:02:06 2 So that connects with the audio and transcript of 12
12:02:13 3 January 2006. Yes, thank you.
12:02:15 4
12:02:15 5 MR WOODS: Thank you, Commissioner. On that list of people
12:02:24 6 in front of you, and they're the names that we're not going
12:02:27 7 to say obviously in the left-hand column, the 35th person
12:02:30 8 on that list, do you see that name there?---Yes.
9
12:02:34 10 I'm not going to use the real name or the pseudonym of that
12:02:39 11 person, I'm just going to call them the 35th person on the
12:02:43 12 list for now?---Okay.
13
12:02:45 14 You're aware that following - we'll talk about this a
12:02:49 15 little bit more openly in closed session if that makes
12:02:52 16 sense?---Yes.
17
12:02:53 18 In a little while. But you're aware that on the night of
12:02:58 19 that person and that person's co-accused's arrest Ms Gobbo
12:03:04 20 saw both of them at the police facilities?---Yes.
21
12:03:10 22 And you were there that night?---I was in the building,
12:03:15 23 yes.
24
12:03:16 25 In fact with the 35th person on the list you had
12:03:20 26 conversations with both him and Mr O'Brien?---I didn't talk
12:03:26 27 to him, no. I might have been present but I didn't talk to
12:03:30 28 him.
29
12:03:31 30 Okay, I see. There's an entry in the ICRs at - I don't
12:03:35 31 want these brought up on the screens - they can be brought
12:03:44 32 up on the witness's and my screen. I think other people
12:03:48 33 who require it have a copy of the ICRs. This is p.259 of
12:03:52 34 ICR 3838. This is the night of that person's arrest and
12:04:09 35 the co-accused's arrest. What happens at 15:04, so a
12:04:17 36 little bit up I think it is, is that - from my
12:04:23 37 understanding of the ICRs it's you that was the handler at
12:04:27 38 the time and that's correct?---That's right, yes.
39
12:04:29 40 And so you've given, you've made a phone call to her to
12:04:32 41 tell her that there are two individuals in custody?---Yes.
42
12:04:37 43 And you don't tell her anything else at that
12:04:40 44 stage?---That's right.
45
12:04:42 46 You've told her that if she sights the handlers at the
12:04:49 47 police facility that she's to ignore them, you agree with

12:04:53 1 that?---Yes, that's right.
2
12:04:56 3 And that in order to be able to talk to the handlers she's
12:04:59 4 got to send them a text message and will meet with them
12:05:03 5 away from the building, do you accept that?---That's right,
12:05:05 6 yeah.
7
12:05:06 8 Then at 16:10, so an hour later, she contacts - the
12:05:17 9 investigators have contacted the source and then at that
12:05:22 10 stage they've advised her what she's already been advised
12:05:24 11 by you, which is that the two individuals are in custody
12:05:27 12 and that both of them are asking for Ms Gobbo as their
12:05:32 13 legal advisor. You agree with that?---Yes.
14
12:05:38 15 She at that stage is en route to the police facility and is
12:05:42 16 ten minutes away; is that correct?---That's what I've
12:05:45 17 written, that's right.
18
12:05:46 19 And you've also written there that she seems happy about
12:05:51 20 the arrests and she asks the question, "Who's next", do you
12:05:55 21 agree with that?---Yeah, I remember that.
22
12:05:57 23 Why do you have a particular memory of that, remembering
12:06:01 24 we're not going to use the names of these people?---Well it
12:06:05 25 was an odd comment I just felt in all the circumstances.
26
12:06:11 27 An odd comment, I understand, with the circumstances being
12:06:14 28 that, firstly, she was acting for the first of those
12:06:17 29 individuals at the time that you first met her and
12:06:21 30 continued to act for him up until this date at least, you
12:06:24 31 agree with that?---Yes, that's probably not why I said it
12:06:32 32 was an odd comment. I felt it was an odd comment because,
12:06:37 33 you know, effectively a police operation had come to a
12:06:44 34 conclusion, and straight away - the sort of message I got
12:06:47 35 out of that comment is, "When the next one's going to
12:06:51 36 start". I may be wrong but I thought it was odd at the
12:06:56 37 time.
38
12:06:56 39 It was odd at the time because it's a sort of gleeful
12:07:06 40 expression as to - I suppose revelling in the role as a
12:07:06 41 human source, would that be right?---Perhaps. Keeping in
12:07:07 42 mind my role as the handler is to record everything, warts
12:07:10 43 and all. It's not up to me to filter what the source tells
12:07:15 44 me so I have to write it down. Yeah, but I did think it
12:07:17 45 was odd.
46
12:07:19 47 Yes, I understand. At 17:30 there's a recording of a phone

12:07:22 1 call that you have with Ms Gobbo after she's seen the first
12:07:25 2 of those individuals in custody and she's very emotional at
12:07:30 3 that stage. So from 16:10 and the elation and the
12:07:34 4 happiness of the arrests to 17:30, she's very emotional.
12:07:39 5 Do you remember her mood fluctuating about these
12:07:43 6 arrests?---Can I just start off by saying you started that
12:07:48 7 question this is a recording. You mean there's a record of
12:07:51 8 it?
9
12:07:53 10 Sorry, there's a record of it, yes?---Yes, but that
12:07:56 11 emotional side, I don't really remember that on the day.
12:08:01 12 I've written it down so it should be right, but I don't
12:08:04 13 really remember it.
14
12:08:06 15 I should explain, the reason I'm asking this is I'm a
12:08:08 16 barrister many years later reading these documents and I
12:08:11 17 wasn't a participant in these conversations, but it might
12:08:15 18 be said they strike a real discord between the 16:10
12:08:19 19 elation and the 17:30 emotional response and I'm asking
12:08:23 20 someone who was a participant in it whether they have any
12:08:27 21 memory of it because it does seem like an odd thing to have
12:08:30 22 occurred?---Yeah, and absolutely I understand why you're
12:08:34 23 asking the question. I don't remember it. I mean on
12:08:38 24 occasion the source could be quite emotional. On this
12:08:43 25 particular night I just don't recall it. I must have at
12:08:48 26 the time because I noted it, but I don't recall it.
27
12:08:50 28 Okay. Then we might just scroll down a bit. At 18:35,
12:08:56 29 despite her emotional state at seeing the first of those
12:09:01 30 people in custody, she then goes on to send you a text
12:09:05 31 message where she says, oh, she forgot to mention there
12:09:11 32 were [REDACTED] at the place where the person was
12:09:14 33 apprehended, do you accept that that's what she did?---Yes.
34
12:09:20 35 Perhaps by that stage her emotional reaction had worn
12:09:25 36 off?---It may be, I don't know, but, yeah, she passed it
12:09:27 37 on.
38
12:09:27 39 That was passed on to DII O'Brien immediately by
12:09:32 40 you?---Yes, because of the - yes, it was.
41
12:09:41 42 Following this particular arrest do you know whether or not
12:09:45 43 those [REDACTED] were located at that location?---I
12:09:51 44 believe [REDACTED] were found.
45
12:09:54 46 Yes?---I'm not sure of the exact circumstances but I think
12:09:57 47 they were found after that

1

12:09:59 2 In fact the records indicate that they were the substance
12:10:01 3 of charges against that individual as well for which he was
12:10:04 4 found guilty. You're not in a position to convince me
12:10:08 5 that's not correct, I assume?---If that's what the records
12:10:10 6 say that'd be - yeah, that'd be right I guess.

7

12:10:17 8 You were present when the individuals were brought into
12:10:22 9 custody, present at the police facility where they
12:10:27 10 arrived?---I don't know whether I was there when they
12:10:33 11 arrived but I was there at some point.

12

12:10:37 13 Then you had a meeting with Ms Gobbo on that occasion, or
12:10:45 14 you spoke to Ms Gobbo at the facility. There was a formal
12:10:49 15 face-to-face in the usual sense of it later on that evening
12:10:52 16 but I'm just talking about in the early evening when the
12:10:54 17 two individuals were brought into custody?---Yes. I'm just
12:10:59 18 not clear on the exact sequence. Can the page be scrolled
12:11:03 19 down a little bit, please?

20

12:11:04 21 Yes, sure. We're going to talk about this in more detail
12:11:18 22 in a little while. I just want to get some propositions,
12:11:23 23 put some propositions to you first?---Okay. So, sorry, can
12:11:27 24 you repeat the specific question about the meeting?

25

12:11:30 26 That you were present - in fact I don't recall the question
12:11:34 27 now, but I'll ask you a new one perhaps. That you were
12:11:38 28 present when - well, you attended the police facility at
12:11:44 29 some stage after the two people had been brought into
12:11:47 30 custody, now that's right?---Yes.

31

12:11:49 32 That when Ms Gobbo arrived at the facility you also had a
12:11:55 33 conversation with her and that seems to be referred to at
12:11:59 34 the bottom of that page?---Yes, yes.

35

12:12:04 36 She was concerned that some of the other members of the
12:12:10 37 Police Force who were present might know her identity or
12:12:13 38 her role as a human source and she said that to you?---Yes.

39

12:12:17 40 Okay. Then there was an arrangement made for her to be
12:12:22 41 taken away from the building for a rendezvous shortly
12:12:25 42 afterwards?---Yes.

43

12:12:27 44

12:12:30 45

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12:14:00 21
12:14:06 22
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12:14:17 24
12:14:20 25
12:14:26 26
12:14:30 27
12:14:32 28
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12:14:43 31
12:14:45 32
12:14:48 33
12:14:51 34
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12:14:54 36
12:15:01 37
12:15:04 38
12:15:09 39
12:15:12 40
12:15:16 41
12:15:19 42
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12:15:34 47

[REDACTED]

[REDACTED]

[REDACTED]

Yes, okay. That can be taken off the screen now. In relation to Mr Karam, I just want to ask a couple of questions. If p.575 of the ICRs can be brought up on the screen, this is ICR 37 of 2958. Officer Fox was the handler on this occasion. It's following the arrest of Karam and some of his co-accused and Gobbo tells handler Fox the arrests of Karam and Higgs and everyone, it was a very busy day for her. An AFP officer told her he wanted to speak to her about all of this. It goes down, then it says at the end, "She knows she is morally, legally and ethically conflicted and will not be doing any of them". That's an indication from her that she won't, certainly as at the date of that ICR, which is 1 September 2008, be acting for any of those co-accused coming out of that matter, you agree with that? I should say it's not a document - you weren't the handler at this stage, this was Mr Fox?---Yeah, I mean it's not my opinion of what that document says, not being present or having written it. That is how it appears though.

Yes, okay. The handling of Ms Gobbo was handed back to you shortly after this, I think only for a short period of time, and it's the case that various handlers came in and out from time to time; is that right?---Yes, we had to manage a number of things. It did change sometimes over short periods. We tried to avoid that but sometimes that happened.

4 December 2008, bearing in mind that she said to handler Fox on 1 September 2008 that she won't be acting on behalf of any of those co-accused because she's morally, ethically and legally conflicted at p.753 of 2958 ICRs. Now you were

12:15:43 1 the handler who prepared this particular document. I can
12:15:49 2 show you that's the case at the top of the ICR I'm sure
12:15:55 3 but, firstly, you might accept that without seeing that.
12:15:59 4 Is this your style of ICR? We might scroll up to the top
12:16:04 5 of that?---No, not with the dot points it's not, no.
6
12:16:09 7 If we might just scroll up to the top of it, that might be
12:16:14 8 incorrect. Up to the top of this particular ICR I'm asking
12:16:17 9 for, so just scroll up a few pages. That has that deceased
12:16:32 10 member's name?---Yes.
11
12:16:35 12 I'm looking for - in fact I think this is the problem. I
12:16:38 13 think what we're looking for is the 2958 ICRs. That might
12:16:42 14 have been me saying the wrong thing there. I'm sorry about
12:16:46 15 that, Mr Smith, I've probably identified the wrong
12:16:49 16 document.
17
12:16:55 18 COMMISSIONER: What page was it again?
12:16:58 19
12:16:58 20 MR WOODS: It's p.753, Commissioner?---Okay.
21
12:17:05 22 Then if we can scroll down to the entry at 753. The ICR
12:17:17 23 reads about Karam, "Karam is seeing human source at 16:00.
12:17:24 24 Asking if should ask about Roper. Yes. Karam seeing Valos
12:17:28 25 before that". Now that's something that you've recorded in
12:17:32 26 the ICR?---Yes.
27
12:17:35 28 It's the case that it was known to the SDU that Karam was a
12:17:40 29 known client of Ms Gobbo's at the time?---I don't know if
12:17:47 30 that's right.
31
12:17:50 32 It was known that when she handed over the bill of lading,
12:17:53 33 the particular bill of lading that implicated each of these
12:17:58 34 individuals, she did so in the middle of a trial where she
12:18:01 35 was acting for Mr Karam, you accept that?---I wasn't really
12:18:06 36 involved in all that.
37
12:18:09 38 I want to ask a question about that. Not being involved in
12:18:11 39 it, the fact is you've been asked to step in here, albeit
12:18:15 40 probably for a short period of time, to handle the
12:18:19 41 source?---Yes.
42
12:18:19 43 Wouldn't it have been important for you to work out who she
12:18:22 44 was and wasn't acting for before you did that?---Well, yes,
12:18:25 45 I may have back then, but I can't remember now.
46
12:18:27 47 You may have back then. Would it have been something that

12:18:31 1 you did back then to make sure that you knew who to ask
12:18:34 2 about and who not to ask about?---I can't remember. If it
12:18:41 3 was just a short period of time I may not have.
4
12:18:44 5 I suggest to you that Karam was a known client of
12:18:47 6 Ms Gobbo's at the time and the documents bear that out.
12:18:49 7 You're not in a position to - - - ?---I'm not a position to
12:18:53 8 deny it. I'm just saying I can't remember it.
9
12:18:55 10 Ms Roper was a co-accused of Mr Karam's, do you accept
12:18:58 11 that?---Yes.
12
12:18:59 13 And can I suggest to you that when she said that she was
12:19:03 14 seeing him at 4 o'clock that afternoon and she was saying
12:19:09 15 to you, "Should I ask about Ms Roper", and you said yes to
12:19:15 16 her, that was - there was no other reason to do so other
12:19:18 17 than that Ms Gobbo would feed back information about
12:19:23 18 Ms Roper to you; is that right?---I'm not sure how to
12:19:31 19 answer that question in an open forum.
20
12:19:35 21 We're about to move into a closed session but before we do
12:19:38 22 so is your answer yes or no?---That she would provide
12:19:46 23 information about - - -
24
12:19:49 25 You were asking Ms Gobbo - you were answering her question
12:19:53 26 where she says, "Should I ask about Roper? Should I ask
12:19:57 27 Karam about Roper?" You say yes. And that what in fact
12:20:01 28 you were saying was, "I want you to ask about Roper because
12:20:04 29 I want you to feed back any information that Karam gives
12:20:08 30 you about Roper"?---No.
31
12:20:10 32 We might - - - ?---That's not my recollection.
33
12:20:13 34 We might talk about that in a moment. Can I just suggest
12:20:18 35 that in that exchange where she says she's seeing him at
12:20:23 36 4 o'clock that day, there's no indication on this ICR that
12:20:26 37 you're saying to her, "By the way, I don't want you to
12:20:29 38 provide any information that might be privileged or might
12:20:31 39 put you in conflict", do you accept that?---Yeah, I didn't
12:20:35 40 do that.
41
12:20:35 42 You were leaving those issues to Ms Gobbo?---Well I knew -
12:20:40 43 I suppose I thought I wasn't going to ask about it. I'm
12:20:43 44 presuming at the time, not remembering it.
45
12:20:46 46 But as you were doing the take over I assume you would have
12:20:49 47 read the last few ICRs to get yourself familiar with this

12:20:53 1 source you were stepping back into handling, that would
12:20:57 2 inevitably be the case, wouldn't it?---If you had time.
12:21:00 3 Most often it was a verbal hand over of the important
12:21:04 4 things that were going on.
5
12:21:05 6 Is it your evidence that you simply don't remember whether
12:21:07 7 or not you read or been told that she was morally,
12:21:10 8 ethically and legally conflicted in her view and wouldn't
12:21:14 9 be acting on behalf of Karam or any of his co-accused?---I
12:21:21 10 don't know. I don't recall being told that. I think I've
12:21:24 11 remembered that.
12
12:21:26 13 Commissioner, that's all we can do in open session. I'm
12:21:31 14 going to - there's some other things to put in open session
12:21:34 15 later on today.
16
12:21:35 17 COMMISSIONER: For the moment then we'll go into closed
12:21:37 18 hearing. Under s.24 of the Inquiries Act access to the
12:21:42 19 inquiry during the evidence of Officer Peter Smith, a
12:21:46 20 pseudonym, is limited to legal representatives and staff
12:21:49 21 assisting the Royal Commission, the following parties with
12:21:51 22 leave to appear in the private hearing and their legal
12:21:54 23 representatives, State of Victoria, Victoria Police,
12:21:57 24 including media unit representatives, Director of Public
12:22:00 25 Prosecutions and Office of Public Prosecutions,
12:22:02 26 Commonwealth Director of Public Prosecutions, Ms Nicola
12:22:04 27 Gobbo, the SDU handlers, Australian Federal Police, the
12:22:09 28 legal representatives of the following parties with leave
12:22:11 29 to appear: Faruk Orman, Person 14, John Higgs, Pasquale
12:22:16 30 Barbaro, Paul Dale, media representatives accredited by the
12:22:24 31 Royal Commission are allowed to be present in the hearing
12:22:25 32 room. The hearing is to be recorded but not streamed or
12:22:28 33 broadcast. Subject to any further order there's to be no
12:22:31 34 publication of any material, statement, information or
12:22:34 35 evidence given made or referred to before the Commission
12:22:37 36 which could identify or tend to identify the persons
12:22:40 37 referred to as Witness A, Witness B, Witness X, Person 14,
12:22:43 38 any member of the Source Development Unit or their
12:22:50 39 whereabouts. A copy of this order is to be posted on the
12:22:54 40 door of this hearing room.
41
42 (IN CAMERA HEARING FOLLOWS)
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1 UPON RESUMING IN OPEN COURT:

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MR WOODS: I'm going to ask you some questions broadly to do with [REDACTED] on that list of names in front of you?---Yes.

I want the SML brought up on - certainly not on a public screen but on the Commissioner's, mine and the witness's screen, and this is 285. Sorry, ICRs, not the SMLs.

COMMISSIONER: 285 in the ICRs?

MR WOODS: Page 285, that's right.

COMMISSIONER: Have you got some water there, Mr Smith?---I do. I've got a bit of a cough over the last few days, I apologise. I do have some water.

No, no, that's all right, I just wanted to make sure you had some water.

MR WOODS: Is that SML in front of you yet on the screen?---Yeah, it's an ICR.

Sorry, I keep saying SML, I'm not quite sure why. I've got it stuck in my head. This is an ICR that you completed?---Yes.

Scrolling down. You'll see at 20:45 on 5 May 2006 that yourself and I think it's that deceased member of the SDU were meeting with Ms Gobbo on that occasion?---Yeah, with the controller.

And you say, you record there that what was received, received Bunnings receipt from human source re items purchased by that person on the list I was talking about before [REDACTED]?---Yes.

"Receipt given to human source by that person on [REDACTED] Sunday (cannot be used as evidence without compromise of the human source) relevant IR previously submitted by handler", and then there's the handler's name?---Yes.

And Purana are aware of relevance. Item destroyed by you. And that's what happened on that occasion?---Yes.

This is at a time - so what was happening on this occasion

15:15:26 1 was that the source was providing to you a Bunnings receipt
15:15:31 2 for implements that they'd purchased in order [REDACTED]
15:15:37 3 [REDACTED]?---Yeah, I can't remember what they were but that's
15:15:41 4 right, yep. Something to do with [REDACTED], yes.
5
15:15:46 6 On her providing it to you, your view was that's incredibly
15:15:53 7 dangerous to Ms Gobbo because it might compromise her as a
15:15:56 8 source; is that correct?---Yes.
9
15:16:02 10 What happened in relation to that is you simply destroyed
15:16:05 11 the receipt?---I'm sure - that's what happened, yes, that's
15:16:12 12 right.
13
15:16:14 14 You'd understand that a receipt such as that would be
15:16:21 15 evidence that could assist in the proof of a criminal
15:16:24 16 offence that might have been being committed?---Yeah, but I
15:16:29 17 was aware that Purana already knew about that and I think,
15:16:33 18 from memory, which is not great, they had other evidence of
15:16:39 19 it.
20
15:16:41 21 So whether or not there was other evidence of it, this was
15:16:43 22 evidence that could prove that that person had been
15:16:46 23 purchasing equipment [REDACTED]?---Or was it
15:16:55 24 just some sort of hardware in relation to the whole set up?
15:17:01 25 I don't know.
26
15:17:01 27 Your own recording of it says, "Received Bunnings receipt
15:17:06 28 from human source re items purchased by that person [REDACTED]
15:17:09 29 [REDACTED]". He wasn't running a [REDACTED], I take it, it
15:17:13 30 was only a [REDACTED]?---Sorry, I'm not trying to be super
15:17:19 31 pedantic. But, yeah, I don't - it wasn't - I'm don't think
15:17:22 32 it was chemicals or fertilizer of something, it may have
15:17:24 33 been hardware or whatever. It was to do with [REDACTED] for
34 sure.
35
15:17:25 36 Whether or not there was other evidence, I'm not asking
15:17:28 37 about how much evidence there was in relation to this item,
15:17:30 38 I'm asking just simply about the existence of this item of
15:17:33 39 evidence. It was, you would accept, an item of evidence
15:17:37 40 that could be used to prove a criminal offence was being
15:17:40 41 committed by that person?---That's right.
42
15:17:42 43 If that person chose to contest any charge that was
15:17:48 44 brought, the State would be assisted by the existence of
15:17:51 45 that receipt?---As I say, the investigators already knew
15:17:56 46 about it and had other evidence of it.
47

15:17:58 1 I'm not asking about whether there was other evidence of
15:18:00 2 it, I'm asking about this particular item of
15:18:05 3 evidence?---Okay.
4
15:18:06 5 This item of evidence would show that the person was
15:18:08 6 actively engaged in the setting up a [REDACTED], do you agree
15:18:12 7 with that?---It would go towards that, yes.
8
15:18:18 9 If, for example, the person pleaded guilty to the charge
15:18:22 10 but said, "Look, I wasn't actually the person who was
15:18:25 11 involved in the [REDACTED], I was involved in other
15:18:28 12 aspects of it", this is an item of evidence that could be
15:18:33 13 used to show indeed they were involved in the set up of [REDACTED]
15:18:37 14 [REDACTED], if that's what they wanted to argue, do you accept
15:18:40 15 that proposition?---Now you're getting me confused with my
15:18:53 16 own thoughts. I understand what you're asking me. That
15:19:03 17 was evidence about buying those items, for sure, but as I
15:19:06 18 say the investigators had other means to prove that and
15:19:08 19 they knew about it already, but clearly we did think on the
15:19:13 20 day because I was concerned about the - it would have
15:19:19 21 compromised the source 100 per cent sure if it came out,
15:19:23 22 right. I did what's said in the ICR in the presence of
15:19:25 23 those members that were there.
24
15:19:27 25 Do you remember how you destroyed it?---No.
26
15:19:37 27 How do you remember that it was in the presence of those
15:19:39 28 people?---Actually, go back. I can't remember. I can't
15:19:43 29 remember whether I destroyed it then or I took it and
15:19:46 30 destroyed it.
31
15:19:47 32 All right?---Yes, that's probably more likely because I
15:19:53 33 think we would have gone and discussed it. Actually,
15:20:00 34 knowing - I'm not going on a specific memory, I'm not being
15:20:04 35 unspecific now with you but my practice would be for
15:20:06 36 something like that, I'm sure, talk to the controller about
15:20:09 37 it and say, "What do we do here?" And talk about it and
15:20:14 38 throw a few ideas around, yeah.
39
15:20:17 40 And in fact can I suggest to you that as you sit here now
15:20:22 41 perhaps destroying it wasn't the right way to go and it
15:20:24 42 should have been handled in some other sensitive
15:20:29 43 manner?---Talking about it as a piece of evidence in
15:20:31 44 relation to questions you've asked me in those matters,
15:20:34 45 thinking about it like that, yes. But - well yes, clearly
15:20:39 46 I hope you understand the reasons I did it.
47

15:20:43 1 Certainly the Commissioner's heard your evidence on that
15:20:47 2 score. The Commission's spent considerable time both
15:20:52 3 working through ICRs and the transcripts of face-to-face
15:20:56 4 meetings, and as I've said to you earlier in your evidence,
15:21:01 5 it is clear that on a number of occasions Ms Gobbo was told
15:21:05 6 that she shouldn't represent particular people but she
15:21:10 7 pressed on and represented them anyway, you're aware of
15:21:15 8 that happening on a number of occasions?---It happened
15:21:17 9 sometimes, yes.
10
15:21:18 11 In fact the person we were talking about a moment ago is
15:21:22 12 one of those people?---Yes, yes.
13
15:21:28 14 Was she told not to act on behalf of Tony Mokbel to your
15:21:31 15 memory?---I can't remember.
16
15:21:38 17 Roula Mokbel?---Can't remember anything that that person
15:21:45 18 was charged with.
19
15:21:46 20 Mr Karam? Just as a matter of fairness, I did take you a
15:21:53 21 while ago to some documents where she of her own volition
15:21:56 22 said that she couldn't act on behalf of Mr Karam or any of
15:21:59 23 his co-accused. Do you know whether you or any other
15:22:05 24 member of the SDU specifically told her not to act on his
15:22:08 25 behalf?---I can't remember one way or the other.
26
15:22:14 27 What about Faruk Orman, are you aware of whether or not she
15:22:17 28 was told not to act on Faruk Orman's behalf?---I don't
15:22:25 29 know, no. I haven't had a chance to go through all the
15:22:30 30 things. There's too much there for me to go and look at.
31
15:22:37 32 Just on a related topic, this is at p.101 of the first lot
15:22:42 33 of ICRs. This is 26 December 2005 and I think Mr Black was
15:22:54 34 the handler at this stage.
35
15:22:57 36 COMMISSIONER: Correct.
15:22:59 37
15:23:04 38 MR WOODS: There's an entry "DSU management". Here we go.
15:23:08 39 "Source discussed an issue of bail variation" for the [REDACTED]
15:23:15 40 [REDACTED] on that list that we were talking about before and
15:23:19 41 the DSU advise the source to do "business as usual" and
15:23:24 42 warned the source about avoiding any relationship with that
15:23:27 43 person or Mr Karam. A couple of lines down, "Source needs
15:23:32 44 to keep the relationships professional". Source confident
15:23:36 45 that the source has total control over that [REDACTED] on
15:23:41 46 the list regarding welfare. Now, it was known, because
15:23:47 47 we've gone through the documents, that Ms Gobbo was acting

15:23:50 1 for that person. Not Mr Karam but the other person?---Yes.
15:23:56 2 At some point, yes.
3
15:23:58 4 She told you in the first, second and third face-to-face
15:24:01 5 meetings I suggest?---Okay, yes.
6
15:24:04 7 And there was an intention from an early stage that we've
15:24:07 8 spoken about earlier that that person could be used to
15:24:11 9 bring down the Mokbels?---Yeah, we've already discussed
15:24:16 10 that, of course.
11
15:24:18 12 We have. What I'm going to suggest to you is that the
15:24:20 13 phrase that is used here, "DSU advised source to do
15:24:29 14 business as usual", shows quite the opposite to a position
15:24:34 15 where she's being told not to act on behalf of that person,
15:24:37 16 instead a known client, a client she said three times by
15:24:42 17 this stage that she's acting for, she's told to do
15:24:45 18 "business as usual" with that client. You accept that's
15:24:48 19 what she was told?---I really - that's how it looks but I
15:24:58 20 know who wrote this contact report.
21
15:25:00 22 Yes?---Sorry, I think I do. Is it - - -
23
15:25:04 24 Just go and have a look at that list I took you to a moment
15:25:07 25 ago?---Officer Black.
26
15:25:09 27 Yes, Officer Black, that's the one?---Officer Black is very
15:25:14 28 specific and to the point. I guess I'm loathe to
15:25:24 29 second-guess - he might have had a different meaning for
15:25:26 30 that phrase, and considering he's put it in inverted
15:25:31 31 commas, you know what I mean? I just don't want to -
15:25:33 32 again, I'm not trying to be unhelpful.
33
15:25:36 34 No, I understand?---I'm wary of attributing something to
15:25:42 35 his writing that I've got wrong.
36
15:25:43 37 The phrase a few lines down isn't in inverted commas which
15:25:47 38 is, "Source needs to keep the relationships professional".
15:25:51 39 You accept that that's what she was told, to keep her
15:25:53 40 relationships with at least those two people
15:25:56 41 professional?---Yeah, I'm sure that if Officer Black wrote
15:26:00 42 it that's what he said.
43
15:26:01 44 And the professional relationships she had with - I'll just
15:26:05 45 restrict it to that particular person we were talking about
15:26:08 46 in closed session, is that she was acting for the
15:26:11 47 person?---I don't know whether she was at the time or not.

1

15:26:20 2 Can I suggest to you that the entry that we see here
15:26:24 3 demonstrates an intention to foster conflicts and to use
15:26:31 4 them to Victoria Police's advantage rather than to ensure
15:26:35 5 that Ms Gobbo doesn't have those conflicts, what do you say
15:26:38 6 about that?---That was not the intention, to foster
15:26:42 7 conflicts as you put it.

15:26:45 8

15:26:46 9 MR CHETTLE: Commissioner, are you going to give the
15:26:48 10 witness a break?

11

15:26:48 12 COMMISSIONER: Yes, I will.

15:26:49 13

15:26:50 14 MR WOODS: Sorry.

15

15:26:51 16 COMMISSIONER: We'll adjourn now. We'll have a ten minute
15:26:53 17 break now. Thank you.

18

19 (Short adjournment.)

20

15:42:00 21 COMMISSIONER: Yes Mr Woods.

15:42:01 22

15:42:01 23 MR WOODS: Thank you, Commissioner. Mr Smith, can you hear
15:42:03 24 me?---Yes.

25

15:42:04 26 Just so you're aware, my intention is to finish my round of
15:42:10 27 questions by 4.30 today, which will mean that you'll still
15:42:14 28 be needed, if I have finished you'll still be needed
15:42:17 29 tomorrow morning for some examination by a couple of
15:42:19 30 others?---Yes.

31

15:42:20 32 But hopefully this part of it will be done by then?---Thank
15:42:23 33 you.

34

15:42:25 35 Could the operator please bring up p.528 of the ICRs. What
15:42:36 36 this is, what's going to come up on the screen, Mr Smith,
15:42:40 37 is a 30 October 2006 - a record of a face-to-face meeting
15:42:46 38 between officer - let me get the name right - Officer
15:42:52 39 Anderson, who's the first person on that list of
15:42:55 40 pseudonyms?---Yes.

41

15:42:56 42 And yourself?---Yes.

43

15:43:01 44 And the purpose of the meeting was to allow Nicola Gobbo to
15:43:07 45 peruse five volumes of Purana Task Force brief of evidence
15:43:13 46 against Ahec, Barbaro and Milad Mokbel, general debrief
15:43:20 47 regarding recent activities. Now the use of the dot points

15:43:23 1 I assume means that this was Anderson's notes rather than
15:43:27 2 yours?---I can't see it yet but that'd be right.
3
15:43:30 4 Sorry, not on the screen yet. I'll leave it a moment until
15:43:34 5 it's there.
6
15:43:34 7 COMMISSIONER: It's there now. Have you got it now,
15:43:38 8 Mr Smith?---Yes.
9
15:43:42 10 Yes. It's the deceased member's ICR?---That's right.
15:43:50 11
15:43:51 12 MR WOODS: Yes. Do you have a recollection of this
15:43:54 13 occurring, an independent recollection of this occurring on
15:43:57 14 30 October 2006?---Independent, no, but I've since
15:44:05 15 reviewed, I think I've reviewed this ICR you know in the
15:44:11 16 last month, over a month ago, something like that.
17
15:44:16 18 You would accept, I assume, that this is a pretty
15:44:19 19 extraordinary thing to do, to be showing a human source in
15:44:24 20 Nicola Gobbo's position five briefs of evidence of
15:44:28 21 individuals, is that a fair assessment?---Yes, it was but I
15:44:34 22 suppose, you know, I believe I've explained the
15:44:37 23 circumstances but it was unusual.
24
15:44:43 25 531 of the ICR, it will just be brought down on the screen
15:44:45 26 in a moment, Mr Smith. There's comments about what should
15:44:55 27 and should not be on a particular person's brief of
15:45:00 28 evidence. If you could just scroll down. Just that,
15:45:08 29 "3838. Peruse Purana Task Force brief of evidence and made
15:45:12 30 numerous comments and provided comments in relation to the
15:45:15 31 content of the brief of evidence". Just on this topic, do
15:45:19 32 I understand the reason that she was being shown briefs of
15:45:23 33 evidence was to ensure that she wouldn't be identified as a
15:45:30 34 human source?---That's right.
35
15:45:35 36 All right?---And, yeah, I think part of that stemmed not
15:45:39 37 just from her as human source, part of that I think stemmed
15:45:43 38 from she had complained previously about another brief, a
15:45:49 39 while before that time, where she complained of, basically
15:45:55 40 implying incompetence by the informant in including, for
15:46:02 41 example, her home address in a brief, and was paranoid
15:46:04 42 about that sort of thing.
43
15:46:05 44 I see. That's the intention at that stage, is to show her
15:46:08 45 the briefs of evidence for that reason, so that she can be
15:46:11 46 satisfied that she's not going to be identified as a human
15:46:14 47 source?---And probably also, from memory, that memory being

15:46:20 1 prompted by reading it, the fact that she assisted
15:46:26 2 [REDACTED], if that's the relevant person, is that his name,
15:46:33 3 is it?
15:46:33 4
15:46:33 5 If that might be struck from the record. There's a
15:46:34 6 difficulty - - - ?---Sorry.
7
15:46:36 8 COMMISSIONER: It's okay. Are we in closed hearing still?
15:46:39 9
15:46:39 10 MR WOODS: No, we're not.
11
15:46:41 12 COMMISSIONER: We're in open now.
15:46:43 13
15:46:43 14 MR WOODS: Sorry, that - - -
15
15:46:45 16 COMMISSIONER: Yes, we are, we're in public hearing.
15:46:48 17
15:46:49 18 MR WOODS: A particular individual whom she was
15:46:52 19 representing?---Yes, and concerned about what information
15:46:56 20 was in the brief about when she knew about certain matters
15:47:01 21 taking place and the fact that she didn't pass it on to
15:47:07 22 other unrelated or perhaps unrelated people.
23
15:47:10 24 But the fact is though that she goes broader than that in
15:47:16 25 her consideration of these briefs of evidence, doesn't she?
15:47:20 26 She starts commenting on the adequacy of the briefs of
15:47:23 27 evidence. In fact the very first entry, "DNA samples not
15:47:26 28 taken from crooks", you'd accept that has nothing to do
15:47:29 29 with her being disclosed as a human source?---Yeah, I mean
15:47:33 30 the comment that springs immediately to mind when you bring
15:47:37 31 this up is she couldn't help herself.
32
15:47:40 33 That might be where I was going with it in fact. So she
15:47:43 34 couldn't help herself and your job, yours and Officer
15:47:46 35 Anderson's job was to write down whatever she said?---Yes.
15:47:52 36 It's not our job - as previously mentioned, it's not our
15:47:56 37 job to filter what a source says, you've got to record it
15:48:00 38 all. But that was not the purpose and in fact - but this -
15:48:03 39 what's the date of this again, please?
40
15:48:05 41 The date of this is 30 October 2006?---Okay, all right.
15:48:11 42 Not that I remember the detail but I certainly - this is
15:48:15 43 the transcript of which I listened to, at least the first
15:48:19 44 half quite intently.
45
15:48:21 46 Yes?---And listening to that obviously reminded me of
15:48:24 47 certain things. Yeah, you're right, the intention was to

15:48:26 1 check for those things I mentioned, whether the source or -
15:48:30 2 knowledge of who was arrested when and not telling people.
3
15:48:33 4 Yes?---And during that, yeah, there's many minutes of
15:48:38 5 silence where myself and Officer Anderson are waiting for
15:48:43 6 her to flip through things and she starts talking about
15:48:46 7 irrelevant things.
8
15:48:47 9 Okay. Really - - - ?---In relation to - yeah.
10
15:48:51 11 Really what she's doing from that very first entry there
15:48:56 12 that's recorded from her is she's trying to give the police
15:49:02 13 a bit of assistance with the brief of evidence against her
15:49:04 14 client to say, "There's some other evidence that should be
15:49:06 15 in this brief of evidence", that's what she was telling
15:49:10 16 you, she couldn't help herself, do you agree?---That's
15:49:12 17 exactly - that's my term and perhaps your term as well.
15:49:15 18 That happened I think - that was a sort of an underlying
15:49:19 19 theme in some of the things she did I believe.
20
15:49:22 21 Now scroll down a little bit?---Sorry, I was going to add,
15:49:24 22 just - - -
23
15:49:25 24 Sorry, go ahead?---During that - when she was going through
15:49:31 25 this material, at one stage she started talking about
15:49:34 26 something, some forensic matter.
27
15:49:36 28 Yes?---I don't even know what it was, and I told her, "Just
15:49:41 29 move on, it doesn't matter". Like it was taking ages and
15:49:45 30 she was doing what you were saying.
31
15:49:47 32 Just on that, the intent or part of the intention being to
15:49:52 33 satisfy Ms Gobbo that her role as a human source wouldn't
15:49:56 34 be disclosed. Can I suggest to you that that was something
15:50:00 35 that the SDU were capable of both identifying and dealing
15:50:08 36 with without Ms Gobbo's assistance?---Yeah, probably, yep.
15:50:13 37 I agree with that.
38
15:50:14 39 In retrospect that's probably what should have happened
15:50:21 40 here?---Yes, I mean it was obviously talked about prior to
15:50:25 41 doing it and, you know, clearly Purana, is it, must have
15:50:32 42 known because they gave it to us. But yeah, looking back I
15:50:36 43 can't remember exactly why we thought it necessary to
15:50:38 44 actually physically get her to do it.
45
15:50:42 46 As you say, Purana - - - ?---There's a better reason. Go
15:50:45 47 on.

1

15:50:45 2 As you say, Purana provided the briefs of evidence to you
15:50:48 3 so that might indicate that it was a request made by Purana
15:50:52 4 to provide those briefs?---It would have had to be.

5

15:50:58 6 Have you ever shown a brief of evidence to another human
15:51:01 7 source in this sort of context?---Not in this context. I'm
15:51:14 8 not even sure if I've shown one. I may have - maybe
15:51:17 9 referred to one in a historical sense I guess.

10

15:51:21 11 Scroll down the page. She's questioning why a video
15:51:23 12 interview was included?---Yes.

13

15:51:24 14 It's explained to her why that was in the brief of
15:51:27 15 evidence?---Yes.

16

15:51:28 17 She's concerned that that might lead to a particular
15:51:30 18 individual identifying her as having knowledge of what this
15:51:34 19 person was doing?---M'mm.

20

15:51:37 21 She talks about another brief of evidence that doesn't
15:51:39 22 include a transcript of this person. An additional reason
15:51:43 23 why the brief should be included in one. She talks about a
15:51:46 24 statement that has been missing from one of the statements,
15:51:50 25 from one of the briefs of evidence in the next section.
15:51:53 26 Then there's a concern about photos that she says may need
15:51:59 27 to be removed if they're on the brief of evidence. She
15:52:02 28 says that Dale Flynn should be asked what he's going to say
15:52:06 29 when cross-examined as to why the surveillance units were
15:52:09 30 directed to the [REDACTED] and how did
15:52:13 31 Flynn know of its location. You recall that those are
15:52:17 32 matters that Ms Gobbo was discussing with you in this
15:52:20 33 meeting?---That's right, and except for one matter, which
15:52:25 34 is the matter you just mentioned about Flynn.

35

15:52:31 36 Yes?---Totally disinterested in all of it, and that's, as I
15:52:35 37 understand, Purana.

38

15:52:37 39 All right. But the information that Ms Gobbo gave as to
15:52:41 40 her views of these briefs of evidence was passed on to
15:52:44 41 Purana though, wasn't it?---Yes. I believe it was by
15:52:50 42 Officer Anderson.

43

15:52:51 44 Yes?---And I believe they said, "Know all that", and the
15:53:00 45 brief was served very shortly after.

46

15:53:02 47 So they didn't take her advice?---Nothing was changed, and

15:53:07 1 that was never the intention to change anything by the way,
15:53:09 2 as I understand what happened. I think I've either got
15:53:12 3 that from Officer Anderson's - anyway, inquiries within the
15:53:20 4 Loricated database indicated to me that's what occurred.
5
15:53:24 6 All right. I want to ask you a couple of questions about
15:53:26 7 Ms Gobbo's appearance at the OPI in July and August 2007.
15:53:32 8 I think you only had fleeting involvement in this because
15:53:38 9 there was only a brief hand over to you at the period. But
15:53:42 10 you understand that in 2007 Ms Gobbo was asked to appear or
15:53:47 11 summonsed to appear before the OPI?---Yes.
12
15:53:51 13 And Officer Fox was involved initially in dealing with
15:53:55 14 Ms Gobbo in July 2007 which was when her first hearing took
15:54:00 15 place. It then appears that there was hand over - I think
15:54:04 16 she actually went on holidays to Bali in the middle of the
15:54:08 17 first and second hearings and there was a hand over to you
15:54:13 18 during that period and that you were her handler on the
15:54:18 19 second occasion that she appeared before the OPI, do you
15:54:21 20 have a memory of that?---That sounds about right but of
15:54:24 21 course the details I would need to - - -
22
15:54:26 23 Yeah, okay?---Yes.
24
15:54:29 25 I won't dwell on it but if p.1073 of the 3838 ICRs could be
15:54:33 26 brought up, please. Let me know when that's on the
15:54:46 27 screen?---It is, a page on 27/07/07.
28
15:54:52 29 What's happened there is that there's an update that's been
15:54:56 30 prepared for you by that person?---Yes, by Officer Fox,
15:55:03 31 yes.
32
15:55:04 33 That's the one. It says the OPI's been adjourned to an
15:55:10 34 unknown date, understood to be scheduling issues, et
15:55:16 35 cetera, et cetera?---M'hmm.
36
15:55:18 37 On the actual day of her attendance at the OPI Mr Ryan has
15:55:28 38 given evidence that on both occasions he attended the OPI
15:55:31 39 and sat in a remote office and watched the proceedings, do
15:55:35 40 you understand that?---I don't know if I knew that then but
15:55:41 41 anyway, yep.
42
15:55:44 43 Do you recall being the handler who she was dealing with
15:55:49 44 during her second appearance at the OPI?---Not really.
15:55:52 45 This is the contact report, give me a minute to read it if
15:55:57 46 that's okay.
47

15:55:58 1 Yes, go ahead?---Okay, so can we - - -
2
15:56:02 3 You might want to scroll down because I think this is your
15:56:05 4 update. The update that was given to you I should
15:56:10 5 say?---All this is - I beg your pardon. Okay, if there's
15:56:13 6 mention of going to the OPI can we go to that?
7
15:56:18 8 Yes, so keep scrolling down. I might just have to dig out
15:56:21 9 the second date of the OPI appearance. It was a date in
15:56:35 10 August and I think it might have been the 7th or 11th of
15:56:38 11 August so you might have to scroll down somewhat. In fact
15:56:48 12 just before we do, you had conversations with Ms Gobbo
15:56:52 13 about how to keep her answers short and concise and deal
15:56:59 14 only with the things that she was asked about, you'd accept
15:57:01 15 that proposition?---In the context of not divulging that
15:57:08 16 she had been a human source and that was our main concern.
17
15:57:12 18 That's what I'm asking about. The reason you had that
15:57:15 19 conversation with her was for that reason?---That's right.
20
15:57:19 21 The records - - -?---Which I don't really remember but I'm
15:57:27 22 sure it's in there, in the contact.
23
15:57:29 24 There's also a note that she was told that - I think it was
15:57:35 25 passed on to you that you passed on to her that the length
15:57:37 26 of her answers was too long and that was going to cause her
15:57:41 27 problems on that front and that she should keep them
15:57:43 28 shorter to protect herself?---That rings a bell but I can't
15:57:48 29 remember who told me that. That may well be recorded
15:57:52 30 there.
31
15:57:53 32 Do you know if you discussed Ms Gobbo's attendance or
15:57:55 33 evidence with Mr Ryan?---I don't know if I did. If I did
15:58:03 34 it would be probably on the contact report.
35
15:58:08 36 Did you discuss her attendance with Mr Overland?---Did I?
37
15:58:12 38 Yes?---No. I don't believe I did, no. Someone may have
15:58:16 39 though.
40
15:58:16 41 Did you ever have meetings, face-to-face meetings with
15:58:22 42 Mr Overland or was that people senior to you?---I think I
15:58:26 43 was present for at least one. I can't remember what that
15:58:29 44 was about. But I'm sure those meetings occurred but I
15:58:34 45 believe it'd be with Mr White and possibly those above him,
15:58:43 46 with Mr White present, yeah.
47

15:58:45 1 And what about Mr Fitzgerald, did you ever have any
15:58:47 2 conversations with him about Ms Gobbo's attendance, being
15:58:51 3 the person who was convening these OPI hearings?---No.
4
15:58:58 5 I want to ask you some things about Mr Karam and ICR p.57,
15:59:07 6 if that can be brought up on the screen of this same
15:59:11 7 document. Page 57. This is an entry of yours and at the
15:59:15 8 very top of the page she says, or you say you've received a
15:59:19 9 call from Ms Gobbo and you phoned her back at her office.
15:59:24 10 She says she's working on Karam's brief and that on that
15:59:28 11 occasion Carl Williams' jury is out. Do you see that entry
15:59:31 12 there?---Yes.
13
15:59:34 14 This being 12 November 2005, it was clear to you at least
15:59:42 15 at that stage that Ms Gobbo was acting for Mr Karam?---In
15:59:47 16 some capacity that's how it reads, yes.
17
15:59:49 18 And that this record of the SDU, these documents go on to
15:59:55 19 the SDU's records, that's the case, isn't it, these
15:59:58 20 ICRs?---Everything does, yes. This is the main record to
16:00:03 21 do with handling a source, yes.
22
16:00:06 23 I see. If you go to p.133. This is about a month and a
16:00:12 24 half later. It says there on 25 January, "Currently Karam
16:00:22 25 is more comfortable with human source than ever before.
16:00:26 26 Rob Karam. Human source is now acting for Rob Karam".
16:00:33 27 That might be not on that page right there, it might be
16:00:37 28 further up or further down. It might be down. There we
16:00:43 29 go?---Yes.
30
16:00:46 31 The first one, "Currently Karam is more comfortable with
16:00:49 32 human source than ever before". Then about five or six
16:00:52 33 lines down, maybe a few more, is "Rob Karam. Human source
16:00:55 34 is now acting for Karam". That was something that she had
16:00:58 35 explained to you on 25 January 2006?---Well certainly, yeah
16:01:02 36 - she certainly said it if I wrote it down, yep.
37
16:01:06 38 Page 858 of the same document, please. This is another
16:01:20 39 handler's entry?---Yes.
40
16:01:22 41 It says, "Gobbo provides handler significant detail
16:01:26 42 regarding Karam"?---I can't see that on the page I'm on.
16:01:34 43 Yes, are you precis-ing that or is that a quote?
44
16:01:39 45 No, it's a précis of mine?---Okay, yep.
46
16:01:44 47 What she's doing there, she's going through a fair bit of

16:01:46 1 detail and informing the handler lots of different aspects
16:01:50 2 of things that she knows about Mr Karam and his associates,
16:01:54 3 do you agree with that?---I'll have to read it all but
16:01:58 4 that's - yeah, the first few lines, that's what it looks
16:02:01 5 like, yeah.

6
16:02:05 7 If you want an opportunity to keep reading do so but you
16:02:09 8 accept that that's what she's doing there, she's telling
16:02:12 9 the handler various aspects about Mr Karam?---Yeah.

10
16:02:20 11 At p.877, which is 5 June 2007, a couple of weeks later,
16:02:30 12 this is the occasion on which she hands over the bill of
16:02:36 13 lading during a trial in which she's representing Mr Karam.
16:02:41 14 Now you're aware that that's something that she did? I'm
16:02:46 15 not saying this is a document that you prepared but you
16:02:48 16 come into the story a bit later on. You're aware that's a
16:02:53 17 document she provided?---Yes.

18
16:02:57 19 And that she then set about assisting the handlers by
16:03:04 20 translating the document from Italian to English?---I'd
16:03:11 21 forgotten that. I have heard that before, yes.

22
16:03:20 23 At the SML - I don't need to take you to the document, but
16:03:24 24 14 June, so a week afterwards, there's an entry saying,
16:03:29 25 "Human source is representing Karam re import trial" and
16:03:32 26 what I'm suggesting to you is that that's the same trial
16:03:35 27 that she was representing him in when she handed over this
16:03:43 28 document, you'd accept that?---If the dates line up, I
16:03:46 29 guess, yeah. It makes sense.

30
16:03:51 31 In circumstances where she's representing this individual
16:03:56 32 at the same time as implicating him in serious offences,
16:04:01 33 you'd accept that she has a serious conflict of
16:04:04 34 interest?---You've mentioned the issue that we were
16:04:12 35 thinking about already, the fact she's committing serious
16:04:17 36 crime.

37
16:04:18 38 I'm not talking about privilege or anything like that, I'm
16:04:20 39 saying - - - ?---Yes, I know, I know, but my answer is
16:04:24 40 that's what we were concerned about.

41
16:04:26 42 Yes?---And I suppose if she hadn't told us about this we
16:04:31 43 wouldn't have known about it, yeah.

44
16:04:34 45 Can I suggest to you that Victoria Police isn't a person or
16:04:41 46 a player that's idly standing by the criminal justice
16:04:45 47 system and simply letting things play out, but it in fact

16:04:49 1 has an obligation to make sure that the criminal justice
16:04:53 2 system plays out fairly in relation to accused people,
16:04:56 3 would you agree with that?---I've never thought that deeply
16:05:01 4 about - when you talk about Victoria Police I'm probably a
16:05:04 5 bit jaded now.
6
16:05:07 7 You as a member of Victoria Police - - - ?---There's an
16:05:11 8 obligation to do that I guess, yeah. I never thought about
16:05:14 9 it in those terms, but yeah.
10
16:05:17 11 In circumstances where it was, I'd suggest, abundantly
16:05:20 12 clear that Ms Gobbo had a serious conflict of interest in
16:05:23 13 acting for Mr Karam, Victoria Police should not have sat
16:05:28 14 idly by and allowed that to occur, do you agree with
16:05:34 15 that?---For what to occur ?
16:05:36 16
16:05:37 17 For her to continue to represent Mr Karam in circumstances
16:05:39 18 where in the same moment she was implicating him in serious
16:05:43 19 criminal activity?---She was telling us about the serious
16:05:49 20 activity he was committing ?
16:05:50 21
16:05:50 22 Yes. Do you accept that this was another occasion where
16:05:54 23 you should have said to Ms Gobbo, "I'm sorry, Nicola, we
16:05:58 24 won't have anything to do with you because you're
16:06:02 25 continuing to act on behalf of this person and that puts
16:06:06 26 you in a conflict"? Do you accept that's something that
16:06:11 27 should have happened in relation to Mr Karam?---This is a
16:06:14 28 separate case so the concept of conflict to me back then,
16:06:18 29 and probably even now, is not clear. She was representing
16:06:23 30 him on a separate case, this had nothing to do with that.
16:06:26 31 This is what's in my mind, I'm just trying to explain it
16:06:30 32 from my point of view.
33
16:06:31 34 Sure?---And he was committing further crimes whilst
16:06:38 35 obviously being before the court for something else totally
16:06:41 36 different. And we took information to try to do something
16:06:48 37 about it. So the conflict aspect, I'm not clear on how
16:06:54 38 that works, if it's a totally separate matter before the
16:06:59 39 court. In fact these matters weren't before the court, the
16:07:02 40 ones you're telling us about.
41
16:07:07 42 What I'm asking is whether or not it would have been
16:07:10 43 appropriate to say to Ms Gobbo, given the fact that she was
16:07:15 44 actively working against her client's interests in this
16:07:18 45 regard, that you would have nothing further to do with her
16:07:22 46 at that stage?---I don't know, I didn't think about that.
47

16:07:33 1 You accept that she had a conflict of interest?---It was a
16:07:39 2 difficult situation but what does conflict mean? What does
16:07:42 3 that mean? I don't - as I say, I see it as two separate
16:07:49 4 matters. I know she was acting for him but also at the
16:07:51 5 same time passing on information. I'm not trying to be
16:07:54 6 obtuse here, but in my mind that was acting separately.
7
16:07:57 8 It is precisely those two separate matters that I'm asking
16:08:00 9 you to reflect on?---Right.
10
16:08:02 11 The first is she was acting for him, and you accept
16:08:05 12 that?---Yes.
13
16:08:05 14 The second is she was implicating him in serious criminal
16:08:09 15 activity, you accept that?---Yes, telling us about what he
16:08:13 16 was doing, yes, she was.
17
16:08:15 18 Criminal activity that he was undertaking?---Yes.
19
16:08:17 20 All right. You accept that there is a conflict or a
16:08:21 21 tension between those two matters?
22
16:08:27 23 COMMISSIONER: Between continuing to act?---M'hmm.
24
16:08:31 25 And giving information to the police about his
16:08:43 26 actions?---Looking back now, yes, there may have been. But
16:08:48 27 I didn't consider it back then.
28
16:08:50 29 MR WOODS: Do you think her clients would have been
16:08:51 30 continuing to pay her money for her services if, as in
16:08:55 31 Mr Karam's position, she was doing what we've just gone
16:08:58 32 through?---I don't know what they would be doing.
33
16:09:04 34 Well, it's inevitable they wouldn't have been paying her
16:09:08 35 had they known she was assisting police in implicating
16:09:15 36 them?---What's the question?
37
16:09:18 38 COMMISSIONER: I think we can just take that as a comment.
16:09:20 39
16:09:21 40 MR WOODS: All right. Would you accept that someone in the
16:09:26 41 position of Mr Karam and others like him who Ms Gobbo was
16:09:33 42 implicating in criminal activity whilst also purporting to
16:09:36 43 represent them, one couldn't assume that they had been
16:09:41 44 fairly dealt with by the criminal justice system because
16:09:44 45 they didn't have an impartial lawyer?---I think in this
16:09:55 46 case - it always stuck in my mind there was a case that
16:10:01 47 this source had that a person was acquitted of a very

16:10:06 1 serious offence and they made a comment that that had
16:10:14 2 either sickened or saddened them and yet that was what the
16:10:18 3 source was working for. I know it's probably a little bit
16:10:22 4 long-winded but I always felt the source wanted to do -
16:10:26 5 would do what was the right thing in court. Now rightly or
16:10:28 6 wrongly that's what I felt.
7
16:10:30 8 Quite frankly I'm not following you?---Not that it really
16:10:34 9 occurred to me anyway.
10
16:10:35 11 What I was asking you though is whether or not in your view
16:10:39 12 a person who is a client of Ms Gobbo's, who has had
16:10:43 13 Ms Gobbo (a) representing them, whilst (b) at the same time
16:10:49 14 working against their interests, would feel that they had
16:10:53 15 been fairly dealt with by the justice system?---Well if
16:11:03 16 they had been involved in criminal activity it wouldn't
16:11:07 17 matter.
18
16:11:07 19 Your view is that criminal activity trumps
16:11:11 20 everything?---No, no, it's not. I don't know.
21
16:11:16 22 So lawyers needn't act in their client's best interests in
16:11:20 23 your view?---I'm sure they should but what that really
16:11:28 24 means, what the interpretation is of that I don't know.
25
16:11:31 26 I might move on.
27
16:11:32 28 COMMISSIONER: Yes, I think that might be wise.
16:11:34 29
16:11:40 30 MR WOODS: It's the case that you were involved at an early
16:11:44 31 stage in assisting - there were a number of speeding
16:11:51 32 tickets that Ms Gobbo received, being essentially written
16:11:55 33 off and characterised as rewards for Ms Gobbo; is that
16:12:09 34 right?---Yes. If I may I take objection to the words
16:12:13 35 "written off". It was a process put in place that was
16:12:16 36 clearly documented.
37
16:12:17 38 Yes?---And those specific ones, as I recall, related to her
16:12:23 39 coming actually to specifically meet us.
40
16:12:26 41 Yes?---So yes, there was a - the process - that was pretty
16:12:32 42 well the only way we could - we felt we had some
16:12:34 43 involvement in her incurring those and that's how that was
16:12:38 44 addressed.
45
16:12:39 46 So she receives this regulatory offence in a context where
16:12:45 47 she's actually on her way to give you guys assistance; is

16:12:48 1 that right?---That's how I recall it, yes.
2
16:12:50 3 And because the offence is committed in circumstances where
16:12:57 4 she is about to attend on the SDU, it's appropriate, given
16:13:03 5 that set of circumstances, that the fine can be waived, is
16:13:10 6 that the better explanation?---Well that was what, as I
16:13:14 7 recall that's what the reward application said and it was
16:13:18 8 clear.
9
16:13:18 10 Are you aware of any - - - ?---That was - - -
11
16:13:23 12 Go ahead?---It was specifically - it was just on the way.
16:13:26 13 I think it was literally within minutes of a meeting, as I
16:13:30 14 recall it. I could be wrong about that. I'm sure the
16:13:33 15 application itself, which I haven't read lately, will
16:13:37 16 indicate that. Many occasions she complained to me that
16:13:42 17 she thinks she got another speeding fine and my comment was
16:13:46 18 always, "Slow down".
19
16:13:49 20 COMMISSIONER: Yes. You didn't authorise her to speed to
16:13:51 21 come and meet you?---No. At one stage she was worried
16:13:56 22 about losing all her points. I said something like, "It's
16:14:01 23 going to cost you a few dollars in taxis".
24
16:14:03 25 Yes. But the waiver was not only for the fines, it was
16:14:07 26 also for the demerit points, wasn't it?---I don't know.
16:14:12 27 Yeah, I don't know.
28
16:14:12 29 All right, thank you.
30
16:14:16 31 MR WOODS: Are you aware of any other situation, I don't
16:14:19 32 need you to explain it other than giving me a yes or no,
16:14:22 33 any other situation where a human source has had a
16:14:27 34 regulatory offence or a summary offence or an indictable
16:14:31 35 offence essentially taken away because of them assisting
16:14:35 36 the SDU?---Certainly not an indictable offence. If you're
16:14:41 37 talking about a regulatory offence, as in similar to this,
16:14:45 38 yes.
39
16:14:46 40 Road rule type situations or other situations?---Yep, road
16:14:51 41 situations.
42
16:14:52 43 Your experience is that that's, in your experience,
16:14:54 44 happened with other human sources?---Yeah, but it's
16:14:57 45 carefully scrutinised. It's not ad hoc and it's not our
16:15:04 46 decision.
47

16:15:04 1 I understand there's a hierarchy and there's a system that
16:15:06 2 needs to be gone through. I'm simply trying to understand
16:15:09 3 what the ambit of it is and whether there are other types
16:15:12 4 of offences that this could relate to, this procedure?---It
16:15:15 5 wouldn't relate to withdrawing any charges that had already
16:15:18 6 been placed at a court, not that I know of.
7
16:15:20 8 Regulatory offences such as breach of road rules, are you
16:15:24 9 aware of any other than that that human sources have had
16:15:28 10 dealt with by the police as a reward?---Parking fines, is
16:15:33 11 that in the same category?
12
16:15:36 13 Yes. Just fines?---From memory, yes. There's probably
16:15:39 14 more, if I had more time to think about it. In any case,
16:15:42 15 as I say, any reward is always clearly documented and
16:15:47 16 explained. And in fact in this case it's not really a
16:15:52 17 reward, it was caused by us so it's - - -
18
16:15:56 19 Hang on - - - ?---Really it's the only mechanism we had to
16:16:01 20 go into a fight for her.
21
16:16:02 22 It wasn't caused by you, it was caused by the person
16:16:05 23 speeding in the car, Mr Smith?---It was, it was. It's
16:16:10 24 always the driver's fault, I absolutely agree with that.
16:16:13 25
16:16:14 26 On their way to see you?---But there was some - yeah, on
16:16:16 27 the way to see us, so we felt it was justified.
28
16:16:18 29 Pages 14 to 15 of your statement you were asked to provide
16:16:22 30 details of your knowledge, understanding, et cetera, of the
16:16:24 31 obligation of Victoria Police to disclose to courts, the
16:16:28 32 prosecution and the accused any and what information
16:16:31 33 obtained during the course of an investigation that was not
16:16:35 34 included in a brief served on an accused. You say, "I
16:16:42 35 believe this is more applicable to the investigator role.
16:16:45 36 My understanding is there is no obligation to advise a
16:16:50 37 charged person that information was supplied by a source
16:16:53 38 and the fact that the source was even involved in a matter
16:16:57 39 was not to be disclosed". Now that was a steadfast rule
16:17:03 40 from your practice, that the source was never to be
16:17:06 41 disclosed; is that right?---That's right. It was actually
16:17:10 42 - it became Victoria Police policy.
43
16:17:12 44 Yes?---I'm not sure when.
45
16:17:13 46 If it was the case that hypothetically a serious abuse of
16:17:19 47 process had been identified by Victoria Police that there

16:17:25 1 might have been a source involved in, was it still your
16:17:29 2 understanding that even in that situation that should not
16:17:32 3 be disclosed to an accused person because of relevance of
16:17:37 4 the source?---I understand the question you're asking.
5
16:17:46 6 I'm just trying to understand the primacy of these
16:17:51 7 considerations?---Yeah, well - I don't know. The primacy
16:17:53 8 to me was always the identity of the source not being
16:18:01 9 divulged. I don't know that I can take it any further.
10
16:18:03 11 No, no, that's all right. There's a cardinal rule, as we
16:18:08 12 understand it, from SDU members and others that human
16:18:13 13 sources should not be transitioned into witnesses. Is that
16:18:16 14 your understanding, or is that your belief?---Yeah, I don't
16:18:21 15 know if it's written down anywhere as a cardinal rule but
16:18:24 16 it's a strong belief.
17
16:18:27 18 But in relation to Ms Gobbo in particular, your strong view
16:18:30 19 was that she shouldn't be transitioned into a witness in
16:18:33 20 relation to the prosecution of Paul Dale?---That's right.
21
16:18:37 22 Or any other person?---You mean prosecution of any other
16:18:45 23 person?
24
16:18:46 25 Yes, that's right, to be a witness in any
16:18:48 26 prosecution?---Yeah, that's right. I don't know if that
16:18:50 27 was put to us but it was certainly for me personally
16:18:54 28 mentioned, yes.
29
16:18:55 30 The reason is it wouldn't take a lot of time under
16:18:59 31 cross-examination for it come out that she was a human
16:19:02 32 source?---That's right, how'd you get here?
16:19:04 33
16:19:05 34 Thereby her life would be in serious jeopardy?---Yes.
35
16:19:08 36 Your understanding is that the direction to transition
16:19:11 37 Ms Gobbo into a source came from Mr Overland, is that
16:19:16 38 right?
16:19:16 39
16:19:16 40 COMMISSIONER: To a witness.
16:19:18 41
16:19:19 42 MR WOODS: Sorry, to a witness. She was already a source.
16:19:23 43 Your understanding is that direction came from
16:19:25 44 Mr Overland?---That's my understanding.
45
16:19:26 46 Did you express your views on that proposition to anyone at
16:19:31 47 the time?---I'm sure it was discussed within the office, at

16:19:36 1 least probably to Officer White.
2
16:19:44 3 Yes?---And I think I recorded it, or he may have recorded
16:19:50 4 it on my behalf or I recorded it somewhere, maybe in a
16:19:56 5 contact report, about what I thought about the situation.
6
16:19:58 7 You're aware that Officer Black, who is number 9 on that
16:20:01 8 list in front of you, prepared a briefing document on that
16:20:04 9 proposed transition?---Yes, he had some sort of analysis or
16:20:08 10 something, yeah.
16:20:08 11
16:20:08 12 SWOT analysis, does that ring a bell?---Yes.
13
16:20:11 14 Is that a document you would have been familiar with at the
16:20:14 15 time?---No.
16
16:20:16 17 Just a couple more issues before we conclude. The
16:20:21 18 disbanding of the SDU you deal with at paragraphs 18 to 19.
16:20:27 19 You say, "I was never provided with a full explanation of
16:20:30 20 why this occurred. When the advice came of the decision I
16:20:33 21 was on leave. A few days later I attended the office in
16:20:38 22 order to speak to Inspector O'Connor and Superintendent
16:20:43 23 Sheridan about this. Recently I've been advised that ten
16:20:45 24 minutes before this decision was announced to
16:20:49 25 Superintendent Biggin, a senior member of Victoria Police
16:20:51 26 management advised Biggin that the reason for disbanding
16:20:54 27 the SDU was because of corruption. If this is so I totally
16:20:59 28 vehemently and totally refute this. Further, if that is
16:21:04 29 the case I ask the question: why was this matter not
16:21:08 30 investigated and why were members of the SDU neither spoken
16:21:13 31 to nor formally interviewed about this?" That's your
16:21:17 32 evidence in your statement?---Yes.
33
16:21:18 34 Have you since had it confirmed that there was in fact any
16:21:21 35 suggestion or formal finding of corruption?---No.
36
16:21:28 37 Might it have been a misunderstanding of the use of the
16:21:33 38 term "corruption" and in fact what people were concerned
16:21:37 39 about was a serious abuse of process?---No, no. The
16:21:46 40 corruption is a very serious word and that was the word
16:21:49 41 that was used to me.
42
16:21:51 43 You say, "I formed the view that the SDU's use of a lawyer
16:21:54 44 as a source may have caused some embarrassment to Victoria
16:21:59 45 Police and was therefore shut down. If this is the case it
16:22:03 46 exhibits a total lack of fairness in that every single
16:22:06 47 detail of our conduct was recorded and reported in minute

16:22:10 1 detail and yet I was not once spoken to about this matter".
16:22:16 2 That's your evidence?---Yes.
3
16:22:21 4 You are aware that in fact the use of Ms Gobbo as a human
16:22:26 5 source has indeed caused significant embarrassment to
16:22:30 6 Victoria Police since it became disclosed more
16:22:33 7 broadly?---Yes.
8
16:22:38 9 So the embarrassment that you assumed might be the case,
16:22:43 10 your feeling about that potential embarrassment was
16:22:46 11 well-founded, wasn't it?---It appears so.
12
16:22:55 13 Given - - - ?---I didn't want it to be.
14
16:22:58 15 No, I understand. But given that - for example, just
16:23:01 16 taking the conflicts of interest that we've gone through,
16:23:05 17 it is the case that that embarrassment was well-founded,
16:23:11 18 just looking at the conflicts of interest on their own,
16:23:14 19 that Victoria Police might well have been embarrassed
16:23:17 20 because of the situation that was allowed to persist from
16:23:19 21 2006 to 2009 with Ms Gobbo, do you agree with
16:23:26 22 that?---Sorry, I was trying to follow you then. I think I
16:23:29 23 lost it. Can you please repeat that?
24
16:23:31 25 What I'm doing is I'm restricting my question to just the
16:23:34 26 conflicts of interest. I'm not talking about LPP, I'm not
16:23:38 27 talking about any of those other issues. I'm just talking
16:23:39 28 about the conflicts of interest where the situation that
16:23:42 29 you've given evidence about was that Ms Gobbo was told on a
16:23:45 30 number of occasions or assured you on a number of occasions
16:23:48 31 that she should not and would not act for particular
16:23:50 32 individuals. That was the case?---Yes.
33
16:23:54 34 And the reason that she was told that or she said that was
16:23:57 35 the potential for a real conflict of interest, do you agree
16:24:01 36 with that?---You keep saying this conflict of interest.
37
16:24:07 38 Conflict of interest - - - ?---I think I said earlier I
16:24:11 39 still find that concept a bit difficult to grasp.
40
16:24:14 41 Well a conflict between the interests of assisting police
16:24:17 42 and acting as a police agent, as Mr White called it, in a
16:24:22 43 face-to-face meeting with her that we went through earlier
16:24:25 44 on the one hand, and on the other hand the duty that she
16:24:29 45 owes to her clients as a legal practitioner. I can't
16:24:32 46 really be any more clear about the conflict between those
16:24:35 47 two roles. Do you still not understand what I'm asking

16:24:39 1 you?---No, no, I understand it. I just - in my own mind I
16:24:42 2 know what I was thinking at the time and I still - yeah, I
16:24:48 3 just find it difficult to explain my thoughts on it. I
16:24:56 4 find it difficult to differentiate between someone
16:24:59 5 committing criminal offences, as opposed to being
16:25:03 6 represented. You're saying it's a conflict because they're
16:25:06 7 looking after, and put this in simple terms, looking after
16:25:12 8 in court, but they're telling me about criminal activity
16:25:16 9 that's got nothing to do with that court case.
10
16:25:17 11 Officer Black's SWOT analysis acknowledges that there was
16:25:20 12 an awareness that convictions and prosecutions would be in
16:25:22 13 jeopardy because of the use of Ms Gobbo as a human source.
16:25:25 14 Now that realisation, at least to him, occurred in December
16:25:30 15 of 2008?---Yes.
16
16:25:33 17 Is that something that was discussed with you?---I don't
16:25:37 18 recall. You'd have to ask him about that. Of course a
16:25:40 19 SWOT analysis, as I understand it, is, you know, taking
16:25:44 20 extreme views either end of the scale without fear or
16:25:47 21 favour when you do that sort of analysis. So I don't know,
16:25:51 22 you'd have to ask him about it.
23
16:25:54 24 Mr Smith, you gave evidence earlier today that there were
16:25:57 25 detailed meetings that occurred on a regular basis to
16:26:00 26 discuss human sources and that everyone in the team knew
16:26:03 27 which human sources were being run and what the issues
16:26:06 28 pertaining to those human sources were. You remember that
16:26:10 29 evidence?---Yes, that's right. That's what happened back
16:26:13 30 then, that's right.
31
16:26:14 32 And in December 2008 I'm suggesting to you that you were
16:26:17 33 well aware of a problem that was bubbling up that there was
16:26:23 34 a real issue that convictions and prosecutions would be put
16:26:27 35 in jeopardy and that Officer Black had identified it in his
16:26:31 36 SWOT analysis and that that was something that was
16:26:33 37 explained to you at the time. Do you accept that or
16:26:35 38 not?---I don't recall being explained that at the time.
16:26:40 39 Certainly after that I heard things, I think within the
16:26:46 40 media or reported in court proceedings, but at that time I
16:26:51 41 don't recall it. If others say it happened, so be it. I
16:26:57 42 can't recall it.
43
16:26:57 44 And just finally, given the discussion that we've had today
16:27:02 45 and the back and forth we've had about conflict of
16:27:06 46 interest, do you now accept that there was a conflict of
16:27:11 47 interest that arose between Ms Gobbo and a number of her

16:27:15 1 clients or do you still say that that's something that the
16:27:19 2 jury's still out on?---Well, with all the things you put to
16:27:27 3 me today it may well have been, yeah.

16:27:28 4
16:27:28 5 Thank you, Mr Smith, they're all the questions I have.
6

16:27:32 7 COMMISSIONER: Right. Just before we adjourn there was
16:27:34 8 just something I wanted to ask you about in your second
16:27:37 9 statement dealing with Nicola Gobbo's health. I think it's
16:27:45 10 p.24 of the second statement that I have. You were
16:27:49 11 describing how she'd had this jaw problem. You said it was
16:27:54 12 also said to be related to her having previously suffered a
16:27:57 13 stroke. She saw several specialist physicians regarding
16:28:02 14 this and the treatment included taking prescription pain
16:28:05 15 killing medication for a prolonged period of time. At one
16:28:07 16 point a medication with unsuitable side effects was
16:28:14 17 prescribed. This was withdrawn by the attending doctor
16:28:16 18 when the situation became obvious. How did the situation
16:28:19 19 become obvious and do you know what the medication was and
16:28:22 20 what the side effects were?---I think I do have that
16:28:26 21 recorded. I came to those points in that statement by
16:28:31 22 going through my contact reports and I did single out
16:28:39 23 those, the major health issues. Sorry, did you ask the
16:28:46 24 specifics of the medication?
25

16:28:49 26 Yes. What were the side effects, what was the medication
16:28:52 27 that was withdrawn? Do you remember those details? If you
16:28:54 28 don't know, just say you don't know?---Well, I don't know
16:28:57 29 what now but I'm sure they'd be in the contact reports
16:29:02 30 because I was recording specifics of that.

16:29:07 31
16:29:07 32 MR CHETTLE: Commissioner, would you like him to look for
16:29:09 33 that overnight and tell you in the morning?

16:29:12 34
16:29:12 35 COMMISSIONER: Yes, would you do that
16:29:14 36 overnight?---Certainly.
37

16:29:14 38 You said it was during late 2007 through 2008, so it
16:29:19 39 shouldn't be too hard to find?---I should have some - yeah,
16:29:21 40 I should be able to do that, yes.

16:29:24 41
16:29:24 42 MR CHETTLE: Where he is now, Commissioner, he has a
16:29:26 43 complete set of the ICRs and by reference to his statement
16:29:29 44 he should be able to get you that by tomorrow morning?---I
16:29:32 45 can do it where I am now. I can't do it if I leave here I
16:29:37 46 don't think.
16:29:37 47

16:29:38 1 MR WOODS: I might be able to give you some guidance on
16:29:40 2 that. If you look at ICR 46 of the 2958 ICRs, 21st of the
16:29:47 3 11st 2008. Because I don't have it in front of me I'm not
16:29:52 4 convinced that you were a participant or a reporter of
16:29:57 5 that.
6
16:29:58 7 COMMISSIONER: What page was that, Mr Woods?
16:29:59 8
16:30:00 9 MR WOODS: Unfortunately I don't know the date.
10
16:30:01 11 COMMISSIONER: The page, the page? Did you mention a page
16:30:04 12 number?
16:30:04 13
16:30:05 14 MR WOODS: No, I didn't. I'm getting it from a different
16:30:07 15 document. 48 it might be. I'm taking this, I should say,
16:30:17 16 Mr Smith, from Detective Fox's statement where he puts on
16:30:22 17 those detailed lists of where various things were
16:30:27 18 discussed?---Yes.
19
16:30:28 20 And there's an indication there that on the 21st of the
16:30:31 21 11st 2008 at 10.44 the doctor advised human source to stop
16:30:36 22 taking new medication immediately, symbolic of similar
16:30:41 23 antidepressants?---That actually rings a bell but where I
16:30:43 24 obtained my information from prior to making that statement
16:30:46 25 was I went through and made notes of my ICRs, so there are
16:30:50 26 specifics in there. I didn't put those in the statement.
27
16:30:53 28 COMMISSIONER: All right?---Yeah.
29
16:30:58 30 I think we can probably deal with this in a more efficient
16:31:01 31 way.
16:31:02 32
16:31:03 33 MR WOODS: We can?---Sorry, Commissioner, if you want me to
16:31:05 34 do that overnight, is that right?
35
16:31:08 36 COMMISSIONER: Mr Chettle, you might be able to deal with
16:31:11 37 it in your re-examination. That might be the fastest way
16:31:15 38 to deal with it.
16:31:16 39
16:31:16 40 MR CHETTLE: By reference to his statement we'll find it,
16:31:17 41 Commissioner.
42
16:31:17 43 COMMISSIONER: Yes, that might be the best way to deal with
16:31:21 44 it. So Mr Chettle will do it when he gets to you in
16:31:24 45 re-examination tomorrow. That will save you having to look
16:31:27 46 at it overnight. But if you want to look at it overnight
47 you can?---I'll look at it.

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16:31:29 Okay. Thanks very much, Mr Smith. We'll adjourn until
16:31:33 9.30 tomorrow.

16:31:36 <(THE WITNESS WITHDREW)

16:31:37
16:32:06 ADJOURNED UNTIL THURSDAY 12 SEPTEMBER 2019