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1 PROCEEDINGS IN CAMERA:

2
09:55:30 3 COMMISSIONER: In terms of appearances, can I note Ms Enbom
09:55:35 4 and Ms Argiropoulos this morning for Victoria Police.
09:55:37 5 Mr Goodwin for the State. Now I understand Ms Ristivojevic
09:55:44 6 is here - - -

09:55:44 7
09:55:45 8 MS RISTIVOJEVIC: Yes, good morning, I seek leave to appear
09:55:48 9 today in relation to Mr Flynn's evidence on behalf of
09:55:52 10 Mr Mokbel.

09:55:53 11
09:55:53 12 COMMISSIONER: Mr Anthony Mokbel?

13
09:55:57 14 MS RISTIVOJEVIC: Yes.

09:55:58 15
09:55:58 16 COMMISSIONER: That's appropriate, Mr Winneke, from your
09:56:00 17 perspective?

09:56:02 18
09:56:03 19 MR WINNEKE: Yes, Commissioner.

09:56:04 20
09:56:05 21 COMMISSIONER: Does anybody have any submissions to the
09:56:08 22 contrary? No. I'll give you leave to appear in respect of
09:56:13 23 the evidence of Mr Flynn on behalf of Mr Anthony Mokbel.
09:56:16 24 And I've also been informed that legal representatives for
09:56:21 25 Mr Higgs and Mr Barbaro intend to seek leave to appear for
09:56:29 26 the witnesses Biggin, Buick and Bateson. So we don't need
09:56:32 27 to deal with that now but I'm just mentioning that. I
09:56:36 28 think we're going to be with Mr Flynn all day today but if
09:56:40 29 you could take that on notice, thanks, Mr Goodwin and also
09:56:47 30 Ms Enbom, so we can - I assume, Mr Winneke, the Commission
09:56:52 31 is comfortable with that?

09:56:54 32
09:56:55 33 MR WINNEKE: I haven't seen the application but - - -

09:56:58 34
09:56:58 35 COMMISSIONER: I don't know if there is one. There's not a
09:57:02 36 written one.

09:57:03 37
09:57:03 38 MR WINNEKE: I've got no doubt there's a reasonable
09:57:07 39 justification for it. I'll just clarify that.

09:57:12 40
09:57:12 41 COMMISSIONER: Yes, over time. So we'll deal with that,
09:57:14 42 we'll take that on notice. All right then, so I think we
09:57:19 43 can proceed now with the witness. If Mr Flynn can return
09:57:22 44 to the witness box, thank you. And of course you're on
09:57:28 45 your former oath.

09:57:30 46
09:57:31 47 <DALE FLYNN, recalled:

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09:57:33 1
09:57:33 2 MR WINNEKE: Mr Flynn, I was dealing last week, the week
09:57:38 3 before last, with the establishment of - I'm sorry, I've
09:57:45 4 jumped in. There has been some discussion over the weekend
09:57:49 5 about a particular aspect of Mr Flynn's evidence which he
09:57:52 6 wanted to add to with respect to one of the paragraphs in
09:57:55 7 his statement and I think the understanding is that
09:57:57 8 Ms Argiropoulos would deal with that briefly. I've got no
09:58:00 9 objection to that.
09:58:01 10
09:58:01 11 COMMISSIONER: Yes, all right.
09:58:02 12
09:58:03 13 MS ARGIROPOULOS: Thanks Mr Winneke. Commissioner, you'll
09:58:05 14 recall that when Mr Flynn first started he indicated there
09:58:09 15 was some further brief evidence-in-chief he wished to give
09:58:12 16 about a matter that had to be dealt with in closed hearing.
09:58:16 17
09:58:16 18 COMMISSIONER: Yes.
09:58:17 19
09:58:17 20 MS ARGIROPOULOS: Mr Flynn, in reviewing your diaries in
09:58:20 21 preparation of giving evidence have you been reminded of
09:58:25 22 some matters that relate to your diary entry on [REDACTED]
09:58:29 23 2006?---Correct, yes.
09:58:29 24
09:58:30 25 What would you like to tell the Commissioner about what
09:58:32 26 occurred on that date?---I've made an entry in my
09:58:36 27 statement, a paragraph in my statement about being with
09:58:39 28 [REDACTED]
09:58:40 29
09:58:40 30 COMMISSIONER: What paragraph is that, thank you?---It's
09:58:43 31 paragraph 66.
09:58:55 32
09:58:55 33 Thank you. Yes?---And the paragraph just indicates that
09:58:58 34 whilst with [REDACTED] he informed me of a perceived threat
09:59:05 35 against Ms Gobbo made by Milad Mokbel. What I've located
09:59:11 36 in my diary is that there was also, he informed me of
09:59:14 37 another threat made against Ms Gobbo and that threat
09:59:17 38 originated from Horthy Mokbel and the threat was along the
09:59:21 39 lines of if he finds out that [REDACTED] was arrested before
09:59:27 40 [REDACTED] she'll be dead too.
09:59:31 41
09:59:31 42 Thank you.
09:59:32 43
09:59:32 44 MS ARGIROPOULOS: And those matters are referred to in your
09:59:34 45 diary entry for that date?---Correct.
09:59:36 46
09:59:37 47 Thank you, Commissioner, that's the further

.30/09/19

6740

FLYNN XXN - IN CAMERA

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09:59:40 1 evidence-in-chief.
09:59:41 2
09:59:41 3 MR WINNEKE: Thanks for that, Mr Flynn. As we established
09:59:53 4 when you were last here the purpose of this exercise of
09:59:56 5 this operation was to, and this is the way it turned out,
10:00:04 6 there are various other options which were canvassed
10:00:07 7 earlier on, that is there was some issue about whether you
10:00:11 8 were going to meet with [REDACTED] and Ms Gobbo or not and I
10:00:16 9 put to you in fact that was the case, when you look at all
10:00:21 10 the notes, et cetera. Do you accept that, that's likely to
10:00:24 11 be the case?---Certainly if it's in Officer White's or
10:00:29 12 Mr O'Brien's notes that would certainly be the case. As I
10:00:32 13 said previously, it is a matter I don't recall, and it is a
10:00:36 14 strategy we must have discounted very early on in the
10:00:40 15 piece.
10:00:40 16
10:00:41 17 Then what occurred was the idea was to in effect catch
10:00:45 18 [REDACTED] up to his old tricks again and then he would be
10:00:52 19 under immense pressure to assist Purana to roll and give
10:00:57 20 evidence against other [REDACTED]
10:01:01 21 [REDACTED] associates, [REDACTED], these
10:01:08 22 sorts of people and that was the plan, correct?---Yes.
10:01:12 23
10:01:12 24 As things progressed into the New Year you had a fair bit
10:01:18 25 of leave I think in the early part of the New Year, is that
10:01:19 26 right?---Leave and other unrelated policing duties, yes.
10:01:23 27
10:01:24 28 But you are aware and you can say that you're aware now
10:01:26 29 from examining your notes in the early part of 2006 that in
10:01:31 30 effect the operation carried on in accordance with
10:01:36 31 expectations and in accordance with the plans?---I think
10:01:38 32 there was a significant change during that period of time.
10:01:41 33 I think there was a broader base number of offenders that
10:01:48 34 we were initially looking at and that was reduced, which
10:01:52 35 included [REDACTED]
10:01:54 36
10:01:55 37 You and Purana received information in relation to, for
10:02:01 38 example, [REDACTED] and he came on to the scene and
10:02:07 39 came into the sights, if you like, of the
10:02:10 40 detectives?---Yes.
10:02:10 41
10:02:10 42 He's a person who you hadn't been aware of before, he was
10:02:14 43 an associate, a friend of [REDACTED] ---Yes, correct.
10:02:20 44
10:02:23 45 You also received information concerning [REDACTED]
10:02:28 46 from [REDACTED] ---I expect so, yes.
10:02:35 47

.30/09/19

6741

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10:02:36 1 It became apparent - I don't know whether it was apparent
10:02:40 2 early on in the proceedings, but certainly Ms Gobbo and
10:02:48 3 ██████████ were comfortable with you?---Yes.
10:02:51 4
10:02:55 5 That certainly appeared from the evidence that we examined
10:02:59 6 previously to be the case early on, and you'd had
10:03:02 7 discussions with ██████████ and Gobbo in the months
10:03:07 8 previously, or the years previously in fact?---Yes.
10:03:08 9
10:03:09 10 When was there a decision made that you were going to be
10:03:12 11 the person who would primarily deal with ██████████---It's
10:03:21 12 really hard for me to put a date on it, but I can't recall
10:03:24 13 it ever not being the case from the time I was informed I
10:03:28 14 was moving to the Purana Task Force, so I transferred to
10:03:31 15 the Purana Task Force on 21 November. There were briefings
10:03:35 16 prior to that and to the best of my recollection whenever
10:03:40 17 ██████████ name was going to be mentioned as part of our
10:03:45 18 investigation, that was always going to belong to myself
10:03:49 19 and my crew.
10:03:49 20
10:03:49 21 That's the basis upon which you came into this operation
10:03:52 22 that you were in effect going to be the ██████████
10:03:56 23 whisperer, if I can put it that way?---Yes, that's one way
10:03:59 24 to put it.
10:04:00 25
10:04:00 26 It helped significantly I assume that you appeared to have
10:04:02 27 a good professional relationship with Ms Gobbo and she had
10:04:07 28 confidence in you?---I don't know about my relationship
10:04:10 29 with Ms Gobbo, it was more about my relationship with
10:04:14 30 ██████████
10:04:15 31
10:04:15 32 But it was also well-known from very early on that Gobbo
10:04:20 33 was the person with whom ██████████, or in whom ██████████
10:04:27 34 would confide and seek legal advice from?---Well, yeah,
10:04:36 35 that's probably a fair comment. Ms Gobbo and ██████████
10:04:39 36 were close.
10:04:41 37
10:04:44 38 That was something that wasn't discouraged both by, I
10:04:50 39 suggest, the investigators, being you and Mr O'Brien, nor
10:04:54 40 was it discouraged by the handlers, that was part of the
10:04:58 41 plan, if you like, the process was to encourage a closer
10:05:04 42 relationship between Gobbo and ██████████?---Yes, I would
10:05:08 43 agree with that, yes.
10:05:09 44
10:05:11 45 If we take an example of that sort of plan and the product
10:05:18 46 of that plan. If we go, for example, to the ICRs at p.110,
10:05:24 47 that's early on in the process. Now I'm not suggesting

.30/09/19

6742

FLYNN XXN - IN CAMERA

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10:05:28 1 that you're aware of this because you're away, but
10:05:31 2 subsequently you became aware that [REDACTED] was going to
10:05:33 3 [REDACTED] he was going to [REDACTED] for a week and there was
10:05:37 4 an issue with respect to his [REDACTED]. If we come
10:05:41 5 up to that you'll see that he's going to [REDACTED] and
10:05:52 6 Ms Gobbo states that she wouldn't normally handle this type
10:05:56 7 of more menial matter, that is [REDACTED], that would be a
10:06:01 8 solicitor's job normally. But in this case she was in
10:06:05 9 effect taking over the role of solicitor and barrister, if
10:06:08 10 not personal confidante of [REDACTED], do you accept
10:06:12 11 that?--Well I accept what I'm reading on the contact
10:06:16 12 report, yes.

10:06:16 13
10:06:16 14 And the idea would be that if the [REDACTED] situation could be
10:06:20 15 sorted out, the relationship between [REDACTED] and Ms Gobbo
10:06:28 16 would be enhanced. Do you see that?---Yes, I do.

10:06:34 17
10:06:35 18 That's really an example of what you and the handlers were
10:06:43 19 trying to achieve, a close relationship between Gobbo and
10:06:47 20 [REDACTED] and - do you accept that proposition?---Yes, I do.

10:06:53 21
10:06:53 22 You're brought into it because it says here, Gobbo would
10:06:57 23 prefer to deal with someone like yourself rather than the
10:07:01 24 actual informant, being Senior Detective Bartlett, however
10:07:06 25 she was aware that you were on leave?---Yes.

10:07:08 26
10:07:10 27 Ordinarily what you would have if this was a usual
10:07:14 28 situation, you'd have a solicitor, now in this case
10:07:18 29 Mr Hargreaves had acted for [REDACTED] previously,
10:07:23 30 correct?---I'm not sure at what stage Mr Hargreaves got
10:07:29 31 involved with [REDACTED] quite possibly.

10:07:32 32
10:07:33 33 In any event it would normally be a solicitor dealing with
10:07:39 34 the informant but the unusual circumstances of this case
10:07:40 35 meant that Ms Gobbo the barrister would deal with you, even
10:07:43 36 though you weren't the informant, and there would be
10:07:45 37 discussions between the two of you with the view to
10:07:47 38 enhancing the relationship all round, if you like?---Well
10:07:52 39 that appears to be what this contact report indicates, yes.

10:07:55 40
10:07:55 41 Ultimately it didn't pan out because if you see, if we go
10:08:00 42 over the page on 5 January - sorry, I apologise. If we go
10:08:10 43 back up to the page we were initially on. There we are,
10:08:16 44 stop there. "Spoke to controller and then Senior Detective
10:08:19 45 Sergeant O'Brien. Flynn's on leave. Gobbo is to be
10:08:23 46 supplied with O'Brien's mobile number and advise that he is
10:08:27 47 Flynn's supervisor and may agree to request in Flynn's

.30/09/19

6743

FLYNN XXN - IN CAMERA

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10:08:31 1 absence", do you see that?---Yes, I do see that.
10:08:33 2
10:08:33 3 That was the way in which it was sorted out. Do you know
10:08:36 4 whether he did [REDACTED] or was it
10:08:43 5 smoothed out without the need for that?---I can't assist,
10:08:49 6 I'm sorry, I don't know. I am aware that there was
10:08:50 7 concerns about him going to [REDACTED], but
10:08:55 8 I wasn't aware of the further details that's on this
10:08:57 9 contact report.
10:08:58 10
10:08:59 11 There was a surveillance operation on him, wasn't
10:09:01 12 there?---I don't know.
10:09:01 13
10:09:04 14 In any event he wasn't prevented from doing so?---I don't
10:09:09 15 know.
10:09:09 16
10:09:10 17 Albeit his [REDACTED] [REDACTED], if they were [REDACTED],
10:09:15 18 he could have been prevented from doing so?---I'd have to
10:09:19 19 look at what [REDACTED] were but that sounds
10:09:22 20 plausible.
10:09:23 21
10:09:23 22 Without going into details, you in your statement indicate
10:09:27 23 you did receive information from a number of the other
10:09:30 24 detectives, for example, Detective Rowe, about information
10:09:36 25 that was clearly coming from Gobbo and that information
10:09:44 26 concerned, for example, Mr Cvetanovski, Mr Karam and other
10:09:51 27 people and that information was coming in throughout
10:09:53 28 January and February, do you accept that
10:09:56 29 proposition?---Yes, I do.
10:09:57 30
10:09:58 31 It became apparent in around February of 2006 that [REDACTED]
10:10:06 32 [REDACTED] was also associating with a fellow by the name of
10:10:14 33 [REDACTED]---Yes.
10:10:14 34
10:10:14 35 And it appeared [REDACTED] was also involved in the criminal
10:10:19 36 activities of [REDACTED]---Yes.
10:10:22 37
10:10:22 38 You accept that?---Yes.
10:10:23 39
10:10:24 40 I wonder if you could go to your diary of 28 February 2006.
10:10:31 41 And I don't know whether we've got a copy of this. In fact
10:10:34 42 I suspect we don't but I wouldn't mind just asking you some
10:10:38 43 questions about an entry on p.212 of your diary for 28
10:10:43 44 February 2006. I'm not going to ask you the name of this
10:10:53 45 person, but if you can just have a look at this. This was
10:10:58 46 a person who was a target of an operation called
10:11:07 47 Rakus?---Rakus, yes.

.30/09/19

6744

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10:11:08 1
10:11:09 2 The Commission has evidence that Ms Gobbo did at times, did
10:11:14 3 at least at one time represent him?---Yes.
10:11:17 4
10:11:28 5 Without going into the details of it, there's a reference
10:11:30 6 to a discussion that you had with this person?---Yes, there
10:11:40 7 is.
10:11:40 8
10:11:41 9 And that person was in effect offering himself up to
10:11:44 10 provide assistance, is that right? In effect if you go
10:12:12 11 down, a third of the way down, "Wants to know what's in it
10:12:15 12 for him", do you see that?---Yes, I think from my
10:12:18 13 recollection there was - - -
10:12:20 14
10:12:21 15 COMMISSIONER: We've got something on the screen but I
10:12:23 16 don't know it's the right one, you said 20 February?
10:12:28 17
10:12:28 18 MR WINNEKE: 28th, Commissioner. It's 212 and it's not in
10:12:31 19 the materials - - -
10:12:33 20
10:12:33 21 COMMISSIONER: We do actually have something.
10:12:42 22
10:12:42 23 MR WINNEKE: I think you'll find, Commissioner, that's not
10:12:44 24 the page that Mr Flynn is dealing with.
25
26 COMMISSIONER: Thank you.
27
10:12:48 28 MR WINNEKE: What I was simply wanting to ask you is this:
10:12:54 29 Gobbo has acted for this person. This person is now saying
10:13:00 30 to you that he wants to assist and - - -
10:13:03 31
10:13:03 32 COMMISSIONER: Mr Winneke, could the witness be shown
10:13:05 33 Exhibit 81 because I don't know who he is talking about.
10:13:09 34
10:13:09 35 MR WINNEKE: Commissioner, I don't want to - - -
10:13:11 36
10:13:11 37 COMMISSIONER: It's not on Exhibit 81?
10:13:14 38
10:13:14 39 MR WINNEKE: No, it's not, I don't believe it is. Mr Flynn
10:13:17 40 knows who he is, in fact I think I asked him questions
10:13:20 41 about it last week?---Yes.
10:13:21 42
10:13:22 43 I don't want to raise it if there's any suggestion that
10:13:26 44 this person went on to become the provider of
10:13:30 45 information?---No, there's not.
10:13:31 46
10:13:32 47 There's not?---No.

.30/09/19

6745

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10:13:33 1
10:13:33 2 What I did want to ask you is this, do you recall Ms Gobbo
10:13:38 3 ever assisting this person and having discussions with you
10:13:42 4 about this person coming to you and offering himself up to
10:13:45 5 provide assistance to the police?---No.
10:13:47 6
10:13:49 7 You can say that as far as you're aware that was never the
10:13:52 8 case?---I can say that, yes.
10:13:54 9
10:13:56 10 All right then, if that's the case I'll move on. We don't
10:13:59 11 need to worry about that, Commissioner. After you came
10:14:10 12 back from doing whatever you were doing you started to have
10:14:15 13 more direct involvement with this operation again, is that
10:14:20 14 correct?---Yes, I was briefed on 20 May 2006, so that was -
10:14:27 15 - -
10:14:27 16
10:14:27 17 March or - - -?---Sorry, 20 February 2006 and that was when
10:14:33 18 I was re-immersing myself in relation to this operation.
10:14:37 19
10:14:37 20 That's at p.204 of your diary, I think you're briefed by
10:14:42 21 Detective Senior Constable Rowe regarding Operation Posse,
10:14:45 22 is that correct?---Yes.
10:14:46 23
10:14:46 24 And the current TIs that were in place?---Yes.
10:14:49 25
10:14:49 26 And there were obviously at that stage telephone intercepts
10:14:52 27 in relation to ██████████, another person
10:14:56 28 by the name of ██████████?---Yes.
10:14:58 29
10:14:58 30 And there were various other investigative techniques being
10:15:03 31 employed?---Yes.
10:15:04 32
10:15:06 33 Obviously ██████████ was the main target, if you like, but
10:15:11 34 there were these other associates who were being looked
10:15:14 35 into?---He was one of a number of targets, yes.
10:15:17 36
10:15:18 37 There's reference to ██████████ as well?---Yes, there is.
10:15:22 38
10:15:22 39 Clearly that information to a significant extent is coming
10:15:26 40 from Gobbo with obviously the addition of other
10:15:36 41 investigative techniques that you're referring to there, is
10:15:39 42 that right?---This information is just about the police
10:15:49 43 methods that were operating at the time. There's no
10:15:52 44 information there from Ms Gobbo but no doubt the reason
10:15:54 45 we've had a number of these telephone intercepts,
10:15:57 46 et cetera, was based on information received from Ms Gobbo.
10:16:00 47

.30/09/19

6746

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10:16:00 1 Yes, I follow that. Then again without going into great
10:16:08 2 detail you get another briefing I think on 21 February, the
10:16:15 3 following day, from Mr O'Brien, is that right?---Yes.
10:16:25 4
10:16:30 5 If we go to p.210 of your diary, 26 February?---Yes, that's
10:16:43 6 correct, more information from - - -
10:16:44 7
10:16:44 8 More information which is coming out of this
10:16:49 9 operation?---Yes, correct.
10:16:49 10
10:16:49 11 In your statement you refer in summary form to the days on
10:16:53 12 which you received information which you understood was
10:16:57 13 coming from Ms Gobbo to the investigators, is that
10:17:01 14 right?---That's correct, yes.
10:17:02 15
10:17:03 16 And you refer to information that you receive in February
10:17:07 17 and in March, the 13th, the 16th, the 17th, the 21st of
10:17:13 18 March, information which was provided by
10:17:18 19 Mr O'Brien?---Well, yes, that's correct.
10:17:19 20
10:17:19 21 From Ms Gobbo, you believe?---Yes.
10:17:22 22
10:17:23 23 So, for example, if we go to 16 March, which is p.190 of
10:17:34 24 the ICRs?---So 16 March 2006 is my diary p.224.
10:17:59 25
10:17:59 26 Yes. On that day there's evidence - what do you say in
10:18:05 27 your diary at 224, there's a briefing from Mr O'Brien from
10:18:12 28 human source, is that right?---Well my diary entry has it
10:18:16 29 at 1.10 pm.
10:18:17 30
10:18:18 31 Yes?---From Mr O'Brien, yes.
10:18:21 32
10:18:24 33 Human source is providing information, is that
10:18:28 34 right?---Yes.
10:18:28 35
10:18:28 36 What's that?---So, "Human source identifying [REDACTED] not
10:18:36 37 possible". Do you want me to continue through the entry?
10:18:39 38
10:18:39 39 Yes?---[REDACTED] said around the corner from [REDACTED]
10:18:43 40 [REDACTED] Friday night. [REDACTED] at
10:18:47 41 5 pm. [REDACTED], which is a reference to
10:18:56 42 [REDACTED] "From [REDACTED] and (indistinct) [REDACTED] from
10:19:01 43 unknown [REDACTED] going to give human source
10:19:06 44 phone number, SIM card, to pass on to [REDACTED]
10:19:11 45
10:19:12 46 Your reference in your notes, the reference that you make,
10:19:16 47 or at least you write "HS"?---Yes.

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10:19:18 1
10:19:20 2 Clearly your understanding is that that's Ms Gobbo
10:19:22 3 providing that information?---Yes.
10:19:23 4
10:19:28 5 And the reason that you make reference, or at least you
10:19:34 6 write that as HS and not Gobbo is for what, what
10:19:40 7 purpose?---Well that was a standard practice that police
10:19:43 8 would conduct for any information that when I receive it I
10:19:47 9 know it's coming from a human source.
10:19:49 10
10:19:50 11 Right. And also if your diaries at some stage are called
10:19:55 12 for by either barristers representing accused persons or
10:20:00 13 subpoenaed, then there would be an argument about whether
10:20:05 14 or not it would be appropriate or otherwise to identify the
10:20:08 15 person who is the human source?---Yes.
10:20:10 16
10:20:11 17 There might well be a claim of public interest
10:20:14 18 immunity?---Yes, there might be.
10:20:15 19
10:20:15 20 Over the fact that there's a source or the name of the
10:20:19 21 source?---Well, the standard policy for Victoria Police in
10:20:26 22 relation to human sources was simply a line of it's the
10:20:31 23 policy of Victoria Police to neither confirm or acknowledge
10:20:35 24 the existence of a human source. So that would say the
10:20:39 25 fact of a human source.
10:20:40 26
10:20:40 27 So if a diary was called for, would there be any redactions
10:20:47 28 made to the diary? Say, for example, if you have a look at
10:20:51 29 your diary dated 16 March and it says, "Briefed by
10:20:57 30 Detective Acting Inspector O'Brien from HS. HS
10:21:01 31 identified", et cetera. Do you see that?---Yes.
10:21:03 32
10:21:03 33 If you were asked to produce your diaries, in what form
10:21:06 34 would that entry be produced?---I would redact that, that
10:21:10 35 part of the entry.
10:21:11 36
10:21:12 37 And what would you take out?---I would possibly take out
10:21:20 38 the whole entry.
10:21:21 39
10:21:21 40 It may well be that the entire entry from 13:10 would be
10:21:29 41 blacked out, is that right?---Yes.
10:21:30 42
10:21:30 43 Is that something which would be identified as public
10:21:36 44 interest immunity or would it simply be handed over with
10:21:40 45 that section blacked out or indeed not handed over at
10:21:43 46 all?---No, in - as I indicated to you on the 20th, that my
10:21:49 47 procedure there was to redact my notes and then hand it

.30/09/19

6748

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10:21:53 1 over to whoever requested them. So I would just hand it
10:21:56 2 over.
10:21:56 3
10:21:56 4 If that was the only entry with respect to a relevant
10:22:01 5 matter, which was the subject of the call for the notes,
10:22:07 6 that page might not be handed over at all?---Possibly.
10:22:10 7
10:22:12 8 In which case a person would not even know whether there
10:22:16 9 was a relevant communication on that day?---Yes.
10:22:19 10
10:22:20 11 So it wouldn't be the case that a person would be able to
10:22:24 12 look at your notes and say, "Here's a PII matter, I want
10:22:28 13 the judge to have a look at this and form a view as to
10:22:32 14 whether or not this is a valid claim for public interest
10:22:37 15 immunity"?---Yes, that would depend on whether a redacted
10:22:40 16 copy was handed over or not. As I indicated, it's possible
10:22:46 17 if that was the only relevant entry it wouldn't be and your
10:22:51 18 statement is correct.
10:22:52 19
10:22:52 20 That would be an unfortunate situation surely. Perhaps if
10:22:57 21 you can answer that question firstly?---I'm sorry, which
10:22:58 22 question do you want me to answer?
10:22:58 23
10:22:58 24 If, for example, and this is, perhaps it's hypothetical at
10:23:03 25 this stage, if that page was not handed over at all,
10:23:07 26 assuming it's relevant, if the page isn't handed over at
10:23:11 27 all, the court, the defence would never know that there was
10:23:15 28 a relevant entry there, albeit, which was the subject of a
10:23:20 29 claim for public interest immunity, do you accept the
10:23:22 30 proposition?---Yes, I do.
10:23:23 31
10:23:23 32 The question I put to you was that would be an unfortunate
10:23:26 33 situation because neither the court nor anyone else would
10:23:31 34 ever know that something had occurred on that day which may
10:23:34 35 well be relevant to an investigation and charges, but which
10:23:39 36 was in relation to which a claim of PII was made?---I do
10:23:46 37 follow what you're saying but I just don't think I've ever
10:23:50 38 considered it in that type of detail. My memory in
10:23:53 39 relation to protecting human sources, which is protect
10:23:56 40 human sources whenever we can, and generally we've been
10:23:59 41 fairly successful in excluding this type of information
10:24:03 42 that might reveal it, so I don't know if I've ever thought
10:24:07 43 that way. I understand what you're asking me but it was
10:24:11 44 just a matter I'd assume it's source related, we redact it.
10:24:15 45
10:24:16 46 I follow that. With the idea being this, "We don't know
10:24:19 47 anyone to know we've got a human source because as soon as

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10:24:22 1 we hand over a page in which there's a claim for public
10:24:28 2 interest immunity it telegraphs to an accused there's a
10:24:32 3 human source"?---Yes, it does.
10:24:33 4
10:24:33 5 Or alternatively it might be police methodology?---Yes.
10:24:36 6
10:24:37 7 But chances are it will be relating to a source?---Yes.
8
10:24:41 9 If that source or the fact of the source or who the source
10:24:43 10 is, is in fact relevant, then that information doesn't come
10:24:48 11 to light?---Well I was of the opinion that the existence of
10:24:57 12 the human source needed to be protected so from that point
10:25:03 13 of view I was going to say wasn't relevant, I understand
10:25:06 14 you're saying it might be relevant, but generally we would
10:25:09 15 think it's not relevant and we would just want to protect
10:25:13 16 that human source.
10:25:13 17
10:25:13 18 Ultimately you accept this proposition, the question of
10:25:16 19 public interest immunity is a question for the
10:25:18 20 court?---Yes, I do.
10:25:18 21
10:25:18 22 To determine. It's not for the police officer to determine
10:25:21 23 PII, do you accept that proposition?---Yes.
10:25:24 24
10:25:24 25 Looking back now, do you accept that that is a wrong way of
10:25:28 26 going about it, that is simply not handing something over
10:25:32 27 because you take the view, rightly or wrongly, that the
10:25:37 28 accused person should not be aware that there is a human
10:25:40 29 source?---I probably - well I accept that with these
10:25:48 30 matters which were quite common there's probably avenues
10:25:52 31 for me to get further advice in relation to how I should
10:25:55 32 have handled it.
33
10:25:56 34 Yes?---I thought the practice I was using at the time was a
10:26:00 35 common practice at that stage. I could be wrong there but
10:26:03 36 I thought it was a common practice.
10:26:06 37
10:26:06 38 I suggest to you it was a common practice. That was the
10:26:09 39 way in which it was done?---Yes.
10:26:11 40
10:26:11 41 Do you accept it perhaps still is done that way?---I can't
10:26:16 42 comment on that.
10:26:17 43
10:26:17 44 The reality is in this case this human source in this entry
10:26:21 45 is Nicola Gobbo?---Yes.
10:26:22 46
10:26:23 47 We know now that Nicola Gobbo was both an agent of police

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10:26:29 1 and acting for people who were the subject of your
10:26:33 2 investigation?---Yes.
10:26:33 3
10:26:33 4 And obviously the High Court has said what it's said and
10:26:37 5 looking back now you would accept that there are real
10:26:40 6 problems with you receiving information from a human source
10:26:43 7 who is in fact representing the person who is the very
10:26:46 8 subject of the investigation?---Yes.
10:26:48 9
10:26:48 10 And what has occurred is that this never came to light, do
10:26:57 11 you accept that?---Yes, I do.
10:26:58 12
10:26:58 13 Part of the reason that it never came to light is because
10:27:01 14 this process was carried on by investigators, that is by
10:27:06 15 withholding material which would have enabled people to at
10:27:10 16 least look into it and argue whether or not it's
10:27:12 17 appropriate to make the claim for public interest immunity,
10:27:15 18 do you accept that?---Well, in part, yes, I accept that
10:27:19 19 there's, this example, and this is an extremely unusual
10:27:27 20 example.
10:27:27 21
10:27:28 22 It may be?---Highlights that this would have been
10:27:31 23 potentially valuable. But as I said this was an unusual
10:27:35 24 matter and I can only go back to that earlier practice of
10:27:42 25 my understanding.
10:27:43 26
10:27:43 27 I understand what you're saying?---That anything to do with
10:27:46 28 a human source was just not provided.
10:27:48 29
10:27:54 30 I suppose considering it now, the appropriate way of going
10:27:59 31 about it would be to say well look, if you're making a
10:28:02 32 claim for public interest immunity it would be to get legal
10:28:09 33 advice firstly, is it appropriate to make this claim and is
10:28:13 34 it appropriate to do it in a way in which the practice
10:28:17 35 appears to have been, that is by simply not providing the
10:28:21 36 notes?---Yes, that would have been an option, yes.
10:28:24 37
10:28:25 38 It may have been an option then but the reality is the
10:28:28 39 practice was that detectives said, "Look, we've got to
10:28:34 40 protect our source. We know what public interest immunity
10:28:36 41 is about. We understand that informers are a no-go area
10:28:42 42 and we believe that this is the way we do it, by simply not
10:28:47 43 producing notes"?---That's certainly how I was acting at
10:28:51 44 the time, yes.
10:28:51 45
10:28:56 46 I'm not suggesting you were unusual about that, this was
10:29:00 47 the way in which you were, whether you're taught to do it

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10:29:03 1 at Detective Training School or you learn that approach on
10:29:07 2 the job by speaking to more senior officers, it was the
10:29:11 3 accepted way of going about it?---I'm not sure if I'm
10:29:14 4 willing to concede with that because even note-taking
10:29:19 5 itself differed between, from officers to officers, so the
10:29:23 6 level of details. So there may be some officers who would
10:29:26 7 not put any information in relation to human sources in
10:29:28 8 their diary, but I've always used my diary, you know, as
10:29:32 9 the one source of truth for everything that I did so I
10:29:34 10 would put as much information in there as possible.
10:29:37 11
10:29:37 12 I follow that. You would hold the view that someone who
10:29:40 13 deliberately doesn't put something in a diary, who doesn't
10:29:44 14 record relevant information simply because that may mean
10:29:47 15 that information would be the subject of scrutiny and may
10:29:50 16 mean that it would then come to light, would be a wrong way
10:29:54 17 of going about it?--Well it wasn't the practice I
10:29:57 18 followed, but I understand that, you know, there's a need
10:30:03 19 to protect certain information we get and for that reason I
10:30:07 20 understand that course of conduct.
10:30:09 21
10:30:09 22 I follow that. The whole point of making notes is to
10:30:13 23 record contemporaneously what occurs?--Yes.
10:30:15 24
10:30:16 25 Because in due course you're going to have to refresh your
10:30:19 26 recollection. You can't recall everything that occurred
10:30:22 27 over many years so you need to record things?--Yes, I
10:30:25 28 agree.
10:30:25 29
10:30:25 30 If you adopt the practice of simply not recording things
10:30:28 31 because it may mean a court or defence counsel on behalf of
10:30:31 32 an accused person might find out something that we don't
10:30:34 33 want them to find out, that would be another example of
10:30:39 34 withholding relevant information, surely?--Well, I don't
10:30:43 35 know if it's a practice that's done for the purpose of
10:30:48 36 withholding information, it's just a practice that
10:30:51 37 different people have different practices when they take
10:30:54 38 notes and some are more detailed than others.
10:30:56 39
10:30:57 40 But the effect of it is - there's two down sides to it, one
10:31:01 41 is you don't get contemporaneous records, I'm focusing on
10:31:04 42 this notion that you say some detectives, some police
10:31:08 43 officers did adopt, that is not recording information
10:31:12 44 because of the concern that it may reveal the fact of or
10:31:17 45 the identity of a source. There's two vices in that, one
10:31:22 46 you don't get a record of relevant information and, two, if
10:31:26 47 it does become a relevant issue no one is ever going to

.30/09/19

6752

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10:31:30 1 know because there's no notes?---Yes, I agree with that.
10:31:33 2
10:31:33 3 In effect it's making - again, like withholding a page of
10:31:38 4 the notes, it's taking that decision which should be made
10:31:41 5 by the court away from the court and placing it on the
10:31:44 6 shoulders of the police officers?---In effect that's
10:31:47 7 probably what's occurring. I don't know if that was the
10:31:49 8 intent.
10:31:50 9
10:31:50 10 The reality is police officers really are obliged, I asked
10:31:56 11 you this question before about the process of
10:32:00 12 investigating, it's to investigate in accordance with the
10:32:02 13 law, it's a search for the truth in accordance with the
10:32:06 14 law?---Yes.
10:32:06 15
10:32:07 16 And investigators shouldn't be taking it upon themselves to
10:32:12 17 craft their notes in such a way as to prevent the truth
10:32:16 18 from getting out. Do you accept that?---Well yes, I do
10:32:22 19 accept that.
10:32:22 20
10:32:23 21 If there is an issue that is the subject of public interest
10:32:27 22 immunity, it would be much easier for the police officer to
10:32:30 23 say, "It's not a matter for me, it's a matter for you, the
10:32:33 24 court and you don't have to make that decision, it's a
10:32:37 25 question for the court to consider. You don't have to go
10:32:40 26 into the witness box and feel uncomfortable about answering
10:32:44 27 questions", do you accept what I'm saying?---There's
10:32:47 28 potentially a lot of issues about whether that could occur
10:32:52 29 in an efficient manner, but I do accept what you're saying
10:32:56 30 in principle, yes.
10:32:56 31
10:33:00 32 Things progressed and it became apparent that, as we move
10:33:09 33 into April, or the latter part of March, for example, 21
10:33:15 34 March you have a diary entry at p.232 I think of your diary
10:33:19 35 and there was a suggestion that [REDACTED] was [REDACTED] for
10:33:22 36 the [REDACTED] ---Yes.
10:33:28 37
10:33:28 38 And clearly that's information coming from Ms Gobbo?---Yes.
10:33:31 39
10:33:35 40 There would have been no doubt in your mind at the time
10:33:39 41 that's what was going on, that's the information that was
10:33:42 42 coming?---There was no doubt.
10:33:43 43
10:33:44 44 Then I think in your statement you say you receive more
10:33:48 45 information provided by I think Mr O'Brien and also
10:33:54 46 directly from the handlers, again coming from Ms Gobbo,
10:34:00 47 concerning the conduct of [REDACTED] ---I'm not sure what

.30/09/19

6753

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10:34:04 1 entry you're referring to.
10:34:06 2
10:34:07 3 If you perhaps have a look at paragraph 38 of your
10:34:11 4 statement. What you've done there is you've set out more
10:34:14 5 or less in summary form the information?---Yes.
10:34:17 6
10:34:17 7 Where it was coming from, et cetera, et cetera?---Yes.
10:34:19 8
10:34:20 9 Rather than set out in your statement all the information
10:34:22 10 that's in your diary, you have truncated it in that way, do
10:34:27 11 you accept that?---Yes, I do.
10:34:28 12
10:34:28 13 In addition to those entries, are you saying that they're
10:34:31 14 the only entries in your diary where information came from
10:34:36 15 Ms Gobbo and which you received?---Yes.
10:34:39 16
10:34:45 17 If we go to ICR 229. You see there that, "[REDACTED] having
10:34:55 18 lunch today with Ms Gobbo. Will ring first and bring [REDACTED]
10:35:03 19 [REDACTED]. He's using [REDACTED] used by [REDACTED] as a
10:35:09 20 [REDACTED] Will definitely be [REDACTED] tonight". Do
10:35:13 21 you see that?---Yes, I can see it.
10:35:14 22
10:35:15 23 I'm not suggesting this is an entry in your diary, but it's
10:35:22 24 information that would have got to you, I take it, if you
10:35:25 25 were working at about this time?---Well I would have hoped
10:35:28 26 so, yes.
10:35:28 27
10:35:31 28 And it also says that he wants Ms Gobbo to have [REDACTED]
10:35:37 29 [REDACTED] to give him [REDACTED]---Yes.
10:35:39 30
10:35:40 31 "He wants to [REDACTED] [REDACTED] before going in, he has
10:35:43 32 no one else that he can trust to do this", and do you see
10:35:48 33 that?---I see the entry, yes.
10:35:50 34
10:35:52 35 Further down on the same day there's references to tasking,
10:35:58 36 or at least leading down to that she's to advise when
10:36:02 37 meeting with him and that's to enable the SCSU, the
10:36:09 38 [REDACTED], to be aware of it and to observe it,
10:36:12 39 is that right? Would that be what that entry means?---The
10:36:16 40 one at 15:19?
10:36:18 41
10:36:18 42 No, just above 14:12, "HS to advise when meeting re [REDACTED] re
10:36:25 43 SCSU"?---Yes, that's right, yes.
10:36:26 44
10:36:26 45 That's to enable people to be observing?---To monitor the
10:36:30 46 meeting, yes.
10:36:30 47

.30/09/19

6754

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10:36:31 1 She's rung [REDACTED], there's no answer. She's rung and will see
10:36:41 2 Gobbo at the office in ten minutes, do you see that?---Yes.
10:36:44 3
10:36:47 4 O'Brien is advised he's not in the office and the handler
10:36:51 5 advises you directly, do you see that?---Yes.
10:36:54 6
10:36:54 7 And advised no mention in diary of info regarding the SCSU,
10:37:01 8 do you see that?---Yes.
10:37:02 9
10:37:02 10 I take it what that means is that it would not be advisable
10:37:06 11 for you to put into your diary any information about, in
10:37:12 12 effect, if I could put it this way, soiling the dogs on to
10:37:19 13 [REDACTED] in the vicinity of Ms Gobbo's chambers?---That
10:37:23 14 appears to be what that entry would suggest, yes.
10:37:27 15
10:37:28 16 If that was apparent from your diary or in your diary, it
10:37:30 17 would mean that, to anyone reading the notes, the SCSU
10:37:43 18 would have commenced to look at [REDACTED] in the vicinity
10:37:47 19 of Ms Gobbo's chambers. Is that what you're seeking to
10:37:53 20 avoid by not putting that material in your notes?---I'm not
10:37:56 21 sure what they're trying to avoid with that entry.
10:37:59 22
10:37:59 23 What I'm suggesting is that if it becomes apparent that,
10:38:08 24 I'm not sure what the best expression is?---The dogs, yes.
10:38:13 25
10:38:13 26 If the dogs start looking at [REDACTED] outside Ms Gobbo's
10:38:18 27 chambers, they then know that the police have got
10:38:20 28 information that [REDACTED] is going to go and see Ms Gobbo
10:38:22 29 at that time?---That could be a possible concern.
10:38:24 30
10:38:24 31 They certainly have all things covered. They have
10:38:28 32 concerns, they're doing their very best to make sure
10:38:31 33 Ms Gobbo isn't identified as being an information
10:38:35 34 source?---Yes, that's a possible interpretation but I'm
10:38:38 35 just trying to interpret here, I haven't read that entry
10:38:42 36 previously.
10:38:42 37
10:38:43 38 It's my interpretation of it. They're telling you to, no
10:38:48 39 mention in your diary of that. That seems to be the
10:38:51 40 interpretation which would be the correct interpretation,
10:38:53 41 wouldn't it?---It does, yes.
10:38:55 42
10:38:55 43 "Don't put it in your diary because then it would appear to
10:39:01 44 anyone looking that they start to look at [REDACTED] outside
10:39:07 45 Gobbo's chambers?---I don't recall him ever telling me not
10:39:11 46 to put anything in my diary, but that appears to be what
10:39:16 47 this entry is indicating.

.30/09/19

6755

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10:39:17 1
10:39:18 2 Can you go to your diary of that date and have a
10:39:21 3 look?--What date are you talking about?
10:39:25 4
10:39:25 5 COMMISSIONER: 9 April.
10:39:26 6
10:39:27 7 MR WINNEKE: 9 April. You've got an entry at about 16:45
10:39:34 8 it seems?---Yes.
10:39:35 9
10:39:37 10 It says, "Liaise with SSU", so they're the dogs?---Yes.
10:39:44 11
10:39:44 12 There's a name there?---Yes.
10:39:45 13
10:39:45 14 What does it say?---It's just his number and "follow [REDACTED]
10:39:50 15 [REDACTED], intel going to [REDACTED] tonight".
10:39:52 16
10:39:53 17 Go on, what does it say there?---"Briefed my crew members,
10:39:57 18 Rowe, Heyes, Hantsis, Detective Sergeant Kelly, Johns, re
10:40:03 19 saturation patrol of [REDACTED] area re [REDACTED]".
10:40:09 20
10:40:11 21 Whether or not you were advised by the handler not to put
10:40:14 22 that information in your diary, you didn't because there's
10:40:18 23 no information in your diary about Ms Gobbo at all or
10:40:26 24 [REDACTED] being surveilled from her chambers?---I haven't
10:40:32 25 made any entry, that's correct.
10:40:34 26
10:40:35 27 In any event, that's your diary entry for that date,
10:40:42 28 right?---This entry is just basically briefing a
10:40:48 29 surveillance crew and investigators in relation to an
10:40:52 30 operation we were running that night. Basically we were
10:40:56 31 going to flood the area with people looking for known
10:41:00 32 vehicles or known people.
10:41:01 33
10:41:01 34 I understand that. It's quite apparent that the [REDACTED]
10:41:04 35 would have been told where he might start observing [REDACTED]
10:41:09 36 [REDACTED] and that was in the vicinity of Gobbo's chambers?---The
10:41:12 37 Surveillance Unit?
10:41:13 38
10:41:13 39 Yes?---Yes, that what appears to be in that ICR which I
10:41:19 40 haven't read before, yes.
10:41:24 41
10:41:31 42 Then at 18:20 there's another reference to [REDACTED] just
10:41:39 43 having left Ms Gobbo's office. He's gone to see a person
10:41:46 44 by the name of Bill Karam to pick something up. He expects
10:41:50 45 to be available for dinner with Ms Gobbo next Wednesday and
10:41:52 46 you're told of that?---Well I have no entry of that in my
10:41:59 47 diary.

.30/09/19

6756

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10:41:59 1
10:41:59 2 Do you say that you wouldn't have received that information
10:42:03 3 or is it something that you simply didn't record in your
10:42:06 4 diary?---Either or either, I can't distinguish between the
10:42:12 5 two.

10:42:13 6
10:42:13 7 All right then. Do you say that it's information that you
10:42:18 8 would not have recorded because it wouldn't be relevant or
10:42:21 9 is it information that you got but you didn't have an
10:42:26 10 opportunity to record or what would you say?---Well because
10:42:29 11 of what we were, the task that we were performing that
10:42:34 12 night it would have been of interest to me, to know his
10:42:37 13 movements, so it might have just simply been a matter of
10:42:41 14 notifying my crew that this is where he is at the moment
10:42:44 15 and left it at that because - and I haven't recorded in my
10:42:47 16 diary because, well, as I indicated to you last week
10:42:52 17 there's not a lot of thought that goes into it but I just
10:42:56 18 didn't think it was relevant to put it in there.

10:42:59 19
10:42:59 20 If we go to the ICR at p.234. This is an entry in the ICR
10:43:09 21 of 12 April. Again, I'm not suggesting this is information
10:43:16 22 that you were aware of contemporaneously, but on this page,
10:43:24 23 on this page it says that, "Gobbo has rung [REDACTED] several
10:43:28 24 times, the phone is ringing but no answer. She brought up
10:43:32 25 discussions with [REDACTED] re perception of possible
10:43:35 26 offences committed by Ms Gobbo if intercepted on TI, for
10:43:41 27 example". Now, she was advised apparently that as long as
10:43:46 28 she has no intent, there's no problem. And also, Ms Gobbo
10:43:51 29 of all people should know what can and cannot be said and
10:43:55 30 she's theorising about situations and being paranoid with
10:44:00 31 respect to possible but extremely unlikely scenarios, do
10:44:04 32 you see that?---Yes.

10:44:05 33
10:44:09 34 Were you ever involved in any discussions with Mr O'Brien
10:44:13 35 or any of the handlers about the possibility that Ms Gobbo
10:44:19 36 might be considered to have been involved or complicit or
10:44:25 37 in some way encouraged his behaviour?---No, not that I can
10:44:30 38 recall.

10:44:31 39
10:44:34 40 You would say, of course, it would not be appropriate for
10:44:39 41 Ms Gobbo to act in such a way that she was either
10:44:44 42 explicitly or implicitly encouraging [REDACTED] to engage in
10:44:50 43 criminal activities?---Yes, I would say that.

10:44:53 44
10:44:54 45 Are you aware of whether there were any telephone intercept
10:44:59 46 products which did capture Ms Gobbo speaking to [REDACTED]
10:45:09 47 [REDACTED]?---Just talking to each other?

.30/09/19

6757

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10:45:13 1
10:45:13 2 Speaking to each other?---Yeah, I believe there would have
10:45:16 3 been some TI material. I can't remember anything of great
10:45:22 4 significance but I'm sure that they would have communicated
10:45:25 5 via the phone at some stage and that would have been
10:45:28 6 captured.
10:45:28 7
10:45:29 8 Would have been captured?---Yep.
10:45:30 9
10:45:30 10 Do you know whether any of that material was ever
10:45:33 11 retained?---No, I don't.
10:45:35 12
10:45:35 13 Do you know whether there was ever any of that material
10:45:40 14 transcribed and provided to accused persons at all?---Well,
10:45:53 15 that's a good question. Normally I would expect any type
10:45:56 16 of communication between [REDACTED] and [REDACTED], that
10:46:00 17 there could be relevant TI materials that would be
10:46:04 18 transcribed and included as part of the brief of evidence.
10:46:06 19 I just can't remember if there was that material in these
10:46:10 20 briefs of evidence.
10:46:11 21
10:46:12 22 Can you say this much, if there were TI material or if
10:46:15 23 there was TI material capturing discussions between
10:46:17 24 Ms Gobbo and [REDACTED], the likelihood is that material
10:46:23 25 would not have been produced?---Correct.
10:46:25 26
10:46:25 27 And so a conscious decision would have been made by
10:46:28 28 investigators that any discussions between Ms Gobbo and
10:46:31 29 [REDACTED] would not be produced?---I don't know if it was a
10:46:38 30 conscious decision, I think it would just be a relevance
10:46:41 31 issue. I don't know whether it would have any relevance.
10:46:45 32
10:46:46 33 Looking back now it may well have a greater degree of
10:46:50 34 relevance than it might have to investigators at the time,
10:46:54 35 one assumes?---I can't answer that without having an
10:46:58 36 understanding of what was in the call, but I can't imagine
10:47:01 37 there was any discussion over, you know, criminal behaviour
10:47:07 38 or calls like, "I'm going to [REDACTED] or anything like
10:47:10 39 that tonight".
40
10:47:11 41 No?---Those conversations were not the type of calls we
10:47:15 42 would receive. I'd be pretty confident in saying I expect
10:47:18 43 there was communication between the two at some stage, but
10:47:22 44 I don't expect it would have been of any relevance, it
10:47:26 45 might have just been, "Catching up" or, "When are we
10:47:28 46 getting together for dinner?", and things like that.
47

.30/09/19

6758

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10:47:30 1 Yes?--And for that reason I don't believe investigators
10:47:34 2 would have ever considered including it in the material.
10:47:35 3
10:47:36 4 I follow that. But knowing what we know now, knowing the
10:47:39 5 idea of this investigation was to foster a relationship
10:47:43 6 between [REDACTED] and Ms Gobbo in circumstances where the
10:47:46 7 desire was to in effect have [REDACTED] comfortably
10:47:51 8 providing information to Gobbo who was then an agent to
10:47:54 9 Victoria Police and then to have Ms Gobbo provide that
10:47:56 10 information to police, it would clearly be relevant
10:47:58 11 information, wouldn't it, looking back now?--Well yes.
10:48:04 12
10:48:04 13 Because in fact it would be capturing the very sorts of
10:48:07 14 communications that this investigative plan was designed to
10:48:11 15 encourage?--Well, I understand the relevance now, yes.
10:48:16 16
10:48:22 17 Were you ever told that Ms Gobbo herself had considered
10:48:30 18 that she may well have encouraged [REDACTED] to engage in
10:48:36 19 criminal behaviour?--No, I was not.
10:48:38 20
10:48:43 21 You were never told by handlers that Gobbo had said, in
10:48:50 22 effect that, "It may well be that I've been encouraging
10:48:53 23 him", you weren't told that?--No, I wasn't.
10:48:56 24
10:48:56 25 Would you have been concerned about that if that was the
10:48:59 26 case?--Well, yes, I would have but, you know, my memory at
10:49:04 27 the time was that [REDACTED] was a [REDACTED]. We
10:49:12 28 had really no doubt that he would have been [REDACTED]
10:49:15 29 [REDACTED]. That was his [REDACTED] at the time, so I don't
10:49:18 30 think he ever needed any encouragement.
10:49:21 31
10:49:21 32 He may not have, but again bearing in mind if the plan is
10:49:24 33 to have Ms Gobbo acting as an agent of Victoria Police it
10:49:28 34 would be troubling to know that she considered herself to
10:49:32 35 have encouraged him to engage in criminal activity?--Yes,
10:49:37 36 I can never recall any conversation with Jim O'Brien or any
10:49:43 37 other member of Victoria Police where we actively sought to
10:49:46 38 encourage her to encourage him.
10:49:48 39
10:49:48 40 I follow that. What I'm putting to you is were you ever
10:49:53 41 told that Ms Gobbo had herself said that she considered
10:49:58 42 that that might be what she was in fact doing?--No, I
10:50:01 43 wasn't.
10:50:02 44
10:50:02 45 Because the Commission has evidence I think on [REDACTED] she
10:50:06 46 said more or less that to her handlers?--No, I haven't
10:50:09 47 been told that.

.30/09/19

6759

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10:50:10 1
10:50:12 2 I'll take you to it in due course. The information that
10:50:18 3 was received on [REDACTED] at p.237 was that [REDACTED] had
10:50:25 4 been out to dinner with Ms Gobbo. Do you see that about
10:50:32 5 quarter past 11 at night? "She'd just left the [REDACTED]
10:50:39 6 restaurant. He has just left a minute before to check out
10:50:43 7 his new [REDACTED]. He hopes to be back at the new [REDACTED]
10:50:47 8 at 06:00 hours Thursday morning, [REDACTED] to start [REDACTED]
10:50:53 9 [REDACTED] Left the restaurant in his known vehicle", and then
10:50:58 10 further information is that, [REDACTED] 2006 it's believed
10:51:02 11 that [REDACTED] will commence the establishment of an
10:51:06 12 [REDACTED]. Location is believed
10:51:10 13 to be about [REDACTED] from his residential address.
10:51:14 14 [REDACTED] the premises" and all sorts of information about
10:51:17 15 that. Further down there's information about collection of
10:51:21 16 [REDACTED] " [REDACTED] he'll meet with [REDACTED]", I take it you
10:51:27 17 know who that is?---Yes.
10:51:29 18
10:51:29 19 And another person at [REDACTED], you know the other
10:51:35 20 person I take it as well?---Yes.
10:51:37 21
10:51:38 22 [REDACTED] It's anticipated he will receive cash and [REDACTED]
10:51:43 23 [REDACTED] that would be [REDACTED]
10:51:43 24 wouldn't it?---Yes.
10:51:44 25
10:51:44 26 From him to assist him with [REDACTED] do
10:51:47 27 you see that?---Yes, I do.
10:51:48 28
10:51:50 29 Then there's further information going down that, "On
10:51:55 30 Friday the 14th he'll commence [REDACTED]
10:52:01 31 the process will occur [REDACTED]. Then
10:52:03 32 there's additional items of information discussed and
10:52:06 33 there's quite an amount of detail there about what, which
10:52:12 34 is clearly coming from Ms Gobbo, do you accept that?---Yes,
10:52:15 35 I do.
10:52:15 36
10:52:16 37 Because it talks about what was discussed over
10:52:18 38 dinner?---Yes.
10:52:18 39
10:52:19 40 [REDACTED] until
10:52:22 41 [REDACTED] and he'll have to leave the premises to visit
10:52:26 42 [REDACTED]. And if the meeting at [REDACTED] is
10:52:31 43 successful he may ask Ms Gobbo to hold or possibly pass on
10:52:36 44 [REDACTED] on his behalf. She doesn't know the origins of
10:52:39 45 the [REDACTED] or its intended purpose". There was a tasking
10:52:43 46 and she was instructed not to enter into any agreements but
10:52:43 47 to give the DSU, the DSU would give her further

.30/09/19

6760

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10:52:47 1 instructions about the [REDACTED] and gain further intelligence
10:52:51 2 and you were updated with that information?---Yes.
10:52:54 3
10:52:58 4 Just coming back to the [REDACTED], that seems to be additional
10:53:02 5 information to the earlier information that we discussed
10:53:04 6 about Gobbo [REDACTED] and [REDACTED] into [REDACTED]
10:53:09 7 [REDACTED] when he goes to [REDACTED]?---It does.
10:53:15 8
10:53:15 9 Do you accept that?---Yes, it does.
10:53:17 10
10:53:17 11 Bearing in mind at this stage you were certainly aware that
10:53:22 12 he was going to be pleading guilty, I think on [REDACTED], to
10:53:28 13 [REDACTED] offences, or [REDACTED] serious charges that had already been,
10:53:33 14 which were outstanding?---That's correct, yes.
10:53:35 15
10:53:35 16 So the likelihood is he was going to go into
10:53:38 17 custody?---Yes.
10:53:38 18
10:53:38 19 And that was always your understanding, that that would
10:53:42 20 occur?---Yes.
10:53:42 21
10:53:43 22 There was also a concern that that not occur, that is he
10:53:48 23 didn't go into custody until Operation Posse had had the
10:53:53 24 opportunity to come to its conclusion, do you accept
10:53:57 25 that?---Well Operation Posse, the resolution phase occurred
10:54:03 26 before his [REDACTED].
10:54:05 27
10:54:05 28 It did as it turned out?---Yes.
10:54:07 29
10:54:07 30 There was some concern, certainly at this stage you hadn't
10:54:11 31 found the [REDACTED]?---No.
10:54:12 32
10:54:14 33 You were to find it soon but there was a concern on the
10:54:17 34 part of investigators that [REDACTED] continue to be at
10:54:22 35 large until he was able to be caught red-handed in [REDACTED]
10:54:28 36 [REDACTED] up to his armpits in [REDACTED], do you accept
10:54:31 37 that?---I'm sorry, can you - you've lost me a little bit.
10:54:36 38 What exactly are you putting to me? He was - we knew that
10:54:41 39 he was [REDACTED] we couldn't locate the [REDACTED]
10:54:44 40 and - - -
10:54:45 41
10:54:45 42 You wanted to catch him at the [REDACTED] in possession of [REDACTED]
10:54:50 43 [REDACTED] and with as much incriminating evidence as
10:54:52 44 possible?---Yes, that's correct.
10:54:53 45
10:54:54 46 To enable you, the police, to say to him, "Look, you're in
10:54:58 47 all sorts of strife here"?---Yes.

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10:55:00 1
10:55:00 2 "The only way you're going to see the light of day for a
10:55:04 3 very long time is to assist us"?---Yes.
10:55:06 4
10:55:06 5 That's the idea?---That's all correct, yes.
10:55:08 6
10:55:09 7 Do you recall there was concern on the part of the
10:55:11 8 investigators that it may be necessary to get an
10:55:13 9 [REDACTED] of his [REDACTED] to ensure that he could be
10:55:19 10 caught in that way?---No, not really. I can't - I have no
10:55:25 11 notes that has twiggged my memory. I haven't thought about
10:55:33 12 this for some time. There may have been some concern
10:55:36 13 about, "We need to catch him before [REDACTED]", but I
10:55:39 14 can't remember any discussion about [REDACTED]
10:55:41 15
10:55:43 16 Not only did you have to catch him, the idea was to have
10:55:46 17 him assist police in a practical way, that is by getting
10:55:50 18 incriminating evidence on people such as [REDACTED] and [REDACTED]
10:55:53 19 [REDACTED]?---Well ideally yes, but there's a number of
10:55:57 20 different ways he could have assisted us, yes.
10:55:59 21
10:55:59 22 Obviously by making statements?---Yes.
10:56:02 23
10:56:02 24 It would be ideal if you could get them on tape or in some
10:56:11 25 other way which was wholly incriminating?---Yes, that's
10:56:14 26 correct.
10:56:14 27
10:56:14 28 You don't recall having a discussion with Mr O'Brien about
10:56:17 29 the possibility of getting [REDACTED]?---No, I can't.
10:56:22 30
10:56:28 31 Are you aware that the question of [REDACTED] was
10:56:31 32 raised with the Director of Public Prosecutions? Were you
10:56:37 33 aware of that at the time?---Not that I can remember, no.
10:56:41 34
10:56:46 35 In your diary of [REDACTED], can you go to that page
10:56:53 36 there?---Yes.
10:56:54 37
10:57:03 38 I think it's p.253 of your diary and I think we may have
10:57:10 39 it. It's at p.66 I think of the materials that we've got.
10:57:26 40 Do you see that there?---Yes, I do.
10:57:28 41
10:57:33 42 You return a telephone call to barrister Gobbo. What's
10:57:43 43 that about there?---No, it's a return telephone call to a
10:57:50 44 Surveillance Unit and I've been informed that barrister
10:57:55 45 Gobbo in Spring Street outside café.
10:58:02 46
10:58:02 47 Did you meet with Ms Gobbo?---No.

.30/09/19

6762

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10:58:04 1
10:58:04 2 Then if we go down, what do we see?---The next line?
10:58:12 3
10:58:13 4 Yes. If we go to 00:25 on the early morning of - - -?---So
10:58:19 5 that's, "Receive telephone call, a Surveillance Unit,
10:58:23 6 [REDACTED] and [REDACTED]", which is [REDACTED] " [REDACTED] Street,
10:58:27 7 meeting with Gobbo".
10:58:29 8
10:58:30 9 All right. And then the next line - so clearly she's out
10:58:36 10 with them in the early hours of [REDACTED]?---Yes. I'm not
10:58:40 11 sure, I'm at the office at this stage and surveillance
10:58:45 12 units are ringing me and giving me updates in relation to
10:58:48 13 their movements. At 12:40 am, "[REDACTED] in vehicle,
10:58:55 14 [REDACTED] and Gobbo walking in deep conversation, heated
10:59:00 15 argument".
10:59:00 16
10:59:01 17 Heated argument?---Yes.
10:59:02 18
10:59:10 19 Obviously the idea was that certainly [REDACTED] and [REDACTED]
10:59:17 20 would be surveilled to see what's going on because it's at
10:59:22 21 this time that the meeting, was it the meeting at [REDACTED]
10:59:27 22 [REDACTED] expected?---Yes, that's while we were monitoring,
10:59:31 23 looking to see if there was a [REDACTED]
10:59:34 24
10:59:34 25 Then if we continue in your notes what do you see?---At
10:59:39 26 12:46 am [REDACTED] and [REDACTED] on move in [REDACTED] with a
10:59:47 27 registration number.
10:59:47 28
10:59:48 29 Yes?---I received a telephone call from our special
10:59:52 30 projects units, that's indicating that [REDACTED] was sitting in
10:59:56 31 his vehicle in [REDACTED] Street. I've made a telephone call
11:00:00 32 to a colleague to return.
11:00:03 33
11:00:03 34 Yes?---Videotape ready. One to two hours I think that is,
11:00:11 35 or in two hours that might be.
11:00:13 36
11:00:13 37 Yes. Then you return a call from Mr O'Brien, is that
11:00:18 38 right?---Correct, yep.
11:00:19 39
11:00:19 40 And he's got, he's had obviously an update from the
11:00:23 41 handlers, is that right?---That appears to be correct, yes.
11:00:26 42
11:00:26 43 And he's been told about the, in effect firstly he's been
11:00:36 44 told about what you've been told, that is the meeting
11:00:39 45 between - he says [REDACTED] but you think it's an error?---Yes.
11:00:49 46
11:00:50 47 And it's in fact [REDACTED]?---Yes.

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11:00:52 1
11:00:52 2 And there's a reference to - I can't read that, can you
11:00:58 3 read that?---The next line?
11:00:59 4
11:01:00 5 Yes?---Going to [REDACTED], near [REDACTED], to collect [REDACTED]
11:01:04 6
11:01:04 7 And then [REDACTED] for [REDACTED]?---Handed over.
11:01:09 8
11:01:09 9 Handed over?---Yes.
11:01:10 10
11:01:10 11 And that's a reference to [REDACTED] [REDACTED], is
11:01:14 12 that right?---I believe so.
11:01:15 13
11:01:16 14 That's your understanding and Ms Gobbo has been provided
11:01:19 15 [REDACTED] by [REDACTED] to cover the cost of [REDACTED]
11:01:23 16 [REDACTED], is that right?---That's what I believe, yes.
11:01:26 17
11:01:26 18 And then there's information about the location of [REDACTED]
11:01:31 19 [REDACTED], is that right?---Yes, that's correct.
11:01:34 20
11:01:35 21 And there's [REDACTED] at a [REDACTED] in [REDACTED] possibly off
11:01:44 22 [REDACTED] Road, is that right?---Correct.
11:01:47 23
11:01:48 24 And above that, "Not going to the [REDACTED] tonight, going
11:01:50 25 tomorrow morning to [REDACTED]"?---Yes.
11:01:52 26
11:01:52 27 Then, "[REDACTED] is at that location", do you see
11:01:59 28 that?---Yes, [REDACTED], yes.
11:02:00 29
11:02:02 30 If we go to the ICR - perhaps if we stick with your notes
11:02:07 31 for the moment there. If you're able to read out the
11:02:11 32 relevant parts of your notes?---So the third bottom line
11:02:15 33 is, "[REDACTED] in [REDACTED] in [REDACTED] possibly off [REDACTED]
11:02:21 34 Road, [REDACTED] Has [REDACTED]
11:02:25 35 [REDACTED]".
11:02:25 36
11:02:25 37 A [REDACTED]?---Yes. Over the page, "[REDACTED] of
11:02:30 38 [REDACTED] required. Won't get tomorrow", so that might mean
11:02:37 39 won't get until tomorrow, "Going to [REDACTED] on Saturday. Will
11:02:41 40 leave on [REDACTED] Sunday. [REDACTED] intercept going to
11:02:47 41 [REDACTED]".
11:02:48 42
11:02:50 43 That's [REDACTED]. Is that correct?---Yes that's correct.
11:02:56 44
11:02:57 45 He was intercepted with [REDACTED], is that
11:03:00 46 right?---Yes, two days earlier.
11:03:02 47

.30/09/19

6764

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11:03:02 1 And one of the issues you subsequently became aware of and
11:03:07 2 utilised was the fact that his arrest hadn't been conveyed
11:03:11 3 to ██████████?---Yes, his arrest had nothing to do with
11:03:15 4 ██████████ is my understanding, that was through Detective
11:03:19 5 Sergeant Kelly and his crew.

11:03:20 6
11:03:20 7 Yes. But wasn't the understanding that he was arrested
11:03:24 8 with ██████████ which were to be provided to ██████████
11:03:28 9 ██████████?---Well at the time of the intercept I don't think that
11:03:32 10 the investigators or us were aware that it was going to
11:03:34 11 ██████████ ██████████ has later told us that those
11:03:39 12 ██████████ were coming to him.

11:03:42 13
11:03:42 14 All right then. But the point I make is you became aware
11:03:46 15 when you spoke to him and utilised this that he had not
11:03:56 16 been told by ██████████ that ██████████ had been
11:04:03 17 arrested. Do you recall that or not?---I can't recall
11:04:11 18 that, no. I know that on a date after his arrest we had a
11:04:21 19 deep conversation about being stood up by ██████████ and
11:04:27 20 he was very distressed over it all but I can't recall that.

11:04:31 21
11:04:31 22 You can't recall the details of it?---The specific
11:04:34 23 reference, yes.

11:04:34 24
11:04:35 25 Whether or not that was a particular way in which you were
11:04:37 26 able to leverage the, you know, being let down by ██████████
11:04:42 27 ██████████?---Yes.

11:04:44 28
11:04:44 29 You can't recall it?---Yes.

11:04:45 30
11:04:45 31 If we go to the ICR at p.243. That information more or
11:04:56 32 less finds its way into the ICR as well. There's also a
11:05:00 33 reference to ██████████ to collect ██████████ on Wednesday
11:05:05 34 and, "Ms Gobbo wasn't ██████████ tonight as
11:05:09 35 predicted"?---Yes, I see that entry.

11:05:12 36
11:05:12 37 You see that?---Yes.

11:05:13 38
11:05:15 39 You were aware at that time that there was some suggestion
11:05:18 40 that Ms Gobbo was going to be ██████████ by ██████████
11:05:22 41 prior to him going into custody?---I don't think I was
11:05:25 42 aware at that time.

11:05:27 43
11:05:27 44 At that time?---No.

11:05:28 45
11:05:28 46 You subsequently became aware quite some time later that in
11:05:36 47 fact ██████████ said to you that he had in fact given

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11:05:40 1 Ms Gobbo quite a [REDACTED] of [REDACTED]?---[REDACTED]
11:05:45 2 recently told me that, yes.
11:05:46 3
11:05:47 4 In 2007, 2008?---I can't recall that.
11:05:51 5
11:05:52 6 Somewhere in the region of [REDACTED]
11:05:56 7 [REDACTED]?---I can't recall that back in that time frame. I
11:05:59 8 don't know whether it's in my notes or not.
11:06:01 9
11:06:01 10 If it's in your notes obviously it's in your notes?---Yes.
11:06:05 11
11:06:06 12 There's evidence that Mr O'Brien was told, at least said
11:06:12 13 that you told him about the assertion made to you by [REDACTED]
11:06:16 14 [REDACTED] that Gobbo had been given [REDACTED]
11:06:19 15 prior to him going into custody?---If it's in his notes I'm
11:06:26 16 sure that's correct. I just can't recall it as I'm
11:06:29 17 standing here today.
11:06:30 18
11:06:30 19 He was quite persistent that he had given Ms Gobbo a
11:06:35 20 [REDACTED], wasn't he?---I know he has
11:06:39 21 recently made that claim as well, yes.
11:06:40 22
11:06:41 23 When did he make that claim to you?---Just in the last
11:06:45 24 couple of months.
11:06:45 25
11:06:46 26 And you see him on occasions, do you?---I never see him, he
11:06:49 27 occasionally telephones me.
11:06:52 28
11:06:54 29 He told you quite some years ago that he'd given Gobbo [REDACTED]
11:06:57 30 [REDACTED] and he's still maintaining that that's the case
11:07:01 31 now?---Yes.
11:07:01 32
11:07:01 33 Do you accept it?---I've got no reason to doubt it, so.
11:07:08 34
11:07:11 35 Have you spoken to him about, in more recent times, about
11:07:17 36 what he has since learnt?---So he has rang me since the
11:07:22 37 announcement of the Royal Commission was being, became
11:07:26 38 public and, you know, it's a topic I've kind of avoided in
11:07:33 39 relation to discussing with him. He's just made a couple
11:07:36 40 of comments, throw away lines, he's alleged that Ms Gobbo
11:07:40 41 played both sides, played us all, played me, played him,
11:07:44 42 comments along that line.
11:07:45 43
11:07:45 44 It was apparent to you from your discussions with him that
11:07:48 45 he had no idea that Ms Gobbo was a human source?---That's
11:07:52 46 correct.
11:07:52 47

.30/09/19

6766

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11:07:52 1 It was news to him?---Yes.

11:07:53 2

11:07:54 3 Was he surprised by that?---Um, he - you know, it's
11:08:01 4 difficult to judge over a telephone call but, um, you know,
11:08:05 5 but, yeah, he sounded surprised.

11:08:07 6

11:08:07 7 He said that you were all played by Ms Gobbo?---Yes, he
11:08:11 8 said she played us both off.

11:08:13 9

11:08:14 10 Certainly she was being utilised by police, the police knew
11:08:19 11 what she was doing?---Yes.

11:08:22 12

11:08:22 13 You knew what she was doing?---Yes, I did.

11:08:24 14

11:08:24 15 Insofar as it might be suggested or you've suggested she
11:08:28 16 played you off, you're not saying that's the case, is
11:08:33 17 it?---I didn't comment. It's an area that I didn't want to
11:08:36 18 divulge into with [REDACTED] so I just deflected the
11:08:40 19 conversation to what we normally talk about, which is how
11:08:43 20 he's progressed since [REDACTED] and [REDACTED]
11:08:48 21 things and things along those lines.

11:08:50 22

11:08:52 23 Has he ever said, for example, it might have been a lot
11:08:56 24 better if he just hadn't done what he's done and he simply
11:09:02 25 pleaded guilty and took his medicine and not had to live in
11:09:07 26 the way in which he's living?---No.

11:09:10 27

11:09:10 28 Has he ever expressed that view?---No, he hasn't. He's
11:09:14 29 actually expressed an opposite view. He's actually
11:09:19 30 expressed the view that he wouldn't have changed the course
11:09:24 31 of action that he took.

11:09:26 32

11:09:27 33 How frequently do you speak to him?---He was released in
11:09:30 34 [REDACTED], I didn't hear from him until 2016. He might ring me
11:09:34 35 once or maybe twice a year over 2016, 2017, but since the
11:09:40 36 announcement of the Royal Commission he has rang me more
11:09:43 37 recently.

11:09:43 38

11:09:45 39 Has he? All right. When did he first learn about
11:09:48 40 duplicitous role that was played by Ms Gobbo?---Until it
11:09:51 41 was in the public eye and on the front page of the Herald
11:09:55 42 Sun and things like that, so only in the last four or five
11:09:58 43 months.

11:09:58 44

11:10:05 45 Clearly he was obviously aware of your role in it all, in
11:10:08 46 the discussions that you've had?---Again, it's not a topic
11:10:14 47 of conversation I encouraged. I deflected a way to talk

.30/09/19

6767

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11:10:18 1 about something else.
2
11:10:21 3 I can imagine you wouldn't be very comfortable speaking to
11:10:25 4 him about it I suppose?---Well, you know, anything to do
11:10:26 5 with a human source is very, very difficult for police to
11:10:30 6 talk about. It's kind of our - - -
11:10:31 7
11:10:32 8 (Indistinct)?---I accept that, but I still would feel
11:10:35 9 uncomfortable talking to him about it.
11:10:38 10
11:10:38 11 Have you ever discussed the fact that you were using her
11:10:42 12 against him when she was pretending to be his
11:10:47 13 barrister?---No.
14
11:10:49 15 That information that you got on [REDACTED] enabled you to
11:10:57 16 locate [REDACTED] effectively?---Yes.
11:10:59 17
11:11:00 18 And I think you use, I don't know whether you were on
11:11:06 19 holidays or not but you decided to go and have a
11:11:13 20 look?---Yes.
11:11:13 21
11:11:14 22 On [REDACTED]?---Yes.
11:11:15 23
11:11:15 24 And you make a reference to that in your diary, do
11:11:18 25 you?---Yes, I do.
11:11:18 26
11:11:18 27 That's at p.256, is that right?---Correct, yes.
11:11:22 28
11:11:22 29 Are you able to read out what, how you found it and what
11:11:26 30 occurred?---Yes. So I was actually going there to look at
11:11:30 31 another address that I incorrectly thought might have been
11:11:36 32 the [REDACTED] so I got there at 6.35, [REDACTED]
11:11:42 33 area, [REDACTED] Street, is that where you wish me to commence
11:11:46 34 from?
11:11:46 35
11:11:46 36 Yes.
11:11:47 37
11:11:47 38 COMMISSIONER: What date is this, Mr Flynn, in
11:11:49 39 [REDACTED]?---It's [REDACTED], Commissioner.
11:11:51 40
11:11:51 41 Thank you.
11:11:52 42
11:11:56 43 WITNESS: There's reference to a car rego which was outside
11:11:59 44 [REDACTED], the address I went to have a look at. Walk over. I
11:12:07 45 think there's a, "Nil value. Nil lights on upstairs", the
11:12:12 46 premises I was looking at was [REDACTED]. [REDACTED]
11:12:15 47 [REDACTED] Unable to see if vehicle in yard. Also sighted

.30/09/19

6768

FLYNN XXN - IN CAMERA

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11:12:20 1 [REDACTED], large shop in [REDACTED] street,
11:12:25 2 [REDACTED] for [REDACTED] [REDACTED]
11:12:30 3 [REDACTED]. Loud noise and lights on. Rear gate".
11:12:35 4 There's a registration number of a vehicle in the backyard,
11:12:39 5 a small [REDACTED] car. At 8.50 I've received a telephone
11:12:48 6 call from our special projects indicating that [REDACTED]
11:12:51 7 was in [REDACTED]. There's a couple of other
11:12:58 8 registration numbers that I can read out but I don't think
11:13:01 9 they're relevant.
11:13:02 10
11:13:02 11 Don't worry about that?---Then at 7.10 I've left.
11:13:05 12
11:13:06 13 Then it became apparent that those vehicles were associated
11:13:09 14 with [REDACTED], is that right?---The one vehicle in the
11:13:12 15 back of [REDACTED] street was registered to the surname of
11:13:16 16 [REDACTED] which I knew was linked to [REDACTED]
11:13:20 17
11:13:20 18 From that time on you were able to, investigations were
11:13:23 19 able to focus on that particular address?---Yes.
11:13:25 20
11:13:25 21 And obviously there were surveillance units put in place
11:13:32 22 and it became quite apparent that that's where [REDACTED]
11:13:36 23 was [REDACTED] is that right?---Yes, there
11:13:40 24 was a large amount of surveillance put on that address and
11:13:44 25 [REDACTED] was monitored for a number of days, yes.
11:13:46 26
11:13:51 27 So clearly it's quite apparent that all of that information
11:13:55 28 or a significant amount of that information, in particular
11:13:58 29 that information which you ascertained came from Ms Gobbo,
11:14:03 30 information that Gobbo had provided to handlers?---Well
11:14:09 31 yes, I knew it was coming from Ms Gobbo.
11:14:11 32
11:14:13 33 You then were moving towards an arrest phase, is that
11:14:19 34 right?---Correct, yes.
11:14:20 35
11:14:20 36 And you had a plan to arrest [REDACTED] when he was at that
11:14:28 37 address and in possession of [REDACTED] if not
11:14:34 38 actually engaged in [REDACTED], is that
11:14:38 39 right?---Yes.
11:14:38 40
11:14:38 41 In order to do that there was a significant amount of
11:14:41 42 planning and discussion was had, is that right?---Yes.
11:14:46 43
11:14:46 44 And those discussions included meeting with the
11:14:53 45 SDU?---There were two meetings with the SDU, yes.
11:14:56 46
11:14:56 47 The first one was on [REDACTED], is that right?---Correct.

.30/09/19

6769

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11:14:59 1
11:15:02 2 On that occasion you had a discussion with a number of
11:15:11 3 members including Mr O'Brien?---Yes.
11:15:17 4
11:15:19 5 Mr White, Sandy White, is that right?---Correct, yes.
11:15:22 6
11:15:26 7 And the idea - are you able to recall what occurred at that
11:15:30 8 discussion?---I can't actually recall this meeting very
11:15:38 9 well at all but there was some discussion about - well I
11:15:43 10 can refer to my notes which has a planned interview with
11:15:47 11 [REDACTED], so how we were going to approach the interview
11:15:51 12 to try and get him to assist police.
11:15:53 13
11:15:53 14 Yes?---And there was some other, I've made some other notes
11:15:58 15 there about follow up investigations, so like ACC hearings
11:16:03 16 and things like that.
11:16:05 17
11:16:05 18 Yes. Were you at that stage aware that Ms Gobbo had been
11:16:14 19 told by [REDACTED] that he [REDACTED] and that she was
11:16:19 20 feeling guilty?---I have some recollection of Ms Gobbo at
11:16:28 21 some stage saying she was feeling guilty, I just can't put
11:16:32 22 it to a definitive time frame.
11:16:35 23
11:17:09 24 Do you know what time the meeting was that you had with the
11:17:14 25 SDU?---Well my diary indicates ten o'clock in the morning.
11:17:20 26
11:17:33 27 If we can perhaps put this entry up, it's an entry from
11:17:39 28 Mr White's diary, VPL.2000.0001.0711. You'll see there a
11:17:54 29 reference to meeting - this is Mr White meeting with I
11:18:04 30 think Mr Green regarding Ms Gobbo, [REDACTED] told Ms Gobbo
11:18:10 31 that he [REDACTED] and she's feeling guilty about that". Do
11:18:16 32 you see that there?---Yes, I see that.
11:18:18 33
11:18:18 34 This is a couple of hours before you met with Mr White. Do
11:18:24 35 you think that he might have told you that at that
11:18:27 36 stage?---It's possible.
11:18:27 37
11:18:29 38 And then the next entry is, "Need to speak to Ms Gobbo
11:18:33 39 regarding what will happen to [REDACTED] When will he be
11:18:40 40 arrested?" Do you see that?---Yes.
11:18:42 41
11:18:42 42 There's also a reference to other matters which is perhaps
11:18:46 43 of no great note although it says, "[REDACTED] only gets [REDACTED]
11:18:51 44 per cent of profit". Do you see that there?---Yes, I do.
11:18:54 45
11:18:54 46 That might have been information which was passed on to
11:18:57 47 you?---Possibly, yes.

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11:18:58 1
11:18:59 2 By way of in effect saying, being able to convince ██████████
11:19:05 3 ██████████ to assist you against those who were only paying him ██████████
11:19:09 4 per cent?---Yeah, I don't know we would have used that but
11:19:16 5 maybe, you know - - -
11:19:17 6
11:19:18 7 Then over the page there's more information that is coming
11:19:21 8 in, "He's too soft to break away from ██████████ and
11:19:26 9 ██████████"?---Yes.
11:19:26 10 "
11:19:26 11 ██████████, first to ██████████", that would be ██████████?---Yes.
11:19:34 12
11:19:34 13 And then the other two, ██████████, and ██████████ to ██████████
11:19:42 14 ██████████?---Yes.
11:19:43 15
11:19:43 16 ██████████ if ██████████ - - - ?---Required, yes.
11:19:46 17
11:19:46 18 Required perhaps?---Yes.
11:19:47 19
11:19:47 20 Is that your understanding of the state of play at that
11:19:50 21 time, if necessary it may be necessary, there may be a need
11:19:57 22 to ██████████?---I can't recall it, as you asked me
11:20:01 23 before. If others had mentioned it I certainly wouldn't
11:20:04 24 disagree with it.
11:20:06 25
11:20:12 26 And then it seems that there's, if you go down to 9.05,
11:20:17 27 "Call from Jim O'Brien, request meeting", is it TSU?---Yes,
11:20:28 28 TSU.
11:20:29 29
11:20:30 30 Or CSU, the surveillance operatives?---The TSU is the
11:20:36 31 Technical Support Unit and CSU I'm presuming is the Covert
11:20:42 32 Support Unit.
11:20:42 33
11:20:43 34 With respect to ██████████ and the proposed action, do you
11:20:46 35 see that?---Yes.
11:20:46 36
11:20:47 37 I missed an entry above. "HS expects they will all be
11:20:51 38 arrested", do you see that?---I see it, yes.
11:20:54 39
11:20:54 40 Was that something that you were aware of or was that made
11:21:00 41 clear to you that that was her expectation at that time or
11:21:05 42 not, do you know?---I can't recall anything along those
11:21:08 43 lines. We wouldn't be too concerned about what she
11:21:10 44 expected at that stage but, you know, generally we would
11:21:13 45 arrest whoever we found offending.
11:21:16 46
11:21:22 47 If you then go to the notes at 10.05, over the following

.30/09/19

6771

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11:21:26 1 page, I just want to see whether you agree with these
11:21:29 2 matters. There's an Operation Purana meeting with a number
11:21:33 3 of people, obviously Mr O'Brien, there's a couple of -
11:21:39 4 [REDACTED] and [REDACTED] and yourself?---Yes.
11:21:41 5
11:21:43 6 Obviously they're the people from the Technical Support
11:21:49 7 Unit, is that [REDACTED]?--[REDACTED]'s from the Technical
11:21:56 8 Support Unit and [REDACTED] is from the State
11:22:00 9 Surveillance Unit.
11:22:00 10
11:22:00 11 And then there's another person there whose name I can't
11:22:04 12 read, you may or may not know who that is?---No, I can't
11:22:09 13 read it either.
11:22:09 14
11:22:11 15 [REDACTED] or something like that?---No, it doesn't.
11:22:14 16 It's not in my diary either.
11:22:17 17
11:22:18 18 COMMISSIONER:
11:22:18 19
11:22:18 20 MS ARGIROPOULOS: I'm very sorry to interrupt, I'm
11:22:21 21 instructed there's a concern with one of those names that
11:22:25 22 was mentioned, [REDACTED]. Could I ask that that just be
11:22:30 23 removed from the transcript. If it comes up again in
11:22:33 24 future we might need to have a pseudonym.
11:22:37 25
11:22:38 26 MR WINNEKE: It's not of any concern as far as I'm
11:22:40 27 concerned.
11:22:40 28
11:22:41 29 COMMISSIONER: That name should be removed from the record,
11:22:43 30 thank you.
11:22:44 31
11:22:44 32 MR WINNEKE: In any event there's an update. He's [REDACTED]
11:22:48 33 [REDACTED] then
11:22:59 34 [REDACTED] is that right?---Yes.
35
11:23:01 36 So first [REDACTED]?---Yes, that's
11:23:02 37 what the note indicates, yes.
11:23:04 38
11:23:07 39 Too risky for a [REDACTED] to be put in [REDACTED]?---Yes.
40
11:23:08 41 An [REDACTED] to be put [REDACTED]?---Yes.
11:23:09 42
11:23:10 43 "Then Mr O'Brien is to meet", would that be Assistant
11:23:15 44 Commissioner of Crime, Mr Overland?---I would expect so.
11:23:17 45
11:23:18 46 "Today regarding [REDACTED] the DPP, Mr Paul
11:23:22 47 Coghlan"?---Yes.

.30/09/19

6772

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11:23:23 1
11:23:23 2 Do you now accept that was something that was discussed in
11:23:25 3 that meeting or not?---It's possible it was discussed in
11:23:30 4 that meeting. Well yes, this is the note at ten o'clock,
11:23:34 5 isn't it?
11:23:35 6
11:23:36 7 This is the note at ten o'clock of Mr Sandy White's?---Yes.
11:23:40 8
11:23:41 9 Then there's a reference to [REDACTED] to go to Crime
11:23:49 10 Commission hearings?---Yes.
11:23:51 11
11:23:51 12 With respect to [REDACTED], is that right?---That's
11:23:55 13 correct.
11:23:55 14
11:23:56 15 And there was some suggestion that [REDACTED]
11:24:00 16 involvement in this whole process was by way of [REDACTED]
11:24:03 17 [REDACTED], is that right?---Yes, [REDACTED] was living in a
11:24:07 18 house that was under [REDACTED] name, he was [REDACTED]
11:24:12 19 [REDACTED] and there were no doubt [REDACTED] that we
11:24:16 20 believe [REDACTED] was covering up for him.
11:24:18 21
11:24:18 22 And so there would be investigative measures put in place
11:24:23 23 to enable Victoria Police to get information about
11:24:26 24 [REDACTED] both contrary to the interests of [REDACTED]
11:24:32 25 and also perhaps incriminating material with a view to
11:24:37 26 charging [REDACTED]?---Yes.
11:24:40 27
11:24:45 28 And the idea, the objective was to arrest [REDACTED] in
11:24:49 29 possession of incriminating evidence, roll him over and use
11:24:53 30 him against the others, is that correct?---Correct, yes.
11:24:56 31
11:25:00 32 Would it be reasonable to assume that there was a detailed
11:25:07 33 discussion about how the arrest process might occur at that
11:25:17 34 stage?---The physical arrest or are you talking about the
11:25:23 35 interview?
11:25:24 36
11:25:24 37 Firstly the physical arrest because we've got members of
11:25:27 38 the Technical Support Unit and various other people
11:25:31 39 there?---The technical support I would link [REDACTED]
11:25:35 40
11:25:36 41 Yes?---We were exploring options to try and identify when
11:25:39 42 he was actually involved in [REDACTED]
11:25:42 43
11:25:42 44 Yes?---And [REDACTED] is an option but it's an option that we
11:25:47 45 ruled out because of his, well his previous knowledge of
11:25:51 46 police investigations. So - and the physical arrest, I
11:25:57 47 don't know there was detailed conversations. I think that

.30/09/19

6773

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11:26:01 1 was always going to occur with the assistance of [REDACTED]
11:26:05 2
11:26:06 3 And what about the process of rolling him or turning him or
11:26:12 4 pitching the sales pitch to him, would that have been
11:26:16 5 discussed?---Yes.
11:26:17 6
11:26:17 7 And that's the reason, I assume, for having the SDU
11:26:22 8 present?---Yes.
11:26:23 9
11:26:25 10 And one of the things that I suggest to you that would have
11:26:29 11 been considered is what would occur after he was arrested,
11:26:34 12 clearly?---It's difficult for me to expand on this, but
11:26:40 13 that would seem logical, yes.
11:26:43 14
11:26:43 15 It would no doubt have been, it would have occurred to you
11:26:48 16 that it may well be that Gobbo would have an involvement in
11:26:53 17 this either because she would have been called as a lawyer
11:26:57 18 or as a friend, or indeed she may well even attend at the
11:27:04 19 police station?---Yes, that's a fair assumption.
11:27:06 20
11:27:06 21 That's something that was considered?---Well, I can't
11:27:10 22 recall the contents but what you say makes sense. I've
11:27:13 23 made a comment in my statement about having some
11:27:19 24 conversation or some thought about having Ms Gobbo
11:27:22 25 unavailable.
11:27:23 26
11:27:24 27 Yes?---But I can't, I'm not sure if it's part of this
11:27:27 28 conversation or a previous conversation.
11:27:29 29
11:27:29 30 There's another conversation that occurred on the [REDACTED], the
11:27:33 31 next day, wasn't there?---Yes, there was.
11:27:34 32
11:27:35 33 The reality is you people weren't amateurs, you knew what
11:27:40 34 would occur when this fellow was arrested, and all of these
11:27:43 35 people were arrested, they would call lawyers, wouldn't
11:27:45 36 they?---Yes, they would.
11:27:46 37
11:27:46 38 And the likelihood is that [REDACTED] would call
11:27:49 39 Gobbo?---Yes, that's correct.
11:27:50 40
11:27:50 41 In fact it was almost axiomatic, it was inevitable that
11:27:55 42 that's what would occur?---Yes.
11:27:56 43
11:27:56 44 Because the relationship between her and [REDACTED] had been
11:28:00 45 encouraged, we've established that?---Yes.
11:28:03 46
11:28:03 47 So there's a reliance both as a legal advisor but also

.30/09/19

6774

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11:28:09 1 perhaps as a personal association between the two of them,
11:28:13 2 an emotional reliance?---Yes.
11:28:14 3
11:28:15 4 So it was absolutely inevitable that Gobbo would become
11:28:18 5 involved?---Yeah, I can't argue with that, yes.
11:28:21 6
11:28:21 7 That's why your recollection is that there was some thought
11:28:25 8 that it may be that she might not be available, that would
11:28:32 9 be something that you'd considered?---As I said, it's just
11:28:37 10 a thought that I have no diary entry of or can't back up in
11:28:42 11 any way but I just thought it was a consideration that we
11:28:44 12 looked at at some stage.
11:28:46 13
11:28:47 14 COMMISSIONER: That that's probably a good time for the
11:28:49 15 midmorning break. Ms Ristivojevic, your leave, as with the
11:29:00 16 leave granted to all the potentially affected persons is
11:29:04 17 subject to an undertaking, you've probably been told that.
11:29:07 18
11:29:07 19 MS RISTIVOJEVIC: Yes.
11:29:08 20
11:29:08 21 COMMISSIONER: The undertaking is that you'll only discuss
11:29:10 22 with your client the aspects of confidential material
11:29:11 23 relevant to obtaining instructions for potential
11:29:13 24 cross-examination of the witnesses, that you will inform
11:29:15 25 your client of any relevant non-publication orders of the
11:29:19 26 Commission and/or extant suppression orders and the
11:29:22 27 criminal sanctions that would apply with any breach of
11:29:25 28 those orders and that you will not discuss the confidential
11:29:28 29 information orally or in writing with any other person. I
11:29:32 30 take it you're happy to - - -
11:29:35 31
11:29:36 32 MS RISTIVOJEVIC: I agree with the undertaking.
11:29:37 33
11:29:38 34 COMMISSIONER: To make those undertakings. Yes, thank you.
11:29:40 35
11:29:40 36 MS RISTIVOJEVIC: Yes.
11:29:40 37
11:29:41 38 COMMISSIONER: All right, we'll adjourn for a morning
11:29:43 39 break.
11:30:12 40
11:30:12 41 (Short adjournment.)
42
11:51:38 43 COMMISSIONER: Yes, Mr Winneke.
44
11:51:40 45 MR WINNEKE: Thanks Commissioner. I was asking you about
11:51:46 46 the discussions, and obviously you don't have a detailed
11:51:49 47 recollection because we're now some years down the track,

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11:51:53 1 but what you do recall is that consideration was given to
11:51:56 2 the proposition that Gobbo would end up coming along, or at
11:52:00 3 least there would be a call made to her with a view to
11:52:05 4 seeking advice from her by at least [REDACTED]?---I can't
11:52:10 5 recall that those conversations occurred but it would seem
11:52:14 6 logical that that would be a topic that would be discussed
11:52:19 7 to some extent.

8
11:52:20 9 Who discussed it? Who do you believe you discussed it
11:52:25 10 with?---Sorry, we're talking about this meeting at ten
11:52:28 11 clock on - - -

12
11:52:29 13 What you say is, "Look, I've got a vague recollection
11:52:34 14 because - I don't have a note of it but I've got a
11:52:38 15 recollection of somewhere there was talk it might be best
11:52:40 16 if she was unavailable"?---Sorry, I thought you were asking
11:52:43 17 me about something else. That conversation, it's really
11:52:46 18 difficult for me to - potentially it was a conversation I
11:52:50 19 just had with my crew, or it might have been something I
11:52:54 20 discussed with Officer White. I'm really - I can't be any
11:52:59 21 more solid in relation to that.

22
11:53:01 23 I follow that. If it had been raised, it's something that
11:53:05 24 you would certainly discuss with Mr O'Brien, surely?---Well
11:53:11 25 you would think so, yes, possibly. You have to just, you
11:53:17 26 know, consider the different roles that the different
11:53:20 27 police officers were playing at the time.

28
11:53:23 29 Yes?---In one respect it was easy for me not to concern
11:53:29 30 myself too much with Ms Gobbo.

31
11:53:31 32 Yes?---Because she wasn't my role. My role was leading an
11:53:35 33 investigating team and catching [REDACTED] and people
11:53:38 34 associated with his offending.

35
11:53:39 36 Yes. But what you were planning to do was have a
11:53:47 37 discussion with [REDACTED] after he was arrested?---Yes.

38
11:53:52 39 And with a view, one, to getting admissions from him, and,
11:54:00 40 two, getting assistance from him?---Yes, that's true.

41
11:54:06 42 It would certainly be the case that if he is recorded in a
11:54:13 43 record of interview and has not had appropriate proper
11:54:19 44 independent legal advice, then any admissions that he might
11:54:22 45 have made might not be admissible?---That's correct, yes.

46
11:54:26 47 So as an investigator you would have to consider that,

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11:54:29 1 surely?---Well, I don't recall discussing that in relation
11:54:35 2 to Ms Gobbo providing him advice in relation to his arrest.
3
11:54:41 4 Yes?---You know, it's hard for me to recall what was
11:54:47 5 discussed in those days but I think there may have been a
11:54:51 6 perception that despite the fact that Ms Gobbo has provided
11:54:57 7 information that's led to his arrest, there was still a
11:54:59 8 possibility that she could provide him adequate legal
11:55:04 9 advice.
10
11:55:05 11 Adequate. I note you didn't use the word
11:55:09 12 independent?---Well, you know, when you questioned me last
11:55:14 13 week this is one of the things that I think if we had our
11:55:22 14 time again we would have done differently.
15
11:55:26 16 Yes?---And I accept that. But we didn't, she was called,
11:55:27 17 and - - -
11:55:27 18
11:55:28 19 Can I just stop you there. The fact is this is something
11:55:32 20 that police Constables learn at the very outset, you have a
11:55:39 21 right to speak to a lawyer?---Yes.
22
11:55:41 23 It's provided for in the Crimes Act, right, and it's a
11:55:43 24 right to get independent legal advice from a legal
11:55:48 25 practitioner, who's not associated with the investigation,
11:55:51 26 right?---Yes.
27
11:55:52 28 You accept that? You knew - I mean there are very senior
11:55:57 29 police officers involved in this operation, you accept
11:55:59 30 that?---Yes, I do.
31
11:56:00 32 This is perhaps one of the most significant operations
11:56:04 33 which was occurring at this time?---Yes.
34
11:56:09 35 Purana was set up to deal with a very major scourge which
11:56:14 36 was going on in the society at this time, correct?---Yes.
37
11:56:18 38 Not just murders, but significant drug trafficking,
11:56:22 39 correct?---Yes, well there was different phases of Purana,
11:56:27 40 but first it was murders and second was drug trafficking,
11:56:30 41 yes.
11:56:30 42
11:56:30 43 If it comes off [REDACTED] is going to be providing evidence
11:56:33 44 against some of the most significant drug traffickers that
11:56:37 45 this State's known?---Yes.
46
11:56:40 47 We're not talking about just an ordinary little operation

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11:56:43 1 here, we're talking about a very significant operation,
11:56:45 2 correct?---No denying that, that's correct.
3
11:56:48 4 There's communications going on, and I suggest to you that
11:56:51 5 it must have occurred to you and to other police officers
11:56:55 6 that when - and you've accepted the proposition that Gobbo,
11:57:01 7 axiomatically, she's going to be the one to give this bloke
11:57:05 8 advice?---Yes.
9
11:57:06 10 She is no more an independent legal practitioner than is,
11:57:10 11 for example, Simon Overland. He's got a law degree, but
11:57:14 12 he's not going to be able to provide her with legal advice,
11:57:17 13 is he?---No.
14
11:57:19 15 Because he's not an independent person?---No.
16
11:57:21 17 Gobbo's going to come along and provide legal advice to
11:57:24 18 this person when she's not even a lawyer for him, she
11:57:29 19 cannot be a lawyer for him because she's effectively a
11:57:32 20 police officer?---Well, what you say now in here makes
11:57:35 21 sense but I don't know if we discussed that at the time.
22
11:57:38 23 Mr Flynn, what I suggest to you is that how could you not
11:57:41 24 have? You say, look, it's with the benefit of hindsight we
11:57:45 25 can see it, but it would have been as bold, it would have
11:57:50 26 been, stood out like proverbial whatever - - -
27
11:57:54 28 COMMISSIONER: Sore thumb.
29
11:57:56 30 MR WINNEKE: - - - at the time. This woman, who is going
11:57:58 31 to come along and give this bloke advice, is not a lawyer,
11:58:03 32 she is a police officer effectively?---Yes. Well I don't
11:58:05 33 think I ever looked at in that term back in 2006.
34
11:58:09 35 Can I suggest to you that it was something which was being
11:58:12 36 raised by the SDU?---Well, possibly.
37
11:58:19 38 If it occurred to you at the time, and you may have
11:58:21 39 discussed it, that it would be better if she wasn't there,
11:58:25 40 the issue has arisen in your mind, I suggest to
11:58:29 41 you?---Well, certainly it's arisen in my mind at some
11:58:33 42 stage. I'm just at pains to identify when it was, that's
11:58:38 43 all. It would make sense that when we had these
11:58:45 44 discussions on the [REDACTED] and [REDACTED] it was raised then but I
11:58:49 45 just can't confidently say that it was.
46
11:58:54 47 There was another meeting on the [REDACTED], the next day, you

.30/09/19

6778

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11:59:03 1 accept that that's the case?---Yes, I do.
2
11:59:05 3 That was a meeting specifically with members of the
11:59:13 4 SDU?---It was a similar make up of the meeting on the [REDACTED].
5
11:59:17 6 Yes. But without the Technical Support Unit, et cetera; is
11:59:23 7 that right?---No, according to my diary they were there as
11:59:28 8 well.
9
11:59:28 10 What does your diary say?---Ten o'clock, briefing with SDU,
11:59:32 11 which is Dedicated Source Unit, and SSU and TSU with a list
11:59:37 12 to names.
13
11:59:38 14 Read on. Can you read out your diary entry?---Yes.
11:59:40 15 "Briefing with DSU and SSU".
16
11:59:44 17 Yes?---In brackets I have a nickname of the name that was
11:59:49 18 mentioned earlier that we don't want - - -
19
11:59:52 20 We don't want to - that's all right?---And TSU, which was
11:59:58 21 [REDACTED], "Re Posse interview strategy, surveillance
12:00:03 22 tapes both TSU and SSU".
23
12:00:06 24 Yes?---And I think it's SSU logs. So that sounds like to
12:00:14 25 me that I was just receiving some hard copies of some
12:00:17 26 surveillance logs and potentially some video surveillance.
27
12:00:24 28 And that's all, they're the only notes you've got; is that
12:00:26 29 right?---That's all I've got until 12.15, I've got "RT0",
12:00:30 30 which means I cleared the meeting.
31
12:00:33 32 Returned to the office?---Yes.
33
12:00:35 34 So the meeting went, potentially it went for some time,
12:00:40 35 from 10 to 12.15, albeit I think you've said it might not
12:00:44 36 have been that exact amount of time?---Yes.
37
12:00:48 38 Are you able to explain why there are no more detailed
12:00:52 39 notes about that?---I can only speculate.
40
12:00:56 41 You might have a better idea than I. What do you think the
12:01:00 42 reason would be?---Possibly we just covered ground that was
12:01:03 43 discussed earlier on the same day.
44
12:01:06 45 Right?---And, you know, the receiving of surveillance
12:01:09 46 information, well the information was there in hard copies
12:01:13 47 in front of me so there was no need for me to make notes of

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12:01:16 1 it.
2
12:01:18 3 Yeah, I follow. The notes of certainly Mr White, if we can
12:01:27 4 go to those notes. I've got them in a number of different
12:01:36 5 forms but if we go to the form they were in before. I
12:01:42 6 think you'll find it's VPL.2000.0001. - yeah, that's it.
12:01:52 7 It seems to be that there's a meeting at 10.10; is that
12:01:57 8 right?---Yes.
9
12:02:03 10 There's a number of things discussed. The first part
12:02:06 11 relates to [REDACTED] I think?---Yes.
12
12:02:10 13 Do you see that?---Yes.
14
12:02:11 15 "Issues to be discussed, [REDACTED] regarding
12:02:17 16 [REDACTED]"?---Yes.
17
12:02:18 18 And what would that be?---That would be I suspect, you
12:02:27 19 know, for him to be available to us to assist us, we would
12:02:32 20 have to make sure it wasn't common knowledge that his
12:02:36 21 arrest was well-known.
22
12:02:38 23 Right?---So whether it was along, something along those
12:02:44 24 lines.
25
12:02:44 26 It would need [REDACTED] that he somehow [REDACTED]
12:02:48 27 [REDACTED] is that right?---Yes, that's right.
28
12:02:50 29 Was that the plan, that in fact that it was likely that
12:02:55 30 there wouldn't be an arrest of all of the people involved
12:03:00 31 at that stage?---When you say all the people involved, who
12:03:03 32 are you talking about?
33
12:03:04 34 Well, for example, other people who were part of this
12:03:09 35 operation, a target of the operation, for example, [REDACTED]
12:03:13 36 [REDACTED] et cetera?---Yes, that was definitely part of the
12:03:16 37 plan because we really had no offending on [REDACTED] at
12:03:21 38 that stage aside, except what we had in previous
12:03:24 39 investigations. So the initial arrest was only going to
12:03:27 40 occur with [REDACTED] and people directly involved in [REDACTED]
12:03:31 41 [REDACTED] of - - -
42
12:03:32 43 Whoever was at [REDACTED]?---Yes.
44
12:03:34 45 In order to utilise those people effectively it had to be
12:03:37 46 [REDACTED] had taken place?---Yes.
47

.30/09/19

6780

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12:03:40 1 Because otherwise it wouldn't be possible to get them on
12:03:44 2 tape?--That's right. Well it wouldn't be possible to
12:03:47 3 utilise [REDACTED] to his full potential, yes.
4
12:03:52 5 Yes, I follow that. Then there was discussions about his
12:03:56 6 vulnerabilities and obviously assets?---Yes.
7
12:04:00 8 It may well be that it would be said to him, "Look, you're
12:04:04 9 going to [REDACTED]. There's your [REDACTED]
12:04:07 10 your [REDACTED]". Obviously NG, Nicola Gobbo, is considered to
12:04:13 11 be a vulnerability. What would that mean?---I'm not sure.
12
12:04:21 13 Do you recall how Nicola Gobbo was going to be played as
12:04:26 14 part of the attempt to sell or to pitch the idea of him
12:04:34 15 assisting police?---No, I don't.
16
12:04:39 17 [REDACTED], do you know what that's about?---I think
12:04:41 18 that's a reference to the fact that the [REDACTED] was next
12:04:45 19 to a [REDACTED]
20
12:04:46 21 Right?---And we could use the information that it was
12:04:53 22 dangerous to [REDACTED] to, you know, increase the
12:04:58 23 seriousness of the offending and, you know, put pressure on
12:05:01 24 him to think that his offending is not only [REDACTED]
12:05:04 25 for other people but you're putting these [REDACTED] at
12:05:07 26 risk.
27
12:05:08 28 Because, I mean, as we knew previously, one of [REDACTED] had
12:05:11 29 [REDACTED] and also those sorts of issues might be used; is
12:05:16 30 that right?---Yes.
31
12:05:17 32 Then there was a meeting with yourself and Mr O'Brien
12:05:22 33 regarding the strategy?---Yes.
34
12:05:23 35 With respect to [REDACTED]?---Yes.
36
12:05:33 37 Then if we just move up the page. It appears that there
12:05:41 38 are other matters that are of no relevance?---No.
39
12:05:44 40 If we go over the page, I think that might well be the end
12:05:47 41 of that. If we then go to an entry in Mr White's diary at
12:06:00 42 18:00 hours. That's a meeting, appears to be a meeting
12:06:10 43 between Mr Smith, I think Mr Green and Mr White regarding
12:06:18 44 Ms Gobbo - it might be Black do you think? In any event,
12:06:28 45 the issue that's discussed is Ms Gobbo representing
12:06:35 46 [REDACTED] after the arrest, do you see that?---Yes.
12:06:38 47

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12:06:38 1 "Evidence from ██████████ implicating self may not be
12:06:45 2 permissible if counsel not impartial", do you see
12:06:49 3 that?---Yes.
4

12:06:49 5 It was agreed "investigators to be warned" full stop it
12:06:57 6 seems, do you see that?---Yes.
7

12:06:59 8 Then the next line is, "Intended that ██████████ be
12:07:03 9 interviewed prior to recruitment pitch". Do you see
12:07:07 10 that?---Yes.
11

12:07:08 12 Can I stop there and ask you this: it appears to have
12:07:14 13 occurred, at least to those present at that meeting, that
12:07:17 14 there would be admissibility problems if ██████████'s not
12:07:22 15 independently advised?---That appears so, yes.
16

12:07:25 17 And investigators are to be warned about that?---Yes.
18

12:07:30 19 Do you recall receiving a warning or any communications
12:07:35 20 from any of these people about that issue?---No, I don't.
21

12:07:40 22 What you do say is that you've got a recollection about, a
12:07:44 23 vague recollection that it had been considered that it
12:07:48 24 might be best if Ms Gobbo was elsewhere at the time of the
12:07:51 25 arrest?---That's correct.
26

12:07:54 27 That may well be consistent with that issue, that concern
12:07:59 28 being brought to your attention?---Possibly, yes.
29

12:08:01 30 But can I say this. Ultimately by the time of the - or can
12:08:06 31 I ask you this: ultimately by the time of the arrest on the
12:08:09 32 ██████████ it was your expectation that Ms Gobbo would be
12:08:14 33 involved as a legal advisor to ██████████?---I think that's
12:08:22 34 fair, yes.
35

12:08:26 36 You weren't surprised to hear that ██████████ firstly,
12:08:36 37 asked you to speak to Ms Gobbo?---No, not in the slightest.
38

12:08:40 39 And you weren't surprised when she ultimately turned
12:08:42 40 up?---No, not at all.
41

12:08:45 42 I mean the reality is if there was this idea floating
12:08:48 43 around it would be better if Ms Gobbo was unavailable,
12:08:52 44 there might well be problems with that because it may well
12:08:56 45 be that ██████████ would say, and this is something you'd
12:08:59 46 kick around, he might just well say, "I'm not going to say
12:09:03 47 or do anything until I speak to her"?---I don't recall any

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12:09:07 1 of that conversation occurring, so.
2
12:09:09 3 What I'm suggesting is even if it was kicked around that it
12:09:14 4 might be best, it's at best a vague recollection of yours,
12:09:18 5 but the reality is if somehow she wasn't available it may
12:09:24 6 well be that, as I said to you before, [REDACTED] would say,
12:09:27 7 "Look, I want to speak to my lawyer"?---That's a
12:09:31 8 possibility.
9
12:09:31 10 I mean you can't hide it. You can't - you certainly don't
12:09:36 11 recall any discussions about Ms Gobbo being spirited away
12:09:38 12 or taken out of the jurisdiction or anything like that, do
12:09:41 13 you?---No.
14
12:09:44 15 Indeed, it happened. So it's clear that your expectation
12:09:50 16 was that Ms Gobbo would be called and she would speak to
12:09:55 17 these people?---I don't know - expectation - it certainly
12:10:00 18 didn't surprise me that's for sure and there was nothing
12:10:03 19 else that I was expecting or had in place or I can recall
12:10:06 20 that we discussed in relation to who he would call for
12:10:11 21 legal advice.
22
12:10:12 23 Indeed, both at the scene when he's arrested out in
12:10:17 24 [REDACTED] and when he was back at the police station, he
12:10:20 25 indicated he wanted to speak to Nicola Gobbo?---Yes, he
12:10:24 26 did.
27
12:10:25 28 Indeed, so did [REDACTED]; is that right?---So I didn't
12:10:31 29 take the initial hand-over with [REDACTED] so I don't know
12:10:34 30 what he said at the scene, but I know that he certainly
12:10:37 31 spoke to her back at the police station, back at St Kilda
12:10:43 32 Road Police Complex.
33
12:10:56 34 I just want to show you a transcript if I may. It's
12:11:09 35 VPL.0100.0096.0185. I apologise. VPL.0005.0097.0011 at
12:11:55 36 p.272. This is a transcript of a conversation which
12:12:09 37 occurred on [REDACTED] 2006 between Mr White and Ms Gobbo and
12:12:19 38 I think Mr Green was also - and Mr Smith. Smith, Green and
12:12:27 39 White, the people who were at the meeting with you on the
12:12:31 40 [REDACTED] Well possibly. It may well have been, we're not
12:12:38 41 certain about that. But in any event Mr White says this at
12:12:41 42 p.272. I'm not suggesting - obviously you weren't there
12:12:47 43 and this took place out of your earshot but Mr White says,
12:12:51 44 "Look, purely a technical point of view, if you talk to
12:12:55 45 [REDACTED] and give him legal advice before he's interviewed
12:12:57 46 and he makes a confession, and I'm speaking theoretically
12:13:03 47 here, right". Gobbo says, "Yeah, okay". "I'm not saying

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12:13:07 1 this is going to happen. But wouldn't it be the case that
12:13:09 2 down the track that a defence barrister could argue well
12:13:12 3 the advice that he got prior to participating in the record
12:13:15 4 of interview was not impartial because it was done on
12:13:17 5 behalf of the police by a person that was acting for the
12:13:21 6 police". Ms Gobbo's response to that is, "Who the fuck's
12:13:29 7 going to say that?" Mr White says, "It's a theoretical
8 question, right, it's not, I'm trying to". Gobbo, "Anybody
12:13:34 9 say that, why would anyone say that?" White says, "No, no
12:13:37 10 one's going to say that but I'm trying to understand what,
12:13:40 11 the conflict of interest area is not something we ever deal
12:13:43 12 with, all right, for you, and it's, I mean some people
12:13:45 13 could put up an argument that a person who's a barrister
12:13:51 14 perhaps could never help the police and still represent the
12:13:54 15 person that she's helping the police with, so I'm just
12:13:55 16 trying to get my head around this, could you maybe, maybe
12:13:57 17 it's even pointless talking about it because you might
12:13:59 18 actually think I'm going - - -" Ms Gobbo says, "Probably,
12:14:03 19 but what's the real point?" Mr White doesn't really press
12:14:07 20 it because he says, "Forget it, I'm just - - -" "No, no,
12:14:12 21 what's the real point?" Mr Smith says, "Just the general
12:14:15 22 ethics of the whole situation. The general ethics of all
12:14:19 23 of this is fucked". Do you see that?---Yes.

24
12:14:25 25 On [REDACTED] clearly it seems that Mr White is cogitating
12:14:35 26 about this because he thinks it's appropriate to warn the
12:14:39 27 investigators about this issue, right?---Yes.

28
12:14:42 29 And it appears - well, you don't say he didn't warn you
12:14:48 30 about it or it wasn't raised with you?---No, I just can't
12:14:51 31 recall it so it's possible that he did. But I would have
12:14:56 32 thought I would have recalled it but it was a long time
12:15:02 33 ago, so.

12:15:02 34
12:15:02 35 He might have spoken to Mr O'Brien about it?---He could
12:15:05 36 have, yes.

37
12:15:07 38 But this point which I'm putting to you, the proposition
12:15:13 39 that's being tossed about here I suggest to you is it's
12:15:18 40 something that occurred to these particular police officers
12:15:22 41 and I suggest on the evidence was at least raised with the
12:15:25 42 investigators?---I can't recall it being raised with me. I
12:15:35 43 can't take it any further than that.

44
12:15:36 45 I understand that. The note indicates that they intended
12:15:39 46 to warn the investigators. You say you have a recollection
12:15:43 47 about at least some discussion about it might be better if

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12:15:46 1 she wasn't about, right?---Yes. And to be clear, I think I
12:15:53 2 indicated earlier that discussion - it could be part of
12:15:57 3 this or it could have been discussion I had with my own
12:16:01 4 investigators.

5
12:16:01 6 It might well be said that this was a matter which was
12:16:04 7 obvious to Victoria Police officers but despite that the
12:16:09 8 fact is, and I'm putting to you what it might be
12:16:14 9 considered, the police might well say to themselves, "Well,
12:16:17 10 that might be a problem but who is going to find out about
12:16:20 11 this and we want to get this bloke to assist us, so we'll
12:16:23 12 just have to wear that risk". Do you accept that, that
12:16:30 13 that might well be one scenario?---Well it would be a
12:16:34 14 scenario but I don't know if I agree that that was a
12:16:37 15 discussion that was held on this occasion.

16
12:16:40 17 Right. Because, see, what I'm suggesting to you is it is
12:16:46 18 an obvious issue. Ms Gobbo is saying, "Who the fuck's
12:16:50 19 going to find out about it?" What I'm suggesting to you is
12:16:56 20 that it might be open to conclude that Victoria Police
12:16:58 21 might have decided just to cover it up and to keep going
12:17:02 22 regardless of this little problem?---I certainly wasn't
12:17:05 23 part to any conversation where the scenario that you've put
12:17:10 24 forward was discussed.

25
12:17:13 26 Right?---It was not ever a case of any scenario where we've
12:17:17 27 got together and said, "Well, we're probably not doing the
12:17:22 28 right thing here, but we'll get away with it, no one will
12:17:26 29 find out about it so we'll do it anyway". I was not part
12:17:27 30 of any conversation that - - -

31
12:17:29 32 Do you think it might well have been something that
12:17:30 33 remained unsaid? Whilst everyone was thinking about it,
12:17:34 34 elephant in the room, no one really wanted to raise it?---I
12:17:41 35 don't know I would agree with that as well. I mean, you
12:17:45 36 know, when you talk about human sources I do accept that
12:17:50 37 generally we think that that information won't get out.

38
12:17:53 39 Yes?---So whether there's a subconscious or something along
12:17:57 40 these lines, but it was certainly not part of any conscious
12:18:02 41 decision making process that, "No, this is not right but
12:18:04 42 we'll do it anyway because no one will find out".

43
12:18:08 44 The process is, as you've said before, look, as a matter of
12:18:13 45 course we do not reveal our human sources?---That is
12:18:15 46 correct, yes.

47

.30/09/19

6785

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12:18:17 1 This woman is a human source, there's no question about
12:18:20 2 that?---Yes, that's correct.
3
12:18:21 4 And whether or not she turns up posing as his barrister or
12:18:26 5 not, she is assisting police?---Yes, she is.
6
12:18:31 7 And if she's part of the process of rolling [REDACTED] and
12:18:35 8 getting him to assist, she is still not a barrister for
12:18:38 9 [REDACTED] she's still an agent of Victoria Police?---Well,
12:18:43 10 yes, but as I said earlier, before the break, and this is
12:18:46 11 only in my mind, I don't know about other people, but like
12:18:50 12 she - what their relationship was I don't know, exactly
12:18:55 13 know, but they were relatively close and perhaps there was
12:18:58 14 still a thought that, well, even though she's helped us in
12:19:04 15 arresting [REDACTED] that she could still go there and give
12:19:08 16 him proper legal advice.
17
12:19:10 18 Well that may well - are you saying that's what you
12:19:13 19 considered, is it?---Well, I'm not saying I considered a
12:19:16 20 lot of these issues in any great detail. I come back to
12:19:20 21 what I said before, my focus was on catching [REDACTED]
22
12:19:25 23 Yes?---So that's what I was mainly concerned about at that
12:19:27 24 stage.
25
12:19:28 26 Yes?---But I was part of these other discussions with the
12:19:32 27 SDU members on the [REDACTED] and [REDACTED], but I just can't, with
12:19:37 28 any type of accuracy, give you an indication of how
12:19:40 29 detailed those discussions were.
30
12:19:41 31 I'll put this to you because I'm going to be putting it to
12:19:45 32 you down the track, the reality is once you knew it
12:19:48 33 happened, that it shouldn't have happened, and it was never
12:19:51 34 revealed, was it?---It was never revealed until this
12:19:55 35 Commission, that's correct.
36
12:19:56 37 Not only that, steps were taken to prevent it from being
12:20:00 38 revealed?---Are you talking about the legal action of
12:20:03 39 Victoria Police?
40
12:20:04 41 No, I'm talking about the action on the part of
12:20:07 42 investigators to prevent anyone from knowing, whether it be
12:20:10 43 [REDACTED] his solicitor, Mr Hargreaves, any of the people
12:20:15 44 against whom he gave evidence, steps were taken to prevent
12:20:18 45 them from knowing, and indeed the court, what had occurred
12:20:22 46 on the [REDACTED] and subsequent?---Well steps were
12:20:25 47 taken to not reveal that Ms Gobbo was a human source for

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12:20:31 1 Victoria Police, yes.
2
12:20:32 3 Even though it was known that Ms Gobbo did not provide
12:20:38 4 independent legal advice to [REDACTED]?---Yes. Well again I
12:20:44 5 don't think I ever thought of it in those terms but, yeah,
12:20:49 6 I accept what you're saying.
7
12:20:51 8 At the outset, and I posed the scenario of the Senior
12:20:56 9 Constable coming up with an idea of having the Sergeant in
12:20:59 10 the next room, calling him up and utilising that person to
12:21:02 11 provide "legal advice" which in fact wasn't going to be
12:21:10 12 legal advice because you'd know exactly what he was going
12:21:14 13 to say, that is, "Look, you're in all sorts of strife, you
12:21:19 14 should assist the police and you'll get a better outcome".
12:21:23 15 Now whether or not that's good advice or not, the fact is
12:21:25 16 it's not independent legal advice, is it?---No, I accept
12:21:26 17 that, yes.
18
12:21:27 19 And that's effectively what occurred here because it was
12:21:27 20 known what Ms Gobbo was going to say [REDACTED]
12:21:30 21 effectively?---I don't think I, if I knew.
22
12:21:35 23 Hang on. The fact is from the very start you were
12:21:38 24 receiving information from Ms Gobbo with a view to putting
12:21:42 25 away the Mokbels. You'd be pretty amazed, I suggest, if
12:21:46 26 she said, "Don't assist, don't help the police"?---I still
12:21:50 27 thought at the time that if [REDACTED] indicated that he
12:21:53 28 didn't want to talk to police, he didn't want to answer
12:21:56 29 questions, that she would talk to him about the pros and
12:22:01 30 cons of doing that.
31
12:22:02 32 Are you seriously suggesting that it was your expectation
12:22:05 33 that Ms Gobbo would say, "Don't assist the police"? Are
12:22:08 34 you seriously suggesting that?---I am suggesting that I
12:22:11 35 still was of the belief that Ms Gobbo could advise [REDACTED],
12:22:14 36 [REDACTED] of his choices in relation to what he does.
37
12:22:24 38 You knew that she was an agent of police whose whole design
12:22:30 39 in becoming an agent of police was to put away the Mokbels
12:22:34 40 and she was providing information with respect to [REDACTED]
12:22:37 41 to enable you to achieve that end?---Yes.
42
12:22:40 43 So I suggest to you that the scenario that you're raising,
12:22:45 44 the possibility that she might come along and advise him
12:22:49 45 not to assist police, is just fanciful?---No, I don't agree
12:22:58 46 with that.
47

.30/09/19

6787

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12:22:58 1 Well I suggest it is. All right. I put to you that steps
12:23:08 2 were taken to ensure that this information didn't get to
12:23:12 3 the court and to defence barristers and you accept that,
12:23:19 4 that diaries were amended or redacted in such a way that
12:23:24 5 those notes or Ms Gobbo's involvement didn't come to light,
12:23:27 6 do you accept that proposition or not?---Well I accept that
12:23:32 7 like any other human source we would try and prevent the
12:23:37 8 fact that she was a human source was released to anywhere
12:23:41 9 outside Victoria Police, yes.
10
12:23:42 11 You did not go and seek legal advice from any of your
12:23:46 12 lawyers about this?---Correct.
13
12:23:48 14 Did you have a discussion with Mr O'Brien about
12:23:54 15 it?---Seeking legal advice?
16
12:23:56 17 Yes, about seeking legal advice?---Not that I can recall,
12:24:00 18 no.
19
12:24:01 20 Did you speak to him about the problems that had been posed
12:24:04 21 by Ms Gobbo turning up and advising?---No.
22
12:24:11 23 Because she didn't just turn up and provide legal advice,
12:24:14 24 she actively assisted, she was present, wasn't she?---She
12:24:18 25 was, yes.
26
12:24:19 27 With you?---Yes, she was.
28
12:24:21 29 In circumstances where she wasn't, I suggest, simply
12:24:28 30 standing back and offering legal advice, she was actively
12:24:31 31 involving herself in the process of convincing this fellow
12:24:35 32 to assist police?---Certainly towards the end of the
12:24:38 33 interviewing process I'd agree with that, yes.
34
12:24:47 35 I'd raised with you before this issue or at least
12:24:53 36 possibility that it occurred to Ms Gobbo that she not only
12:24:57 37 had been a person who was providing information but perhaps
12:25:03 38 actively involved herself. If we go to p.278. Before I
12:25:09 39 move on, were you ever told by the handlers at any stage
12:25:14 40 prior to the arrest by the SDU that the whole ethics of
12:25:17 41 this situation were "fucked", or words to that
12:25:22 42 effect?---No, not that I can recall.
43
12:25:24 44 Do you think if you'd been told that you would recall
12:25:27 45 that?---Yes, I do.
46
12:25:28 47 Did you consider that ethically the situation was complex

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12:25:30 1 and complicated?---Yes, without a doubt.
2
12:25:33 3 Okay?---And I think that really became evident when
12:25:36 4 Ms Gobbo rolled up at the station on the [REDACTED]
5
12:25:39 6 It would have been apparent to you that you described in
12:25:42 7 perhaps a lot more polite terms than Ms Gobbo, your
12:25:47 8 expression complicated or complex really is the same sort
12:25:50 9 of thing, isn't it?---Yes.
10
12:25:54 11 What she said at p.278 is, if we accept the transcript,
12:26:01 12 "No, the problem, because I was being, you know, not that I
12:26:04 13 was being told all sorts of things for years and years and
12:26:07 14 putting them together, because I spent far too much time
12:26:10 15 thinking about things than anything else, the problem was
12:26:14 16 being used by people to you know manipulate all sorts of
12:26:17 17 systems. Or not so much criminal justice systems but
12:26:20 18 really being used by people. That's what, what's part of
12:26:22 19 it. And that's part of, it was a guilty conscience". So
12:26:27 20 she's describing why she decides to come on board, it
12:26:31 21 appears. "And I guess, but it's not from, not from doing
12:26:34 22 anything illegal myself but from knowing about these and
12:26:37 23 not doing anything about them. With [REDACTED] it's just
12:26:41 24 gone way in one direction because he's now decided that, I
12:26:45 25 mean I'm almost or probably bordering on conspiring with
12:26:51 26 him where you, you know, where I sit down and have these
12:26:53 27 conversations with him and he's telling me about how much
12:26:55 28 [REDACTED] and how much this and how much that, why am I
12:27:01 29 the equivalent" - I and think it's actually, "Why am I not
12:27:05 30 the equivalent of an aider and abettor". And Mr Green
12:27:10 31 says, "Well what are you doing to assist?" And she says,
12:27:12 32 "Okay, forget about assisting but I'm encouraging, I'm
12:27:12 33 inciting him, I'm conspiring with him". Were you ever told
12:27:17 34 that that is what Ms Gobbo had told her handlers?---No.
35
12:27:24 36 You know as an investigator, with, I take it, a degree of
12:27:32 37 familiarity with the law, I'm not saying you'd argue a case
12:27:35 38 in the Court of Appeal, but you know that in order to
12:27:37 39 assist or encourage or incite, you don't actually have to
12:27:43 40 participate, but by your words, by your presence, by things
12:27:46 41 that you do, that you encourage someone to do something you
12:27:50 42 may well be guilty of an offence, do you accept that
12:27:53 43 proposition?---I do.
44
12:27:54 45 Ms Gobbo as a lawyer seems to have understood and
12:27:58 46 interpreted her conduct in that way, doesn't she?---Well it
12:28:02 47 appears from this conversation, yes.

.30/09/19

6789

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1
12:28:03 2 I mean if, for example, Ms Gobbo had, in the period of time
12:28:09 3 since this investigation had been running, encouraged him
12:28:17 4 or incited him or any of those sorts of things that she's
12:28:22 5 concerned about, with a view to in fact getting him to fall
12:28:28 6 into line with the Posse plan, that is getting [REDACTED]
12:28:33 7 and so forth, that would be very concerning, wouldn't
12:28:36 8 it?---Yes, it would be.
9
12:28:37 10 I mean if she was acting as a barrister and who's in the
12:28:42 11 process of preparing a plea for someone, you might be
12:28:45 12 inclined to say, "Listen, you've got to keep your head
12:28:49 13 down, stay away from the likes of [REDACTED] stay away from
12:28:52 14 the likes of [REDACTED], keep yourself clean. We've got a
12:28:55 15 plea coming up. This is what you've got to do". Now
12:28:59 16 whether or not she has any influence upon him, that's what
12:29:01 17 you would hope a lawyer would do?---Well, yes, that makes
12:29:04 18 sense, yes.
19
12:29:05 20 If you're unfortunate enough to have a kid that got
12:29:08 21 involved in this sort of activity, you would hope the
12:29:11 22 lawyer would be saying, "That's what you've got to do, keep
12:29:15 23 yourself clean"?---Yes.
24
12:29:17 25 If you've got a barrister who's not doing that, and who's
12:29:19 26 indeed doing quite the opposite, that would be very
12:29:21 27 concerning, wouldn't it?---Well, yes, she's potentially
12:29:24 28 committing a criminal offence, so yes.
29
12:29:26 30 Indeed, certainly if the police were aware of it, I'm not
12:29:34 31 suggesting that they were at the time that it was
12:29:35 32 occurring, but if you're aware of it subsequently, as of,
12:29:36 33 for example, [REDACTED] when this conversation occurred, that
12:29:39 34 might be something that would give you real pause and cause
12:29:43 35 for concern?---Well, yes, it would.
36
12:29:45 37 You say you were never told about that?---No. No, I cannot
12:29:49 38 recall any discussion or any concerns raised about Ms Gobbo
12:29:54 39 actually aiding and abetting [REDACTED].
40
12:29:57 41 Did you ever say to investigators, sorry, to the handlers,
12:30:02 42 "Look, do you know whether it was ever said look it's got
12:30:05 43 to be made absolutely clear to Gobbo that she must avoid
12:30:09 44 anything of that sort. She must not do anything to
12:30:13 45 encourage or incite or anything like that"?---I don't think
12:30:17 46 I ever had any conversation with them about that.
47

.30/09/19

6790

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12:30:20 1 You'd hope that there would be those sorts of
12:30:23 2 conversations, wouldn't you?---Yes, I would.
3
12:30:25 4 And you don't know whether there were or not?---No, I
5 don't.
6
12:30:30 7 That sort of information, if, for example, it became
12:30:31 8 apparent and came to the court's notice, for example on a
12:30:34 9 plea, that the police had behaved or had countenance, if
12:30:37 10 not encouraged that sort of behaviour, that might be very
12:30:40 11 relevant to a sentence, for example?---It would be relevant
12:30:44 12 to a whole lot of things. It would be something I'd have
12:30:51 13 to seek advice on if I became aware of it.
14
12:30:54 15 So that information, that should have come to light, that
12:30:57 16 should have come out, I suggest to you, those sort of
12:31:02 17 comments made by Ms Gobbo?---Well, again it's the conflict
12:31:07 18 with the fact that she's a human source and that's
12:31:11 19 something we're trying desperately to protect. That is the
12:31:15 20 problem with that scenario.
21
12:31:16 22 Would you accept that it's unfortunate that that
12:31:18 23 information did not come to light very much earlier than
12:31:23 24 now?---As we sit here today, yes, I accept that. But I
12:31:27 25 would still be in a quandary if the role that Ms Gobbo
12:31:32 26 played as human source was not public at that stage, I'd
12:31:37 27 still be very concerned about that information coming to
12:31:40 28 light.
29
12:31:40 30 The reality is - I know this may well be hypothetical in
12:31:46 31 one sense because you didn't know the information, but if
12:31:49 32 you as an ethical police officer had that information
12:31:51 33 available to you, you would be concerned about it, I take
12:31:55 34 it?---Yes, I would be.
35
12:31:57 36 And you would want to get legal advice about it?---Yes, I
12:32:02 37 agree, yes.
38
12:32:03 39 Indeed, you would certainly want to find out exactly what
12:32:06 40 Gobbo is talking about and what she might well have done to
12:32:11 41 encourage, incite or conspire?---Yes.
42
12:32:16 43 You wouldn't have wanted to, for example, discouraged her
12:32:21 44 from the view or buried it or forgotten about it?---That's
12:32:25 45 a fair comment, yes.
46
12:32:26 47 All right. In your experience as a police officer it's not

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12:32:42 1 unusual for public interest immunity claims to be made with
12:32:46 2 respect to informers, do you accept that?---I wouldn't say
12:32:52 3 it's common but it's made from time to time.
4
12:32:55 5 It would be appropriate, do you accept, to get legal advice
12:33:00 6 about it?---Yes.
7
12:33:07 8 Often confidential affidavits are drawn up to show to the
12:33:11 9 court so as no one else knows about it?---Yes, that's
12:33:16 10 right.
11
12:33:16 12 That's a relatively easy process to do, it's not
12:33:22 13 uncommon?---That's correct, yes.
12:33:23 14
12:33:23 15 Then the decision's taken out of your hands and it's put
12:33:25 16 into the hands of the court?---Yes.
17
12:33:27 18 Why wouldn't you do that with respect to the position of
12:33:30 19 Ms Gobbo?---Well to me the obvious answer is that because
12:33:35 20 you know this was a unique set of circumstances because of
12:33:38 21 Ms Gobbo's profession and the risk to her of, with the
12:33:45 22 information she was providing and the people she was
12:33:46 23 providing information about. So, you know, I categorise
12:33:51 24 this in a different category to all other human sources
12:33:54 25 because of that.
26
12:33:55 27 She's still providing information to police but in this
12:33:59 28 situation she's also doing other things which are
12:34:02 29 potentially damaging to the criminal justice system and
12:34:04 30 acting for people in relation to whom she's provided legal
12:34:08 31 advice, incriminating information?---Well, that's something
12:34:16 32 you're putting to me now that we weren't - you know,
12:34:20 33 there's a whole lot of responses I've got to these
12:34:22 34 questions. Firstly, without trying to handball, but these
12:34:29 35 decisions weren't my decisions to make, but I accept what
12:34:31 36 you're saying, that I could raised them. But I understand
12:34:34 37 that with the concerns about seeking legal advice and
12:34:39 38 identifying Ms Gobbo as a human source, I understand those
12:34:43 39 concerns.
40
12:34:44 41 I accept the buck doesn't stop with you but this concern
12:34:47 42 isn't something that resided solely with you, I
12:34:51 43 suggest?---No, that's correct, yes.
44
12:34:53 45 Do you accept that there were other police officers who
12:34:56 46 were aware of the same information that you were aware
12:34:59 47 of?---Yes.

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1
12:35:00 2 Mr O'Brien for one was present?---Yes.
12:35:03 3
12:35:03 4 He knew exactly what was going on?---Yes, he did.
5
12:35:07 6 I'll get to him in due course, but you went upstairs and
12:35:12 7 spoke to Mr Biggin, didn't you, on the very night of the
12:35:16 8 arrest?---That's correct, yes.
12:35:16 9
12:35:17 10 And I'd assume you wouldn't have kept this information from
12:35:20 11 him, would you?---Which information?
12
12:35:22 13 The fact that Gobbo had turned up and was advising
12:35:24 14 [REDACTED]?---I think, you know, that would have been
12:35:26 15 evident.
16
12:35:27 17 I'll come back to that. If we go to p.297 of that
12:35:38 18 transcript. Again, Inspector, this is the same transcript
12:35:49 19 of [REDACTED], [REDACTED] before the arrest, 2006. Ms Gobbo
12:35:53 20 says at p.297, "What does Jim think of", this is obviously
12:36:00 21 a reference to Jim O'Brien, "What does, what does he think
12:36:06 22 from the point of view of knowing that [REDACTED]" - and I
12:36:10 23 might say for the sake of making it really messy, "[REDACTED]
12:36:14 24 and [REDACTED]", so that's clearly a reference to [REDACTED] and
25 [REDACTED]?---Yes.
26
12:36:18 27 "Probably [REDACTED]", is that [REDACTED]?---I think
12:36:22 28 so. I don't - [REDACTED] comes up a few times in my diary and
29 I'm not - - -
12:36:28 30
31 Not certain who it is?---Yeah, that's correct.
32
12:36:30 33 "Not going to ring anybody else but me. It's just, what
12:36:33 34 does Jim think about this?" Mr Smith says, "Well you know
12:36:37 35 what you said before about what we would know about" -
12:36:42 36 there's obviously things that we can't hear but we've got
12:36:45 37 to work with the transcript. Mr Smith says, "Well, you
12:36:47 38 know what you said before about what would we would know
12:36:53 39 about [REDACTED] and what he's doing right now without you",
12:36:57 40 so it seems that effectively they're saying, "Look, without
12:37:01 41 you we wouldn't have known what [REDACTED] doing"?---Yes.
42
12:37:07 43 Ms Gobbo says, "I don't follow that, sorry". Smith says,
12:37:10 44 "He'll be thinking the same thing, they would have been
12:37:13 45 struggling without it". In other words that makes it
12:37:17 46 plainer that O'Brien is likely to be thinking the same
12:37:20 47 thing, "Look, we're really grateful for the information,

.30/09/19

6793

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12:37:24 1 we'd be struggling without the information"?---Yes.
2
12:37:27 3 "I know that, I know that. So you're asking me what he
12:37:32 4 would think about all these people wanting to talk to you
12:37:35 5 on the night. Yeah, yeah". And then Mr Sandy White says,
6 "Well that's just normal. He would know that. He would
12:37:37 7 know. I mean all those that you've mentioned would ask.
12:37:40 8 Yeah". Gobbo then says, "Yeah, I know. He knows me, I
12:37:44 9 know, I know, I know. But I'm saying what does he - - - "
12:37:49 10 Smith says, "You're acting as - - - " Gobbo says, "But I'm
12:37:52 11 saying what does he think about that? Would someone like
12:37:55 12 him think there's some massive conflict or not?" Smith
12:37:59 13 says, "No, no, this is us, this was us wondering about your
12:38:03 14 situation and round tabling and thinking we should discuss
12:38:06 15 it with you". So what that appears to be is a reference to
12:38:10 16 the earlier discussion that I've taken you to before about
12:38:14 17 the difficult issues that arise and Green says, "Oh no, all
12:38:22 18 he wants to know - - - " Smith says, "Don't care what he
12:38:25 19 thinks". Gobbo says, "All he wants to do is be saying
12:38:29 20 thank you to me". Effectively they're having a bit of a
12:38:32 21 discussion about this and ultimately it seems that the
12:38:38 22 conclusion is, well, Victoria Police ought to just be very
12:38:44 23 thankful for her, for what she's doing. Would that have
12:38:47 24 been your attitude if you'd have been told about these
12:38:50 25 massive conflicts, "Look, we don't really care about the
12:38:54 26 conflicts, we're just very grateful for getting this
12:38:58 27 information from you about these terrible criminals"?---No.
12:39:03 28 If I understood all the conflicts, and some of the ones
12:39:07 29 that you've expressed today, I would have deeper concerns,
12:39:10 30 but I - you know, this is all new to me. I haven't read
12:39:13 31 this or seen this before.
32
12:39:14 33 I understand that. What I'm suggesting to you is that the
12:39:17 34 issues that are being tossed about are issues that you were
12:39:21 35 fully aware of because you describe them as complications
12:39:24 36 or complexities?---Yes.
37
12:39:28 38 All right. If we can come back to the way things then pan
12:39:32 39 out. As a result of you discovering [REDACTED] surveillance
12:39:38 40 is put in place. [REDACTED] and others are caught coming to and
12:39:43 41 from on surveillance. On [REDACTED] you get a search warrant
12:39:48 42 to search the [REDACTED] property?---Yes.
43
12:39:52 44 And the other properties which are, of the suspects of the
12:39:55 45 investigation; is that correct?---Yes.
46
12:39:57 47 An affidavit was prepared supporting the application for a

.30/09/19

6794

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12:39:59 1 search warrant?---Yes.
2
12:40:00 3 And that information, or information which went into that
12:40:04 4 warrant included information provided by Ms Gobbo?---Yes.
5
12:40:07 6 Although she wasn't named obviously?---That's correct.
7
12:40:12 8 And the plan was that the arrest would occur on [REDACTED]
12:40:16 9 2006?---That wasn't a plan, that's just how it occurred.
10
12:40:22 11 How it occurred, I withdraw that. In any event, it was
12:40:25 12 decided on [REDACTED] that because [REDACTED] and his associates had
12:40:32 13 been at the property overnight they were probably in the
12:40:34 14 process of [REDACTED]. As you'd been informed
12:40:40 15 previously, it was going to be the [REDACTED] first and then the
12:40:43 16 [REDACTED]?---Yes.
17
12:40:45 18 One or the other. The idea was that the arrest would take
12:40:49 19 place that day?---Correct.
20
12:40:52 21 So the information that we have is that the investigators
12:41:01 22 communicate with the DSU in the very early morning of the
12:41:09 23 [REDACTED] were you aware of that?---Can I just have a
12:41:14 24 look at my diary and see if I've got an entry there?
25
12:41:19 26 Okay?---There's no mention in my diary of any communication
12:41:55 27 between myself and the handlers.
28
12:41:57 29 All right then. In any event, it wouldn't have surprised
12:42:01 30 you. If we go to, I think it's about p.360, [REDACTED] of
12:42:10 31 the ICRs. Perhaps go to 359. I'm sorry, no, 257.
32
12:42:28 33 COMMISSIONER: What date are we looking for?
34
12:42:33 35 MR WINNEKE: [REDACTED]
36
12:42:36 37 COMMISSIONER: 258 the [REDACTED] starts.
38
12:42:38 39 MR WINNEKE: The DSU are aware from information provided by
12:42:43 40 Mr O'Brien?---Yes.
41
12:42:44 42 The arrest phase is going to take place. [REDACTED] are on
12:42:48 43 standby to raid the [REDACTED], correct?---Yes.
44
12:42:51 45 And there's communication with Ms Gobbo. It appears that
12:42:56 46 at least as far as Mr O'Brien's concerned the handlers are
12:43:02 47 to be aware and Gobbo is communicated with, correct?---It

.30/09/19

6795

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12:43:09 1 appears so from that entry, yes.
2
12:43:19 3 Then if we go down the page at 15:03. Just excuse me. No,
12:43:27 4 come back a bit. Sorry. If you have a look at that note
12:43:34 5 there at 9.23?---Yes.
6
12:43:36 7 There's advice to leave the phone in the car, still
12:43:40 8 switched on silent and to ring the handler immediately she
12:43:43 9 leaves the prison because she's out there seeing [REDACTED]
12:43:47 10 [REDACTED]?---Yes.
11
12:43:49 12 "May see handlers today at St Kilda Road if arrest occurs,
12:43:55 13 to ignore unless prearranged secure meeting. To
12:43:59 14 immediately advise handler if there's any contact by
12:44:03 15 [REDACTED]". What that appears to suggest is that there was
12:44:07 16 an expectation, certainly on the part of the handlers, the
12:44:13 17 DSU, that Ms Gobbo would be attending at St Kilda
12:44:17 18 Road?---Yes, that's a fair conclusion.
19
12:44:21 20 Would it be fair to say then that given that there had been
12:44:24 21 communications with Mr O'Brien, there was certainly no
12:44:27 22 instructions on the part of Mr O'Brien that she not
12:44:29 23 attend?---I can only go from this entry.
24
12:44:34 25 Yes?---And that appears to be that she was going to attend,
12:44:38 26 yes.
27
12:44:41 28 I think you've said previously you weren't surprised when
12:44:46 29 you saw her there?---No, well I expected [REDACTED] to
12:44:49 30 contact her.
31
12:44:53 32 Did you note that Mr O'Brien was surprised to see her
12:44:56 33 there?---No, I didn't note that.
34
12:45:01 35 Did he ever express to you that he was shocked that she'd
12:45:05 36 attended or not?---Not that I can recall, no.
37
12:45:09 38 Then it appears that the arrest had taken place at around,
12:45:15 39 or at least there's advice from Mr O'Brien at 15.03 that
12:45:21 40 there were [REDACTED] in custody and that was obviously [REDACTED] and
12:45:24 41 [REDACTED]; is that right?---Yes.
42
12:45:26 43 "Conducted by [REDACTED] but believes can be kept [REDACTED]" So
12:45:30 44 that's a reference back to the [REDACTED] we
12:45:33 45 were talking about earlier?---Yes.
46
12:45:36 47 Then a minute later it appears that Ms Gobbo's been phoned.

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12:45:39 1 So that's at 15:04. It seems that he put down the phone
12:45:47 2 and contacted Ms Gobbo, advised that - that information is
12:45:50 3 then passed on to her. Again, she's told to ignore the
12:45:54 4 handlers if she sees them at St Kilda Road?---Yes.
5
12:46:04 6 And told to text message and will meet the handlers away
12:46:07 7 from the building?---Yes.
8
12:46:08 9 And then if we go to your diary. You mentioned before that
12:46:13 10 you were involved in the arrest phase?---Yes, that's
12:46:15 11 correct.
12
12:46:15 13 And if we go to your diary, I think it's at about p.265, is
12:46:24 14 that right, or - - - ?---265 is where [REDACTED] I offered
12:46:29 15 him, gave him his rights and he wished, he wanted to
12:46:33 16 contact Ms Gobbo.
17
12:46:35 18 At that stage that was declined on the basis that, or why
12:46:41 19 was that declined?---It's not uncommon with [REDACTED]
12:46:48 20 warrants and arrest, it's under the fabrication or
12:46:51 21 destruction of evidence, concerns there might be
12:46:53 22 fabrication or destruction of evidence or the escape of an
12:46:57 23 accomplice. So generally we wait until all opposed
12:47:03 24 warrants had been executed and all the people we were
12:47:07 25 trying to arrest had been arrested.
26
12:47:07 27 That's just done as a matter of course or was it done as a
12:47:11 28 matter of course in those days, was it?---It's done as a
12:47:15 29 matter of course in relation to when there's multiple
12:47:21 30 arrests and multiple warrants. So it's just a matter of me
12:47:25 31 getting some situational awareness of what's happening at
12:47:29 32 other locations.
33
12:47:29 34 Right. You didn't speak to [REDACTED]?---No, I didn't. I
12:47:36 35 might have briefly spoke to him back at the St Kilda Road
12:47:43 36 Police Complex but someone else took charge of him from [REDACTED]
12:47:45 37 [REDACTED] at the scene.
38
12:47:53 39 When he said to you that he wanted to speak to Nicola
12:47:58 40 Gobbo, firstly, you weren't surprised about that?---No.
41
12:48:06 42 You refused his request at that stage. I take it you
12:48:10 43 weren't expecting that Ms Gobbo would be providing
12:48:14 44 information to other people, were you?---I didn't have any
12:48:17 45 communication with Ms Gobbo on this day, so I don't know
12:48:20 46 what communication was occurring.
47

.30/09/19

6797

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12:48:23 1 No, no, I follow that. I take it you no expectation that
12:48:29 2 she would cruel your investigation by providing information
12:48:37 3 to other people?---No, I had no concerns about that, no.
4
12:48:42 5 Really it was just - I mean what you were doing was just as
12:48:47 6 a matter of course and no doubt it would have been done
12:48:50 7 with [REDACTED] as well, I assume, would it?---I don't know if
12:48:53 8 he asked to speak to anyone, but if he did it's quite
12:48:56 9 possible it did happen.
10
12:49:06 11 Was any thought given to saying to Ms Gobbo, "Look, you
12:49:14 12 simply cannot be involved in providing legal advice to this
12:49:17 13 person"?---Certainly from my point I can't take it any
12:49:25 14 further than what I've already indicated.
15
12:49:27 16 Yes?---I would have thought that those discussions were
12:49:33 17 happening within other areas of Victoria Police but I
12:49:36 18 wasn't part of it all.
19
12:49:38 20 I follow that. I suppose with the benefit of hindsight it
12:49:41 21 might be, and perhaps not even with the benefit of
12:49:44 22 hindsight, it might have been an appropriate thing to do, t
12:49:48 23 say, look, to Gobbo, "Look, you can't be advising this
12:49:51 24 person because you're in effect an agent of Victoria
12:49:54 25 Police. You're not much different", as I said to you
12:49:56 26 before, "to Simon Overland, you are a police officer,
12:50:00 27 deputised, if you like"?---Yes, I accept that.
12:50:03 28
12:50:03 29 "And if you do that, we're simply just going to have to
12:50:07 30 disclose the fact to [REDACTED] that you're not getting
12:50:10 31 independent legal advice by speaking to Ms Gobbo because
12:50:14 32 she's the one who's putting information to us about
12:50:17 33 you"?---That's a conversation that could have been had with
12:50:20 34 her, yes.
35
12:50:21 36 It could have been had, and was the reason it wasn't had -
12:50:26 37 perhaps I withdraw that. There are other things that could
12:50:32 38 have been done, for example, it might have been said to
12:50:37 39 [REDACTED] quite comfortably, "Look, she's a suspect in all
12:50:42 40 of this and we don't want you to speak to her"?---Well,
12:50:49 41 that's something I hadn't thought of before but generally
12:50:59 42 once that person requests a particular legal practitioner,
12:51:03 43 well then we're kind of bound to allow them to speak to
12:51:07 44 that person. By then probably our options were gone.
45
12:51:12 46 Can I take you up on that. I mean you have been an
12:51:15 47 investigator, a police officer for a long time. There have

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12:51:18 1 been circumstances where you have said to, having discussed
12:51:24 2 it with other police officers, "We don't this solicitor to
12:51:28 3 be involved" or, "We don't want this barrister to be
12:51:32 4 involved because they're connected to someone else who's
12:51:35 5 involved in this and we don't think it's appropriate for
12:51:38 6 this person to be involved as a legal advisor". That has
12:51:41 7 occurred, hasn't it?--Not that I can recall.

8
12:51:44 9 Not at all?--Not that I can recall. I know that we've
12:51:50 10 thought, you know, it would be good if they could ring
12:51:55 11 different solicitors but really we had no choice in it and
12:51:59 12 I think we were actually trained in that way that, you
12:52:02 13 know, even if a solicitor says, even if someone we've
12:52:07 14 arrested says, "I don't know who to call, who do you
12:52:10 15 suggest", we've been trained to say well don't actually
12:52:15 16 suggest you ring Rob Melasecca or anyone like that, you
12:52:18 17 them a phone book and let them find their own.

18
12:52:21 19 We've seen for example that on very many occasions people
12:52:24 20 who [REDACTED], there was a time when they all
12:52:29 21 seemed to go to [REDACTED]. You knew him, didn't
12:52:32 22 you?--No, I didn't.

23
12:52:33 24 Were you aware that often times [REDACTED] ended up acting
12:52:37 25 for people who [REDACTED]?--No, I wasn't.

26
12:52:42 27 In any event, this was a clear situation where it was
12:52:47 28 unusual, there's no doubt about it?--Yes. Yes, I agree.

29
12:53:11 30 If we then move to your notes when you get back to St Kilda
12:53:15 31 Road. I think you get back at about 3 o'clock or
12:53:20 32 thereabouts, is that right, shortly after, half past 3,
12:53:23 33 thereabouts; is that right?--3.40, yes.

34
12:53:28 35 And [REDACTED] and [REDACTED] were put into separate interview rooms; is
12:53:35 36 that correct?--Correct.

37
12:53:36 38 Obviously they're separated?--Yes.

39
12:53:37 40 The investigative process generally involves people who are
12:53:40 41 suspects being put into, deprived of the opportunity to
12:53:45 42 communicate with each other so as they can't concoct a
12:53:49 43 story or anything like that?--Correct.

44
12:53:51 45 Not that necessarily in this case it would have helped them
12:53:54 46 too much. That's as a matter of course, the idea is to
12:53:59 47 separate people?--Yes.

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1
12:54:00 2 Then on this occasion they're given the opportunity again
12:54:09 3 of speaking to a solicitor or a lawyer; is that
12:54:12 4 right?---Correct.
5
12:54:14 6 And I think at 4 o'clock [REDACTED] says - at least they both say
12:54:20 7 they want to speak to Gobbo?---Yes.
8
12:54:22 9 Ordinarily when someone's arrested they generally speak to
12:54:27 10 a solicitor, don't they, rather than a barrister? Not
12:54:31 11 invariably, but ordinarily?---Probably more often than not,
12:54:36 12 yes.
13
12:54:36 14 In any event, both of them wanted to speak to Gobbo and
12:54:41 15 they were given the opportunity to do so; is that
12:54:43 16 right?---Correct.
17
12:54:49 18 They were given a telephone in the interview room; is that
12:54:52 19 right?---Yes, presumably so, yes.
20
12:54:54 21 And this is prior to the commencement of the record of
12:54:57 22 interview obviously, or any record of interview?---Yes.
23
12:55:04 24 As far as you were aware they did speak to Ms Gobbo?---Yes.
25
12:55:09 26 And then you returned to the interview room at about ten
12:55:12 27 minutes past four?---Correct.
28
12:55:14 29 You made a note about that, correct?---Yes.
30
12:55:18 31 And then at 14 minutes past four you commence an interview
12:55:26 32 with [REDACTED]?---Correct.
33
12:55:27 34 There was a Senior Constable Farrar I think is a
12:55:31 35 corroborator; is that right?---Correct, yes.
36
12:55:33 37 Makes a no comment record of interview and it's over in
12:55:37 38 about five minutes?---Correct.
39
12:55:39 40 Shortly afterwards Ms Gobbo arrives; is that
12:55:43 41 correct?---Yes.
42
12:55:44 43 Where was she when you first saw her?---I really don't
12:55:52 44 know. I'm presuming this was all on the 16th floor of the
12:55:59 45 - the Purana floor.
46
12:56:00 47 16th floor, is it?---Yes.

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1
12:56:02 2 There was interview rooms there?---Yes, there was interview
12:56:07 3 rooms there.
4
12:56:08 5 He had not provided you with any information to that stage;
12:56:12 6 is that correct?---I'm sorry, if I just go back a bit to
12:56:15 7 answer that last question. It was the, must have been 12th
12:56:18 8 floor because I've got "interview room MDID", so that was
12:56:23 9 on the 12th floor.
10
12:56:25 11 All right then. So Ms Gobbo's obviously shown in to the
12:56:29 12 interview room?---Yes.
13
12:56:30 14 Do you think you spoke to her?---Probably, yes.
15
12:56:36 16 And obviously there was no discussion about whether or not
12:56:38 17 she should be there, she was simply shown in?---Yes.
18
12:56:45 19 Clearly again you had no discussion with Mr O'Brien about
12:56:48 20 whether or not she should be there?---No, not at that
12:56:51 21 stage.
22
12:56:55 23 As far as you knew did Mr O'Brien know she was there?---I
12:57:04 24 can't say positively but I expect so.
25
12:57:14 26 Why would you say that you would expect that he would have
12:57:18 27 been aware of that?---He was with me all day and all
12:57:20 28 morning, was all part of it all.
29
12:57:22 30 Yes?---We came back to the office. Actually I'm not sure
12:57:30 31 where he went to because I was then very focused on
12:57:36 32 [REDACTED] but I just would expect him to come back and be
12:57:39 33 part of it all. I mean I could be wrong, he might have
12:57:42 34 been still out at [REDACTED] dealing with some issues out
12:57:46 35 there, about how we're going to secure it and all those
12:57:49 36 issues. I'm just not sure. But I'm sure at some stage he
12:57:54 37 came back on that night and later on in the night I've
12:57:58 38 spoken to him.
39
12:57:59 40 Mr O'Brien's notes indicate that he was back in the office
12:58:03 41 at ten to four, so he certainly would have been there at
12:58:05 42 that stage?---Yes, well then I would expect he would be
12:58:08 43 fully conversant with Ms Gobbo appearing.
44
12:58:11 45 Is his office on the 16th floor or is it on the 12th floor,
12:58:15 46 or would that have mattered? You still accept if he's back
12:58:22 47 at the office, whether it be the 16th floor or the 12th

.30/09/19

6801

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12:58:25 1 floor, he would have been aware of what was going on with
12:58:27 2 these people?---I would have expected that he would have
12:58:30 3 been aware that Ms Gobbo was present, yes.
4
12:58:32 5 All right then. Your notes indicate that Ms Gobbo goes and
12:58:35 6 speaks to [REDACTED] first at about 25 past
12:58:40 7 four?---Correct.
8
12:58:41 9 She's apparently there for about 15 minutes or
12:58:46 10 thereabouts?---Yes.
11
12:58:49 12 Are the interview rooms close to each other or not?---I'm
12:59:01 13 not sure.
14
12:59:02 15 Okay?---I know that sounds - there's been some renovations
12:59:08 16 on level 12 and there was some renovations on level 16 and
12:59:12 17 then there was another stage where all our interview rooms
12:59:16 18 were moved to the 8th floor. So it's just hard for me to
12:59:19 19 remember what was in place then.
20
12:59:21 21 Fair enough. Having spoken to [REDACTED] for a period of time,
12:59:25 22 obviously between 4.25 and 4.43, she then goes in to speak
12:59:32 23 to [REDACTED]?---Yes.
24
12:59:34 25 She speaks to him private; is that right?---Yes.
26
12:59:36 27 And she's there until certainly at some stage around
12:59:40 28 5.45?---Yes.
29
12:59:41 30 Conceivably she's speaking to him for a significant period
12:59:47 31 of time, longer than she speaks to [REDACTED] so somewhere in
12:59:50 32 the region of an hour?---Up to an hour, yes.
33
12:59:54 34 Up to an hour. Would you have been in the vicinity when
12:59:57 35 she was speaking to these people?---Certainly myself or
13:00:02 36 another police officer would have been in the vicinity,
13:00:04 37 yes.
38
13:00:04 39 She would have been in the interview room?---Yes.
40
13:00:11 41 Is it usual or unusual for a lawyer to come into the police
13:00:14 42 station and have these discussions with the people who are
13:00:18 43 to be interviewed?---It's not unusual.
44
13:00:21 45 Yes?---So often legal advice is obtained over the phone but
13:00:26 46 there's plenty of cases where solicitors or barristers will
13:00:31 47 come and actually be part of it and give advice

.30/09/19

6802

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13:00:34 1 face-to-face.
2
13:00:35 3 Yes, all right. Did you have any discussion with Ms Gobbo
13:00:44 4 either before or after the interview with either [REDACTED] or
13:00:49 5 [REDACTED]?--I have no note of it. I suspect that I would
13:00:56 6 have spoken to her in some form of matter but I have no
13:01:00 7 note of it. It just would indicate to me that whatever we
13:01:05 8 discussed was not of too great significance.
9
13:01:08 10 You knew at that stage quite clearly that she was the
13:01:13 11 person who had been providing you with the information to
13:01:16 12 enable the arrest of these people?---Yes, without a doubt.
13
13:01:20 14 Had you ever had any discussions with her directly about
13:01:25 15 that fact or those matters?---It's similar, it's a
13:01:29 16 discussion or conversations that I would try and deflect
13:01:37 17 because it wasn't my role. The role was the SDU to receive
13:01:40 18 information so I didn't want to speak to her about
13:01:43 19 information about, you know, criminal information from a
13:01:46 20 human source. That was for the handlers to deal with. You
13:01:50 21 know, we did talk and there's no doubt that she might say,
13:01:55 22 "I've got a meeting with your friends" or something like
13:01:58 23 that, but it wouldn't extend much further than that.
24
13:02:02 25 It was implicit in things that were said between the two of
13:02:05 26 you that she knew that you knew that she was an
13:02:09 27 informer?---Yes.
28
13:02:10 29 Do you think before she left she might have had a bit of a
13:02:15 30 discussion with you about what [REDACTED] might be inclined
13:02:20 31 to do?---Possibly.
32
13:02:26 33 Possible?---Yep.
34
13:02:27 35 And you might not have made a note of that if you had have
13:02:33 36 had that discussion?---No. Well that was at a stage that -
13:02:37 37 it was before our pitch for want of a better word.
38
13:02:39 39 Yes?---You know, I suspect that however we conversed would
13:02:45 40 have been relatively short. You know, "Everything okay?
13:02:48 41 Any problems?" Things like that. Again, I'm just
13:02:52 42 speculating. I really don't know.
43
13:02:55 44 One assumes that you would have said, prior to her going in
13:03:00 45 and speaking to [REDACTED] or [REDACTED] "Look, we've had a short
13:03:03 46 interview with him, he's told us nothing. He's made a no
13:03:07 47 comment record of interview". Do you think you might have

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13:03:11 1 raised that with her and had a discussion with her about
13:03:15 2 whether or not he was going to maintain that position?---I
13:03:20 3 don't know if I had that discussion with her at that stage.
4
13:03:26 5 The evidence appears to be, certainly if we can rely upon
13:03:35 6 the ICRs - if we go to p.259. Have you read these ICRs or
13:03:48 7 had them shown to you at any stage?---I have not read any
13:03:51 8 ICRs. In preparation to give evidence today I've discussed
13:03:57 9 certain ICRs with my legal team.
10
13:04:00 11 Your legal team has drawn certain ICRs to your attention or
13:04:04 12 comments in some of the ICRs, as is apparent in your
13:04:07 13 statement, because you comment on some ICRs?---Yes.
14
13:04:14 15 It appears, if we go further down, you'll see 17:30. If we
13:04:19 16 go to 16:10, it seems that she was contacted by the
13:04:23 17 investigators, advised that [REDACTED] and [REDACTED] in custody, both
13:04:28 18 asking for her, she's en route to St Kilda Road Police
13:04:32 19 Station, she's ten minutes off. She's to ring later. She
13:04:38 20 seems happy about the arrest and she asks the question,
13:04:39 21 "Who's next?" The next communication with Gobbo appears to
13:04:43 22 be, it's 17 :30, so this is 5.30 pm, if this is accurate,
13:04:49 23 "Received a missed call" and phones her back, see that? If
13:04:55 24 that's accurate it indicates that at 5.30 she's
13:05:01 25 communicated with her handlers, which is about 15 minutes
13:05:07 26 before she leaves the police station?---Yes.
27
13:05:14 28 She's very emotional after seeing [REDACTED] in custody. She's
13:05:19 29 spoken to you and you've told her nothing as yet?---Yep.
30
13:05:23 31 "[REDACTED] wondering how police knew about [REDACTED]
13:05:27 32 was there before the police, thinks this may be relevant."
13:05:31 33 So [REDACTED] very suspicious as to how he was caught?---Yes.
34
13:05:35 35 And he wants Ms Gobbo to ring [REDACTED] and [REDACTED]
13:05:40 36 [REDACTED] and [REDACTED]. He's done a no comment record
13:05:47 37 of interview. Was told by interviewers that he'd be there
13:05:50 38 a week and hadn't told Ms Gobbo - sorry, [REDACTED] told her that
13:05:57 39 he hadn't started [REDACTED] yet. "Also spoken to [REDACTED]
13:06:02 40 who stated there was no [REDACTED] at the [REDACTED] therefore reckons
13:06:06 41 there were no devices there." Certainly she's got a degree
13:06:09 42 of information. She's spoken to you and you haven't given
13:06:12 43 anything away as yet it appears?---M'hmm.
44
13:06:19 45 But that call seems to have been made about 15 minutes
13:06:22 46 before she left, right?---Yes.
47

.30/09/19

6804

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13:06:26 1 If your notes are correct and that note's correct. Did you
13:06:29 2 have a discussion with her to the effect that it might be
13:06:35 3 worthwhile if she remains in the vicinity?---Not that I can
13:06:39 4 recall, no.
5
13:06:41 6 Was it your belief at that stage that Ms Gobbo had finished
13:06:45 7 her involvement, she was off and she was leaving, going
13:06:49 8 home or whatever she was doing?---Yes.
9
13:06:51 10 Because it appears that what occurs is she doesn't go home,
13:06:55 11 she remains in the vicinity I think, in the vicinity of the
13:06:58 12 Emerald Hotel or thereabouts, not far from the St Kilda
13:07:01 13 Road Police Station?---Well the Emerald Hotel, her being at
13:07:04 14 the Emerald Hotel is news to me, but that is close to the
13:07:09 15 police station, yes.
16
13:07:10 17 It may indicate that there was an understanding that she
13:07:14 18 wouldn't go too far away, that she would remain in the
13:07:17 19 vicinity. Did you give her that understanding?---No.
20
13:07:19 21 Are you sure about that?---To the best of my knowledge I
13:07:23 22 don't remember giving her that.
23
13:07:30 24 Obviously you're aware that she returns?---Yes, I am aware.
13:07:34 25 I've noted it.
26
13:07:36 27 All right. Do you know whether anyone else had told her to
13:07:42 28 remain in the vicinity?---I'm just not sure.
29
13:07:57 30 I think I took you to an earlier entry in the ICRs which
13:08:02 31 suggested that the handlers were going to meet her in the
13:08:06 32 vicinity after she left St Kilda Road Police Station. That
13:08:10 33 may well indicate that there was an arrangement between
13:08:12 34 Ms Gobbo and the handlers but what you say is you don't
13:08:15 35 recall being a party to that arrangement?---Not that I can
13:08:18 36 recall, no.
37
13:08:20 38 All right?---I mean it was prior to the pitch that we were
13:08:24 39 going to deliver to [REDACTED]
40
13:08:26 41 Yes?---But I just cannot remember what the arrangements
13:08:31 42 were with Ms Gobbo when she left at 5.35.
43
13:08:35 44 You wouldn't be surprised if [REDACTED] did want to speak to
13:08:39 45 his lawyer, Ms Gobbo, if you were going to be putting a
13:08:43 46 pitch to him, I mean that would be - it would be something
13:08:47 47 that you would expect, wouldn't it?---Yes, that he might

.30/09/19

6805

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13:08:51 1 want to speak to her again? Yes, that's a possibility.
2
13:08:54 3 Because at that stage he'd said nothing. Your plan was to
13:08:58 4 go in there and do the pitch to him and clearly for him to
13:09:02 5 come on board he would need to be making very significant
13:09:06 6 decisions pretty soon, wouldn't he?---Yes, he would.
7
13:09:09 8 And in order for that to occur it would hardly be
13:09:13 9 surprising that he might want to speak to his
13:09:16 10 lawyer?---Yes.
11
13:09:16 12 Who also happened to be, as far as you were aware, a
13:09:19 13 reasonably confidant of him as well?---Yes.
14
13:09:31 15 What you say is that - in your statement I think you say at
13:09:41 16 paragraph 51 that your diary records that "we then attended
13:09:45 17 to some administrative matters"; is that right?---Yes.
18
13:09:47 19 Can I just ask you perhaps to have a look at your diary
13:09:53 20 there and see if we can't fill in some information if we
13:09:57 21 can?---Yes.
22
13:09:58 23 What you say is that she clears the station at
13:10:02 24 17:45?---Yes.
25
13:10:03 26 You then have a discussion with Rowe and you task him to
13:10:07 27 obtain DNA and question, is that what it says
13:10:13 28 "question"?---Yes, I think that means that we did those
13:10:19 29 questions on tape. So I think Paul Rowe might have grabbed
13:10:23 30 another interview tape, gone in, put a series of questions
13:10:26 31 about obtaining DNA and fingerprint evidence.
32
13:10:28 33 And fingerprints and that's got to be done on tape, or at
13:10:32 34 least it should be done on tape, correct?---Correct, yes.
35
13:10:37 36 And take fingerprints from both [REDACTED] - then what does it say,
13:10:44 37 "Then interview [REDACTED]"?---Yes, "From [REDACTED] and then
13:10:48 38 interview [REDACTED]".
39
13:10:49 40 Is it the case that [REDACTED] hadn't been interviewed at that
13:10:51 41 stage, so effectively saying to Rowe, "Go and do the DNA
13:10:55 42 and fingerprint questions for [REDACTED] and then can you interview
13:10:58 43 [REDACTED]"?---Yes, he may have had a - you know, it was general
13:11:04 44 practice to interview an arrested person shortly after they
13:11:09 45 got back to the station, even if it was just to put them on
13:11:12 46 tape, give them their rights and suspend it. I'm not sure
13:11:16 47 if that had already occurred or not with [REDACTED] But this

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13:11:18 1 might have been either to do that or to do the more formal
13:11:23 2 interview with [REDACTED]
3
13:11:26 4 Then what you do or your note says you go to the 16th
13:11:32 5 floor?---Yes.
6
13:11:33 7 Obviously you leave the 12th floor and go up to the 16th
13:11:36 8 floor, correct?---Correct, yes.
9
13:11:38 10 You update Superintendent Biggin?---Yes.
11
13:11:41 12 And [REDACTED], is that right?---It is
13:11:48 13 confusing but yes, that's correct.
14
13:11:53 15 Why did you need to update Biggin?---I've got no idea what
13:12:02 16 directed me up there but it was obviously a very
13:12:06 17 significant resolution phase of our investigation and he
13:12:10 18 was up there and I've provided him some information. I
13:12:13 19 don't know if I was asked to, directed to or just ran into
13:12:16 20 him and provided information on what was occurring.
21
13:12:19 22 Right. Was there any need to go up to the 16th floor? You
13:12:28 23 believe that there was a conscious decision to go upstairs,
13:12:34 24 either upon the direction of someone else, perhaps
13:12:36 25 Mr O'Brien?---I really don't know. I'm really - we seem to
13:12:43 26 have had a break or a short five minute downtime and I've
13:12:47 27 gone upstairs and whilst there I've spoken to Mr Biggin.
28
13:12:51 29 There's some evidence available to the Commission that
13:12:53 30 Mr Biggin had been kept apprised of what was going on with
13:13:00 31 this operation, that wouldn't be surprising to you I take
13:13:03 32 it?---No, it wouldn't be.
33
13:13:06 34 What position did he hold at that stage and within what
13:13:08 35 unit was he?---So he had been the Superintendent in charge
13:13:13 36 of the MDID for a number of years but I think he had left
13:13:17 37 in the month or two leading up to this.
38
13:13:21 39 Yes?---I think he was then in charge of the covert sources
13:13:24 40 which would have included the Dedicated Source Unit.
41
13:13:28 42 Do you think that you might have had a discussion with him
13:13:31 43 about, well, obviously something within his remit, whether
13:13:37 44 it be concerning Gobbo or [REDACTED]?---Certainly would have been
13:13:41 45 about [REDACTED] and I suspect I would have mentioned Gobbo as
13:13:46 46 well.
47

.30/09/19

6807

FLYNN XXN - IN CAMERA

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13:13:48 1 Clearly they were the [REDACTED] people - we've got to be a bit
13:13:58 2 careful about what we do here, but certainly as far as
13:14:02 3 Gobbo was concerned she was a source?---Yes. Yes, he would
13:14:11 4 have been interested, you know, putting things together now
13:14:13 5 I suspect he would have been interested because it was his
13:14:17 6 staff that was handling her.
7

13:14:20 8 It may well be that you had updated her, sorry, him, and
13:14:25 9 that would have included I suspect the fact that Gobbo had
13:14:28 10 turned up and provided legal advice to [REDACTED] and [REDACTED]
13:14:32 11 [REDACTED]?---I suspect so.
12

13:14:35 13 It would be extraordinary if you didn't raise that with
13:14:39 14 him, surely?---I suspect that's correct. I suspect the
13:14:43 15 update was, "Yes, we've located [REDACTED] we've found this,
13:14:46 16 we've arrested him and brought him back here and then
13:14:49 17 spoken to them".
18

13:14:49 19 You were conscious when she turned up of the complexities
13:14:53 20 involved in her being there?---Yes.
21

13:14:55 22 And it would be likely that you would have told Mr Biggin
13:15:02 23 about those complexities as far as you were
13:15:06 24 concerned?---Well, I don't know if I discussed the
13:15:09 25 complexities with him. I think it was just a short update
13:15:12 26 in relation to what had occurred.
27

13:15:24 28 Can I ask you this: Mr Biggin has a diary, in his diary he
13:15:35 29 says he received a briefing with Inspector Ryan, Acting
13:15:38 30 Inspector O'Brien and [REDACTED], do you know who
13:15:41 31 that is?---I'm not sure. Potentially it was an Inspector
13:15:46 32 from [REDACTED] that would have been in charge of the arrest.
33

13:15:53 34 In his notes he says, "The briefing was with respect to
13:15:56 35 Operation Posse phases four and five as per operation,
13:16:00 36 order in notes, tactics and planning". Do you know whether
13:16:07 37 there were any documents created or documents provided by
13:16:10 38 way of briefing notes, et cetera?---Briefing notes created
13:16:16 39 that day?
40

13:16:17 41 Yes?---No, not that I'm aware of.
42

13:16:22 43 Do you know what "phase four and phase five as per the
13:16:26 44 operation" means?---No, I don't.
45

13:16:28 46 You don't know whether there are notes already in existence
13:16:31 47 about those aspects of the operation?---Phase four and

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13:16:34 1 five?
2
13:16:35 3 Yes?---No, I'm not sure what they're referring to.
4
13:16:38 5 Did you not see an operation order which contained notes,
13:16:45 6 tactics and planning?---I saw an investigation plan.
7
13:16:49 8 Yes?---I'm not sure if you're referring to the same
13:16:52 9 document or not. I just can't remember if it had separate
13:16:56 10 phases in it, it may have and I just haven't remembered it.
13:17:01 11 But I knew there was an investigation plan in existence.
12
13:17:04 13 Do you know where that's likely to be because we don't
13:17:06 14 believe we've got anything like that?---An investigation
13:17:09 15 plan by, it was drafted by Senior Sergeant O'Brien.
16
13:17:13 17 We've discussed that, that was back in November of
13:17:17 18 2005?---Yes, that's the document I'm referring to.
19
13:17:20 20 That's what you're referring to?---Yes.
21
13:17:22 22 As to whether there are any documents along these lines,
13:17:26 23 "Briefing re Operation Posse phases four and five as per
13:17:28 24 operation order. Operation order in notes, tactics and
13:17:32 25 planning", you don't know anything about that?---It's not
13:17:35 26 ringing any bells, sorry.
27
13:17:37 28 COMMISSIONER: Yes, that's a convenient time. Now how are
13:17:40 29 we going with this witness, how much longer do you think
13:17:45 30 you'll be, Mr Winneke?
31
13:17:48 32 MR WINNEKE: I would say certainly say well into tomorrow,
13:17:51 33 Commissioner.
34
13:17:51 35 COMMISSIONER: What sort of time are we looking at for
13:17:53 36 cross-examination? I just know that other witnesses would
13:17:58 37 like to know a rough idea of when they're likely to be
13:18:00 38 called. Cross-examination is likely to be, Mr Nathwani?
13:18:01 39
13:18:01 40 MR NATHWANI: No more than an hour, probably less.
41
13:18:03 42 COMMISSIONER: Yes. Mr Chettle?
13:18:06 43
13:18:06 44 MR CHETTLE: Virtually none.
45
13:18:08 46 COMMISSIONER: Virtually none. Re-examination wouldn't be
13:18:10 47 very long, Ms Argiropoulos?

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13:18:12 1
13:18:13 2 MS ARGIROPOULOS: No, Commissioner.
3
13:18:13 4 COMMISSIONER: We might get on to another witness tomorrow?
5
13:18:16 6 MR WINNEKE: I think it's unlikely, Commissioner, but it's
13:18:20 7 possible.
8
13:18:20 9 COMMISSIONER: The next witness is to be?
10
13:18:22 11 MR WINNEKE: The next witness to be Mr Green.
12
13:18:24 13 COMMISSIONER: Mr Green, all right.
14
13:18:27 15 MR WINNEKE: Mr Chettle's client. There's an issue perhaps
13:18:30 16 with Mr Black I think for Thursday.
13:18:34 17
13:18:34 18 MR CHETTLE: I've explained to Mr Winneke the issue in
13:18:43 19 relation to Mr Black for one day only.
20
13:18:45 21 COMMISSIONER: Yes, all right. We'll hopefully be able to
13:18:47 22 accommodate that with other witnesses, we'll see. Mr Green
13:18:51 23 is next did you say?
24
13:18:53 25 MR WINNEKE: Yes.
26
13:18:53 27 COMMISSIONER: He won't be needed before lunchtime and by
13:18:56 28 then we'll have a better idea when he might be needed.
13:18:59 29
13:19:00 30 MR CHETTLE: He's around.
31
13:19:00 32 COMMISSIONER: Yes, all right. There's no need for him to
13:19:03 33 come in anyway tomorrow morning.
13:19:06 34
13:19:06 35 MR CHETTLE: Thank you.
36
13:19:06 37 COMMISSIONER: Yes. All right. We'll adjourn until 2
13:19:34 38 o'clock.
13:19:35 39
40 <(THE WITNESS WITHDREW)
13:19:55 41
13:19:56 42 LUNCHEON ADJOURNMENT
43
44
45
46
47

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14:02:20 1 UPON RESUMING AT 2.04 PM:

14:04:58 2
14:04:59 3 <DALE FLYNN, recalled:

14:05:00 4
14:05:02 5 MR WINNEKE: I was asking you, Mr Flynn, about some
14:05:08 6 comments made in Mr Biggin's diaries about some notes,
14:05:12 7 et cetera, et cetera. You don't recall - what you do
14:05:18 8 recall is the plan which was produced by Mr O'Brien back,
14:05:23 9 way back in 2005 in November?---Yes.

14:05:27 10
14:05:31 11 Clearly there's been a fair bit occur since November and
14:05:41 12 there are a number of meetings that you've had, two
14:05:44 13 meetings on the 18th and 19th, and you've really got to
14:05:49 14 sort out in your mind how you're going to give yourselves
14:05:54 15 the best chance of rolling [REDACTED] and getting him to
14:05:58 16 assist you and so there's been some involvement of the SDU
14:06:02 17 in that and you've had discussions about that. Don't you
14:06:07 18 put together some sort of outline or aide-memoire as to how
14:06:13 19 you go about it? Surely you prepare some notes, you know,
14:06:19 20 that you might work with if you're going to carry out some
14:06:22 21 operation like this?---In what respect of the operation?

14:06:26 22
14:06:27 23 All right. Well in particular the important part of the
14:06:31 24 operation whereby [REDACTED] decides to become a
14:06:35 25 witness?---Yep.

14:06:36 26
14:06:37 27 And - - - ?---So I know that there's been a reference made
14:06:41 28 to an investigation plan.

14:06:44 29
14:06:44 30 Yes?---I can't, as I sit here, visualise that document. I
14:06:50 31 would presume that it would be an intelligence report on
14:06:57 32 [REDACTED] which is like a document that would normally be
14:07:00 33 produced at the start of an operation for our targets.

14:07:04 34
14:07:04 35 Yes?---And it would have some additional information in
14:07:07 36 relation to whatever SDU had gleaned, I suppose.

14:07:10 37
14:07:11 38 Yes?---But as I sit here today I just, I've got no doubt
14:07:17 39 that that document was produced and I've probably looked at
14:07:20 40 it at some stage but I can't really recall it or visualise
14:07:24 41 it as I sit here today.

14:07:26 42
14:07:26 43 We know that there was a document I think which was
14:07:28 44 produced which was the investigation plan. You say yes,
14:07:30 45 there would have been, analysts might have put together
14:07:34 46 something in particular in relation to [REDACTED] ---Yes.
14:07:36 47

.30/09/19

6811

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14:07:37 1 It might well have been added to as time went by and as
14:07:41 2 more information was coming in?---Yes.
14:07:42 3
14:07:42 4 You might well have had recourse to it when you're
14:07:46 5 preparing - I mean you're preparing the process of speaking
14:07:50 6 to [REDACTED] and getting him to come on board?---Yes.
14:07:53 7
14:07:54 8 I mean you're a conscientious sort of an officer I take
14:07:57 9 it?---I would hope so, yes.
14:07:59 10
14:08:00 11 You wouldn't go into an important meeting like that without
14:08:03 12 some sort of guideline for you, an aide-memoire or
14:08:07 13 something like that surely?---That's the only other
14:08:10 14 document that I can think of at this stage, everything else
14:08:13 15 was in my notes, in my diary.
14:08:15 16
14:08:15 17 Yes?---We did, we were changing our method of investigation
14:08:22 18 recording, so we were moving to the Interpose system.
14:08:26 19
14:08:26 20 Yes?---But it was difficult for investigators early on in
14:08:30 21 that stage because we just, it was not a user-friendly
14:08:36 22 system to use, so generally what would happen if we had a
14:08:39 23 weekly briefing or something like that, we'd have an
14:08:43 24 tactical investigation officer or an analyst who would
14:08:45 25 actually type in all the updates and things like that. As
14:08:49 26 to what, as my career progressed and I became a lot more
14:08:55 27 fluent with the Interpose system I would have a lot more
14:08:59 28 input into it.
14:08:59 29
14:09:00 30 That came on track a fair bit later, didn't it, the
14:09:02 31 Interpose system?---You're testing my memory. I thought it
14:09:05 32 was brought in about 2004, 2005 but there were a number of
14:09:09 33 teething problems for probably 12 or 24 months.
14:09:13 34
14:09:13 35 You didn't run a day book at that stage?---No. No, I
14:09:19 36 stopped my day books at the end of 2004.
14:09:21 37
14:09:21 38 2004?---Yes.
14:09:22 39
14:09:23 40 That seemed to be across the board people stopped using day
14:09:27 41 books at about that time, was there a reason for
14:09:29 42 that?---Just efficiency. It's time consuming to write a
14:09:32 43 full day book during the day and then come back and sit
14:09:35 44 down and write it all up again in your diary, especially if
14:09:39 45 you had busy days.
14:09:40 46
14:09:40 47 If you did have any notes going into the meeting with [REDACTED]

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14:09:48 1 they might have been notes that you prepared yourself.
14:09:51 2 Would you do that as well or not?---I do, I know I've
14:09:56 3 indicated I don't remember a lot about the planning
14:09:59 4 process. I do remember initially the plan was not for me
14:10:03 5 to have, to interview [REDACTED]
14:10:06 6
14:10:06 7 Yes?---The plan was to have members from my crew interview
14:10:10 8 him and then once that had occurred he would then be
14:10:15 9 brought into the board room or the conference room with
14:10:17 10 Mr O'Brien and myself.
14:10:19 11
14:10:19 12 Yes?---You know, it was just perhaps it was a little bit
14:10:25 13 theatrical but the idea was that, you know, we were higher
14:10:28 14 ranking police officers and we were decision makers, we're
14:10:31 15 the ones that could influence the decision. But that
14:10:34 16 didn't eventuate because just of lack of manpower on the
14:10:39 17 [REDACTED] that [REDACTED] was arrested, that's why I ended up
14:10:42 18 interviewing him.
14:10:43 19
14:10:44 20 When you say interviewing him, speaking to him prior to the
14:10:48 21 interview?---No, no, I meant the formal interview process.
14:10:52 22
14:10:52 23 No, I'm talking about the sales pitch. Perhaps we're at
14:10:57 24 cross-purposes?---Yep.
14:10:58 25
14:10:58 26 The sales pitch, if you like, there's a formal interview
14:11:04 27 which occurs afterwards?---Before and after.
14:11:06 28
14:11:06 29 There's a discussion that occurs before, isn't
14:11:08 30 there?---There was a formal interview before and after the
14:11:10 31 sales pitch.
14:11:11 32
14:11:11 33 There was a no comment record of interview?---Yep.
14:11:14 34
14:11:15 35 Then there's a sales pitch, if you like?---Yes.
14:11:19 36
14:11:19 37 Which occurs off tape?---Yes.
14:11:21 38
14:11:21 39 Or at least off formal tape?---Yes.
14:11:24 40
14:11:24 41 And then when he indicates that he's prepared to come on
14:11:28 42 board, then there's a formal interview?---Yes.
14:11:31 43
14:11:31 44 I'm talking about that informal process which occurs, not
14:11:39 45 464 but in between the two 464s?---Yes. So the only
14:11:43 46 document that would have assisted me at that stage was the
14:11:47 47 interview strategy that we discussed, that we discussed

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14:11:50 1 earlier, but as I indicated I just don't remember much
14:11:53 2 about it.
14:11:54 3
14:11:54 4 Right, okay. The expectation is that there would have been
14:11:58 5 a document which was in effect setting out the interview
14:12:02 6 strategy?---I think I've referred to it as the interview
14:12:06 7 strategy, so that would make sense. I just can't remember
14:12:10 8 what it contained.
14:12:11 9
14:12:11 10 If we can perhaps come to that process, which is the
14:12:18 11 intermediate process if you like. You weren't surprised
14:12:20 12 that there was a no comment record of interview in the
14:12:23 13 first place?---No, he'd - no, I wasn't surprised.
14:12:26 14
14:12:26 15 He hadn't had the opportunity to speak face-to-face with
14:12:31 16 the person who he thought was his lawyer,
14:12:34 17 Ms Gobbo?---Correct.
14:12:34 18
14:12:34 19 He had a discussion with her for a period of time and then
14:12:42 20 Ms Gobbo leaves, right?---Yes.
14:12:44 21
14:12:44 22 At about, somewhere in the region of 5.45?---Yes.
14:12:49 23
14:12:52 24 Then there's the next stage of this process that occurs.
14:12:55 25 You've gone upstairs to have this discussion and in your
14:13:02 26 notes I think there's a reference to you speaking to
14:13:05 27 Mr Biggin?---Yes.
14:13:06 28
14:13:10 29 At that stage, and Mr Chettle has drawn this to my
14:13:14 30 attention, he hadn't come on board at that stage with the
14:13:19 31 SDU, there was a different set up at that stage. He was
14:13:21 32 the head of the unit which had comprised the Technical
14:13:26 33 Support Unit, the Undercover Unit and another entity I
14:13:30 34 can't recall at this stage. Special Project Unit. He was
14:13:35 35 the head of that team at that stage?---Yes, well - - -
14:13:38 36
14:13:38 37 Does that assist you in understanding why it was you would
14:13:40 38 have been updating Biggin?---Well, it's probably the same
14:13:45 39 result as what I said before the lunch break but just with
14:13:50 40 different areas of the department involved. He would have
14:13:52 41 had areas involved, so that would have included special
14:13:56 42 projects and it would have included surveillance units, and
14:14:00 43 as the head of that unit I would have been updating him on
14:14:04 44 the progress of the investigation.
14:14:05 45
14:14:05 46 Would he have been the most senior officer at that stage
14:14:08 47 who would have been available for you to speak to at

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14:14:11 1 St Kilda Road on that night, [REDACTED]?---It
14:14:14 2 appears to be from my diary, yes.
14:14:16 3
14:14:17 4 If for no other reason he was the most senior officer at
14:14:21 5 St Kilda Road who was generally involved in the sorts of
14:14:27 6 operations, if you like, or investigations which were being
14:14:33 7 conducted at that stage?---Yes. As I indicated Mr Biggin
14:14:36 8 had previously been in charge of the MDID and was very
14:14:40 9 experienced with drug investigations.
10
14:14:42 11 Do you know where Mr Overland was on this night?---No.
14:14:45 12
14:14:45 13 Is it likely that you would have known on the night whether
14:14:49 14 or not he was there?---I suspect that if he was there
14:14:54 15 perhaps - certainly I've never had detailed conversations
14:14:57 16 with Mr Overland. I do recall him being present for one
14:15:04 17 significant arrest phase whilst I was at Purana. I tend to
14:15:08 18 think it was probably more to do with the arrests that were
14:15:12 19 instigated once Tony Mokbel had been arrested in Greece but
14:15:15 20 I'm not sure about that. So I remember him being there on
14:15:19 21 one occasion, I'm just not sure what occasion it was.
14:15:22 22
14:15:22 23 Do you say you hadn't spoken to him at any stage about any
14:15:25 24 of these matters?---No.
14:15:26 25
14:15:27 26 These investigations?---No.
14:15:28 27
14:15:28 28 Never did. That wouldn't be unusual for you to speak to
14:15:32 29 him at that stage as a Sergeant?---No, there's quite a
14:15:37 30 number of different ranks between him and me.
14:15:44 31
14:15:44 32 Although we certainly understand that he was in
14:15:46 33 communication, not originally, with [REDACTED]
14:15:46 34 [REDACTED] Sandy White of the DSU, would that be
14:15:50 35 surprising?---That's not something I'm aware of, but no, it
14:15:53 36 wouldn't be overly surprising. I do know that, I believe
14:15:56 37 at some stage Mr O'Brien was briefing him but I'm just not
14:16:00 38 sure when that started.
14:16:01 39
14:16:01 40 Again, there'd be a few ranks between Acting Inspector
14:16:08 41 O'Brien and Mr Overland, wouldn't there?---Yes, there would
14:16:11 42 be.
14:16:11 43
14:16:12 44 What would be the normal course in terms of briefing
14:16:17 45 up?---So the normal course is you just brief up directly to
14:16:22 46 your next direct report, but on occasions when there's
14:16:26 47 specialist concerns, there might be - an example would be

.30/09/19

6815

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14:16:28 1 if a police officer came over an investigation, or this as
14:16:34 2 an example with the concerns around Ms Gobbo as a source,
14:16:37 3 then there might be different reporting lines.
14:16:40 4
14:16:40 5 I take it you were aware that Mr O'Brien was briefing
14:16:44 6 Mr Overland in relation to these Purana matters?---I became
14:16:47 7 aware of it at some stage, I just don't know - I couldn't
14:16:53 8 tell you what date he started briefing him. I subsequently
14:16:57 9 became aware at some stage he was briefing directly to
14:17:00 10 Mr Overland.
14:17:01 11
14:17:01 12 You would have been aware Mr Overland was particularly
14:17:04 13 invested in Purana and had a particular interest in
14:17:07 14 Purana?---Yes, I think it sat under him in the command
14:17:10 15 structure, yes.
14:17:11 16
14:17:18 17 So it appears that you've come downstairs and do you know
14:17:22 18 how long you were upstairs briefing for or not?---Briefing
14:17:29 19 - - -
14:17:29 20
14:17:29 21 Updating Biggin and [REDACTED]?---Well, no, the diary entry,
14:17:37 22 the timing I've got Ms Gobbo clearing at 5.45 and the SDU
14:17:44 23 member arriving at 6.35, so what's that, 50 minutes, some
14:17:49 24 time in between that 50 minutes.
14:17:52 25
14:17:52 26 She clears at 17:45. You have a discussion with Rowe about
14:17:56 27 formal matters?---Yep.
14:17:56 28
14:17:57 29 That wouldn't have taken too long, then you go up to the
14:18:00 30 16th floor. You might have briefed those officers for a
14:18:05 31 while?---Yep.
14:18:06 32
14:18:07 33 And then you come down at 6.35, is that right? How did you
14:18:13 34 know that Mr Smith had arrived? We're calling him Mr Smith
14:18:19 35 if you haven't seen that?---I don't know if he came and
14:18:22 36 joined us in the conversation on the 16th floor or whether
14:18:25 37 I'd been back down to the 12th floor. I obviously, or my
14:18:30 38 diary notes don't reflect what time I went back down to the
14:18:33 39 12th floor.
14:18:34 40
14:18:34 41 Do you know what occurred between 18:35 and 18:50?---Not
14:18:40 42 with any certainty, no. I would suspect that I probably
14:18:43 43 gave him an update. Again, I'm not sure.
14:18:48 44
14:18:51 45 Can I ask you this: at this stage you had had no
14:18:58 46 knowledge, aside from any discussions that you might have
14:19:01 47 had with Ms Gobbo and [REDACTED] or [REDACTED], you hadn't been

.30/09/19

6816

FLYNN XXN - IN CAMERA

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14:19:11 1 provided with any information essentially because it was a
14:19:16 2 no comment record of interview, went for five minutes,
14:19:18 3 there was nothing discussed in that as to factual
14:19:23 4 matters?---Correct.
14:19:24 5
14:19:29 6 There's information passed to Mr O'Brien shortly after
14:19:33 7 18:35 to the effect that there were [REDACTED] handguns in [REDACTED]
14:19:40 8 [REDACTED] Are you aware of that?---I'm aware that there were
14:19:44 9 [REDACTED] handguns located in [REDACTED]
14:19:46 10
14:19:52 11 Do you know where that information came from?---I think, to
14:19:57 12 me, it came from [REDACTED] I think it's mentioned in his
14:20:01 13 second record of interview.
14:20:03 14
14:20:04 15 You know that Ms Gobbo communicated that information to her
14:20:10 16 handlers who passed it on to Mr O'Brien
14:20:13 17 immediately?---Right.
14:20:14 18
14:20:14 19 Are you aware of that?---No.
14:20:16 20
14:20:16 21 If we go to ICR p.259, there's a reference at 18:35 to I
14:20:28 22 think Mr Smith receiving a text message from Ms Gobbo in
14:20:35 23 which she informed him that there were [REDACTED] guns, [REDACTED] was a
14:20:41 24 [REDACTED] and the [REDACTED] [REDACTED] or something like that,
14:20:44 25 and she'd forgotten to mention this, in the [REDACTED] or
14:20:49 26 [REDACTED] and DDI O'Brien was advised immediately?---Yes.
14:20:54 27
14:20:55 28 That clearly is information, if you accept that ICR, that
14:21:00 29 Ms Gobbo has gleaned from [REDACTED]?---Yes.
14:21:03 30
14:21:03 31 And has then gone and passed it on to Mr O'Brien?---Yes.
14:21:07 32
14:21:12 33 You say that subsequently that information was provided to
14:21:15 34 you by [REDACTED]?---Yes, it's referred to towards the end
14:21:24 35 of the interview.
14:21:25 36
14:21:25 37 Do you think it might have also been provided to you during
14:21:28 38 the course of that intermediate meeting when Ms Gobbo was
14:21:36 39 present?---From Ms Gobbo to me direct, is that what you're
14:21:40 40 asking?
14:21:40 41
14:21:41 42 I'm asking whether you had heard it prior to the
14:21:43 43 interview?---Not that I can recall, no. I do know that I
14:21:49 44 think it might be the next day, I was briefing a crew that
14:21:55 45 were going to work on the search warrant and I gave them
14:21:58 46 instructions about the handguns. So whether that
14:22:01 47 information had come from [REDACTED] or via Mr O'Brien, or a

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14:22:08 1 combination of both, I'm just not sure.
14:22:10 2
14:22:10 3 It's pretty apparent that it wasn't first mentioned in the
14:22:13 4 record of interview because at question 430 you pose this
14:22:18 5 question, "And earlier you mentioned, you said something to
14:22:20 6 me, um, about firearms"?---Yes.
14:22:23 7
14:22:24 8 You had that information prior to the interview, the formal
14:22:27 9 record of interview?---I've got no notes of that previous
14:22:32 10 conversation but that appears from that question is what
14:22:36 11 you're saying is correct, yes.
14:22:37 12
14:22:38 13 Because that information, I mean on one view it came from
14:22:41 14 Ms Gobbo. It was given to Ms Gobbo by ██████████ in a
14:22:46 15 private communication. She then passes it on to her
14:22:49 16 handlers, it ends up in the police, in the possession of
14:22:52 17 the police, that information?---Well, that appears correct,
14:22:57 18 yes. I'm just not sure if that caused me to be aware of it
14:23:01 19 or ██████████ caused me to be aware of that. The answer to
14:23:05 20 that question would suggest that he had told me earlier
14:23:09 21 that there were handguns in there.
14:23:10 22
14:23:14 23 The meeting which occurs - can you tell the Commissioner,
14:23:19 24 when you have the discussion with ██████████ after Mr Smith
14:23:28 25 arrives, whereabouts does that discussion take place?---So
14:23:36 26 it was in a conference room on the 16th floor to the best
14:23:42 27 of my recollection.
14:23:42 28
14:23:43 29 This is after the formal record of interview?---Yes.
14:23:45 30
14:23:46 31 Where he answers no comment?---Yes.
14:23:52 32
14:23:52 33 There's an arrangement for the DSU operator to arrive,
14:23:58 34 Mr Smith?---Yes.
14:23:59 35
14:23:59 36 He arrives?---Yes.
14:24:00 37
14:24:01 38 So he's part of some sort of process that's been planned
14:24:04 39 out to roll ██████████ correct?---Yes.
14:24:06 40
14:24:08 41 And you're aware that he's going to arrive?---Well the
14:24:13 42 first mention I've got of it is in my diary when he arrives
14:24:17 43 at 6.35.
14:24:18 44
14:24:19 45 It would be fair to say that it wasn't a surprise that he'd
14:24:22 46 turned up. You'd been speaking to these people over the
14:24:25 47 ██████████ and the ██████████ and there'd been discussions about the

.30/09/19

6818

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14:24:29 1 process and the techniques you might use, the information
14:24:31 2 you might put to him to roll him. It can't have been a
14:24:34 3 surprise that he turned up, surely?---I can't remember but
14:24:38 4 that's a fair summation that you've made.
14:24:40 5
14:24:40 6 So you believe that [REDACTED] brought upstairs and into this
14:24:46 7 meeting room, if you like, on the 16th floor?---Yes.
14:24:49 8
14:24:50 9 So it's not a formal interview room, it's a - - - ?---No.
14:24:54 10
14:24:54 11 It's a more informal process?---No, it was a conference
14:24:57 12 room, that's right. And I go back to what I said earlier,
14:25:01 13 the plan as I remember it was for both myself and Inspector
14:25:06 14 O'Brien to be there in suits, you know, portraying that we
14:25:12 15 were the decision makers in the police department.
14:25:14 16
14:25:14 17 And he's being treated as, as you say, there's been a bit
14:25:19 18 of theatre, to make it apparent to him that he's dealing
14:25:23 19 with some pretty important investigators?---Yes.
14:25:25 20
14:25:26 21 Big decisions and then he could be given the degree of
14:25:30 22 attention that he needs by these senior police
14:25:33 23 officers?---Yes.
14:25:33 24
14:25:33 25 Part of the process, right?---Yes.
14:25:37 26
14:25:39 27 You are there with - do you recall how long Mr O'Brien is
14:25:43 28 there for?---He was there for the - I just remember us
14:25:52 29 doing it together. So he was there whilst I was there.
14:25:55 30
14:25:55 31 Right. There's some suggestion that Mr O'Brien remains for
14:26:08 32 a period of time, a short period of time and then leaves
14:26:10 33 you alone. Both Mr Smith and Mr O'Brien leave. Do you
14:26:15 34 recall that?---I don't recall it but it's, I'm aware of it,
14:26:20 35 yes.
14:26:20 36
14:26:21 37 You know what's being suggested, don't you?---Yes, yes.
14:26:24 38
14:26:24 39 In any event do you say that pretty soon after you, O'Brien
14:26:29 40 and Smith start talking to him he says, "Look, I want my
14:26:34 41 solicitor here"?---Yes, that's correct.
14:26:35 42
14:26:35 43 That really didn't get too far, that pitch, if you like,
14:26:39 44 because as I suggested earlier, not unsurprisingly [REDACTED] says,
14:26:45 45 "Well look, I need to speak to Nicola"?---Yes.
14:26:48 46
14:26:48 47 And so you leave the room. Do you go and make contact with

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14:26:53 1 Gobbo, call her on her mobile phone, is that right?---Yes,
14:26:58 2 that's correct.
14:26:59 3
14:27:00 4 And I assume [REDACTED] not left on his own, I assume he's left -
14:27:05 5 you leave, make the telephone call. O'Brien and Smith
14:27:08 6 remain with him?---I presume so.
14:27:13 7
14:27:14 8 And you contact Ms Gobbo and she's in the vicinity and she
14:27:20 9 returns?---She does, yes.
14:27:21 10
14:27:21 11 Did she say where she was?---Not that I can recall, no.
14:27:24 12
14:27:25 13 Would you have known that she was handy?---I can't
14:27:31 14 remember.
14:27:32 15
14:27:34 16 One assumes that you see the evidence appears to be that
14:27:39 17 Gobbo was, when she left the police station, was going to
14:27:44 18 go and liaise with I think Smith and Green, who were sort
14:27:50 19 of on standby to meet her. Smith turns up to the station
14:27:55 20 and do you think you might have discussed with Mr Smith, in
14:27:59 21 between say 18:35 when he arrives and 18:50 when the pitch
14:28:04 22 begins, that Gobbo's in the vicinity and she's waiting to
14:28:07 23 come down if necessary?---It's possible.
14:28:09 24
14:28:10 25 That's possible?---It's possible, yes.
14:28:12 26
14:28:13 27 In any event she does turn up and it's not too long before
14:28:18 28 she arrives, do you accept that proposition?---Yes.
14:28:22 29
14:28:25 30 And when she arrives what, I suggest, occurs is that a
14:28:34 31 decision is made, whether on his part, that is [REDACTED] or your
14:28:41 32 part, that is the police, that you and Gobbo will remain
14:28:46 33 with [REDACTED] to see if [REDACTED] can't be convinced to come on
14:28:53 34 board?---Well that's what I've been made aware of, yes.
14:28:57 35
14:28:57 36 That doesn't - I mean discord with your recollection, if
14:29:01 37 you like, that rings a bell with you, does it?---Only
14:29:05 38 because I've been asked about it previously, that's all.
14:29:09 39
14:29:09 40 The thing is, your notes are pretty sparse about this,
14:29:13 41 aren't they?---Yes, they are.
14:29:14 42
14:29:14 43 Indeed, really if you look at your notes we've got, "18:50,
14:29:20 44 speak to [REDACTED]", you've obviously written his name in,
14:29:24 45 "With DI Inspector O'Brien and Detective Smith. Requested
14:29:35 46 solicitor N Gobbo present", so request that she be present,
14:29:37 47 "MTC", mobile telephone call, "To same and attends", is

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14:29:43 1 that right?---Yes.
14:29:44 2
14:29:44 3 "Discussed options"?---Yes.
14:29:46 4
14:29:46 5 Then if we go over the page, the very next entry we see at
14:29:51 6 the top of the page is, "█ agrees to be re-interviewed and
14:29:56 7 assist"?---Yes.
14:29:56 8
14:29:56 9 The re-interview doesn't commence until 21:08?---Correct.
14:30:00 10
14:30:02 11 One assumes once you've got him agreeing to be
14:30:05 12 re-interviewed you want to get him on tape as soon as you
14:30:08 13 could?---Yes, that's correct.
14:30:09 14
14:30:09 15 Really what we've got there is a gap from 18:50 through to
14:30:13 16 21:08 where some quite significant events occur sort of in
14:30:18 17 the history of Victorian policing but there's not too much
14:30:22 18 in the way of notes?---Well, you know, my notes are what
14:30:25 19 they are.
14:30:26 20
14:30:26 21 What they are, yes. And what they are is pretty
14:30:31 22 sparse?---Well, I suppose I could accept that but it wasn't
14:30:40 23 intentionally made to be sparse, it was just, just the
14:30:44 24 recording I did on the day, that's all.
14:30:46 25
14:30:47 26 One assumes that you had your diary there with
14:30:51 27 you?---Generally I have it with me, yes.
14:30:53 28
14:30:53 29 It would be, in a case like this you would be inclined to
14:30:57 30 have your diary, wouldn't you?---Yes.
14:30:58 31
14:30:58 32 There's nothing preventing you from taking notes about what
14:31:02 33 was occurring?---No.
14:31:03 34
14:31:04 35 And it seems that you chose not to, for whatever reason,
14:31:11 36 make notes of what occurred over this period?---Yes, that's
14:31:16 37 correct.
14:31:16 38
14:31:16 39 If we go up the page we can see, for example, 16:00 there's
14:31:21 40 business about █ and Gobbo. 16:10. Then we go 16:14,
14:31:27 41 then 16:19. You're making notes about what's going on,
14:31:32 42 what's being said, what's being done. Do you agree with
14:31:35 43 that?---Yes.
14:31:35 44
14:31:36 45 And yet when we get to this pitch, if you like, there's
14:31:40 46 just no notes really. You know you've got "discussed
14:31:43 47 options", and then that's really, that's basically it,

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14:31:49 1 "discussed options"?--Yes, that's correct. I don't even
14:31:53 2 have the times that Ms Gobbo returned but I don't - really
14:32:03 3 can't take that further.
14:32:04 4
14:32:04 5 It might be thought that that was a deliberate ploy not to
14:32:10 6 record all of that information because of the complexities
14:32:12 7 that you considered were attendant to this whole
14:32:17 8 exercise?---No, I wouldn't agree to that.
14:32:18 9
14:32:19 10 Disagree?---Yes, I was thinking, you know - I mean I've
14:32:25 11 taken notes of every type of parts on that day and
14:32:28 12 including that part, why I just haven't elaborated on that
14:32:33 13 particular section it could be, well, just focusing on
14:32:41 14 trying to get [REDACTED] to assist police.
14:32:45 15
14:32:46 16 But even so, I mean given that whilst you might have been
14:32:51 17 focusing on that there wouldn't have been anything stopping
14:32:56 18 you prior to, for example, carrying out the interview or
14:33:02 19 even after the interview setting down when your
14:33:05 20 recollections were quite fresh what had occurred, do you
14:33:08 21 accept that?---Yes, I accept that there's, I could have
14:33:10 22 done that, yes.
14:33:11 23
14:33:12 24 And you might also expect that in circumstances where a
14:33:16 25 person, to your belief and knowledge at that stage, was
14:33:22 26 going to assist and provide evidence against other people,
14:33:26 27 you would expect that down the track lawyers representing
14:33:32 28 those people might want to know exactly what had occurred
14:33:36 29 and what had been suggested to him, what sort of offers had
14:33:39 30 been made to him, to get him to assist the police?---Um, I
14:33:45 31 don't know if I thought that at the time but this was part
14:33:50 32 of a long process with [REDACTED] and I have taken detailed
14:33:55 33 notes at other stages but this was a two hour block and
14:33:59 34 I've written what I've written.
14:34:00 35
14:34:00 36 Yes, okay. I mean clearly there are a lot of matters
14:34:15 37 discussed. You had an investigation plan. You were going
14:34:20 38 to talk about, you know, [REDACTED], Ms Gobbo, et cetera,
14:34:29 39 et cetera. All of these sorts of things were going to be
14:34:35 40 put to him. Those were matters which may well have, it may
14:34:42 41 well have been worthwhile writing about?---Well, the main
14:34:47 42 pitch.
14:34:48 43
14:34:49 44 Yes?---Was very, very simple and it was simply about the
14:34:53 45 timing that he was looking to spend in prison. There were
14:34:57 46 other matters and we did talk about, um, [REDACTED] and
14:35:03 47 [REDACTED] to [REDACTED] and things like that but the, to the

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14:35:08 1 best of my recollection the significant part of the pitch
14:35:13 2 was very, very simple and it was just simply that he could
14:35:18 3 dramatically reduce the amount of time that he could
14:35:24 4 potentially do in gaol for the [REDACTED]
14:35:31 5 [REDACTED] as opposed to helping police.

14:35:33 6
7 I follow that. I mean it was a pretty simple pitch, or at
14:35:33 8 least you might think it would be a simple pitch and yet
14:35:33 9 the discussion seems to have gone for quite some time,
14:35:37 10 doesn't it?---Yes.

14:35:37 11
14:35:38 12 And ultimately when you came to make a statement about it,
14:35:43 13 and you did make a statement I think in or about June of
14:35:47 14 2006, this is what you said, "At 4.14 I commenced a tape
14:35:54 15 recorded interview with [REDACTED] In his presence I
14:35:57 16 unsealed three audiotapes, marked each master, second
14:36:01 17 original, third original. Senior Constable Farrar was
14:36:04 18 present for the initial part of the interview. At a later
14:36:08 19 stage Detective Constable Rowe replaced Senior Constable
14:36:11 20 Farrar as the corroborator of this interview"?---Yes.

14:36:12 21
14:36:13 22 "After several suspensions this interview was completed at
14:36:17 23 11.27"?---Yes.

14:36:20 24
14:36:21 25 That is pretty sparse as well, isn't it?---Yes.

14:36:22 26
14:36:22 27 That misses out a whole lot of information which may well
14:36:26 28 have been relevant to either a lawyer or a court or a jury,
14:36:31 29 et cetera, in trying to work out what happened at that
14:36:33 30 crucial time. Do you want me to put that statement up so
14:36:44 31 you can see it?---Yes please.

14:36:44 32
14:36:48 33 VPL.6065.0011.2844. That's at p.52, 2852. Page 9 of 14.
14:37:18 34 I apologise, I must say - I've done what we've criticised
14:37:23 35 people for not doing, that is putting Mr Smith on notice
14:37:31 36 and I apologise. Perhaps whilst we're getting that up.
14:38:03 37 You would accept that whilst you may not ordinarily go into
14:38:10 38 a good deal of detail about those sorts of processes, it
14:38:15 39 would be reasonable to include at least the fact that there
14:38:19 40 was a discussion had with him, with various police
14:38:22 41 officers, including Mr O'Brien, do you accept that, that
14:38:27 42 might have been information that could go into the
14:38:29 43 statement?---I don't think it would be common practice to
14:38:32 44 put those type of conversations in there.

14:38:33 45
14:38:34 46 No?---Generally when we make a statement what's evidentiary
14:38:38 47 is what's recorded on a TRIM tape, so the purpose of making

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14:38:44 1 that statement is to make that TRIM tape admissible.
14:38:47 2
14:38:47 3 I follow that?---I'm not sure which prosecution this
14:38:52 4 statement was made for but - - -
14:38:55 5
14:38:56 6 16 June 2006, p.9. Would it assist you if you saw the top
14:39:15 7 of the statement to see what matter it was made in relation
14:39:20 8 to, or would it have been made simply in relation to the
14:39:24 9 arrest of [REDACTED]?---Possibly.
14:39:26 10
14:39:26 11 And [REDACTED]?---Possibly.
14:39:28 12
14:39:28 13 So that would have been common to just about every hand-up
14:39:34 14 brief that involved [REDACTED] giving evidence?---Yes.
14:39:39 15
14:39:42 16 So if we go perhaps, if we go down to p.5. See
14:40:05 17 there?---Yep.
14:40:05 18
14:40:06 19 You talked about the arrest of [REDACTED] and [REDACTED] do you see
14:40:13 20 that?---Yes.
14:40:13 21
14:40:14 22 That really is just a statement which talks about the
14:40:18 23 arrest of [REDACTED] and [REDACTED]?---Yep.
14:40:21 24
14:40:22 25 And at the end of it you describe the process by which the
14:40:25 26 interview occurs?---Yep, just need to scroll down a bit
14:40:33 27 further.
14:40:33 28
14:40:34 29 Scroll down, thanks?---Yes, this appears to be a statement
14:40:47 30 for either the prosecution of [REDACTED] or [REDACTED]
14:40:54 31
14:40:54 32 Keep going. Nonetheless this statement would have been
14:41:04 33 produced, wouldn't it, at least called for in other
14:41:08 34 prosecutions where [REDACTED] gave evidence?---Yep, quite
14:41:14 35 possibly.
14:41:14 36
14:41:15 37 In any statement in which it was, sorry, any prosecution in
14:41:23 38 which [REDACTED] gave evidence, there was generally an
14:41:28 39 interest to know how it was that [REDACTED] sorry, [REDACTED] came
14:41:33 40 to give evidence and came to decide to assist the police,
14:41:36 41 you'd agree with that proposition?---Yes, I would.
14:41:38 42
14:41:38 43 And whilst it may well be fair enough to provide a fairly
14:41:43 44 truncated version about that event, which clearly that
14:41:46 45 statement is, you would say that that would be made up for
14:41:49 46 by providing appropriate disclosure to enable defendants
14:41:55 47 and the court to get a bit better of an idea about how it

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14:41:59 1 all came about?---So with other accused I don't know if I
14:42:08 2 would even have broached the arrest of [REDACTED]
14:42:13 3
14:42:13 4 Yes?---In my statement.
14:42:14 5
14:42:15 6 Yep. So what, you would have made a statement on the brief
14:42:24 7 which didn't contain anything about the arrest of [REDACTED]
14:42:30 8 yes?---I can't, I can't recall actually what I did do, but
14:42:35 9 as I sit here and think about it now, I don't see why I
14:42:39 10 would include, unless it was, there was some relevance in
14:42:43 11 relation to [REDACTED] itself or one of the other accused,
14:42:47 12 like [REDACTED], I don't see why I would make a statement
14:42:53 13 in relation to the arrest of [REDACTED] If he becomes a
14:42:57 14 witness then it's for him to talk about it and what he says
14:43:00 15 in his statement.
14:43:01 16
14:43:01 17 If then there was, for example, cross-examination at
14:43:04 18 committal about that process?---Yes.
14:43:07 19
14:43:07 20 Then it would become apparent to you, wouldn't it, that
14:43:10 21 this is what defence is interested in, the process whereby
14:43:15 22 [REDACTED] comes on board, decides to assist police, in that
14:43:18 23 circumstance it would be then relevant, wouldn't it?---Yes,
14:43:21 24 it would be.
14:43:22 25
14:43:22 26 And one would expect and would hope that there would be
14:43:26 27 appropriate disclosure made, as we discussed last time we
14:43:30 28 were here, about those processes and how it came
14:43:35 29 about?---Well, as I think I answered to those questions, my
14:43:40 30 number one concern at that stage would be the protection of
14:43:43 31 Ms Gobbo as a human source.
14:43:45 32
14:43:45 33 Yes?---So that would be the overriding concern at this
14:43:50 34 stage.
14:43:50 35
14:43:50 36 Yes?---In fact I know with subsequent prosecutions that it
14:43:54 37 was very difficult, I was put into a difficult situation
14:43:57 38 when I was asked about [REDACTED] getting legal advice and I
14:43:59 39 felt on one hand if I answered that correctly that I'm
14:44:05 40 potentially putting Ms Gobbo's life at threat, but of
14:44:10 41 course on the other hand I would be committing an offence.
14:44:11 42 When I was asked those questions I answered it as to what
14:44:17 43 occurred.
14:44:17 44
14:44:17 45 Mr Flynn, I'm going to come to some of those in due course
14:44:20 46 but what I do suggest to you is that the obligation of any
14:44:27 47 person who gets into the witness box and swears to tell the

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14:44:30 1 truth, the whole truth and nothing but the truth is quite a
14:44:34 2 simple process?---Yes.
14:44:35 3
14:44:35 4 You do that?---Yes.
14:44:36 5
14:44:36 6 If you need to say, "Well look, I need to get some legal
14:44:42 7 advice about public interest immunity" that's what you do,
14:44:44 8 do you accept that?---Yes.
9
14:44:45 10 But you don't simply feel uncomfortable and answer
14:44:50 11 questions which might perhaps be not the whole truth, do
14:44:54 12 you accept that?---There are certainly, provided you answer
14:45:01 13 the questions and tell the truth but there are certainly
14:45:04 14 times where for, what I would say would be the right
14:45:11 15 reason, there would be questions you would not want to
14:45:14 16 answer, simply because you are putting someone's life at
14:45:19 17 risk or it might be the integrity of an investigation or
14:45:22 18 something along those lines.
14:45:23 19
14:45:24 20 That's the right reasons, unfortunately they were reasons
14:45:26 21 the court has to determine. That really is the advantage
14:45:28 22 for a police officer. You don't need to worry about the
14:45:31 23 right or the wrong reason. Do you accept that proposition?
14:45:34 24 It's really up to the court. For you to say, "Well look, I
14:45:38 25 can't answer that by telling the whole truth, I'm going to
14:45:43 26 have to put my hand up and say I need some legal advice
14:45:46 27 about this or make a claim for public interest
14:45:49 28 immunity"?---Yes, that's a standard option and it's open to
14:45:52 29 us, yes.
14:45:52 30
14:45:52 31 And not answer questions - you say look, you got into the
14:45:56 32 witness box and you felt very uncomfortable and very
14:46:00 33 nervous about certain questions being asked of you, do you
14:46:02 34 accept that?---Yes.
14:46:03 35
14:46:04 36 You shouldn't have put yourself and you shouldn't have been
14:46:09 37 put into that position I suggest to you?---Hindsight is a
14:46:13 38 wonderful thing. But when we get back to Ms Gobbo's
14:46:17 39 involvement on the [REDACTED] this is one of the reasons the
14:46:20 40 danger that, that position escalated the risk to her
14:46:24 41 significantly, so that would be one of my concerns. That's
14:46:27 42 a hindsight answer. I look back and think, "That was wrong
14:46:30 43 because we put her in danger".
14:46:32 44
14:46:32 45 I understand?---But at the time on the [REDACTED] we didn't
14:46:35 46 realise or, you know, what happened on the [REDACTED], [REDACTED] and
14:46:38 47 [REDACTED] occurred but that was probably - - -

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14:46:44 1
14:46:45 2 All right. We're being a bit hypothetical?---Okay.
14:46:48 3
14:46:49 4 I'll come to the transcripts in due course. So what does
14:46:55 5 occur is that there's a fairly lengthy discussion between
14:47:00 6 you, [REDACTED] and Gobbo is present?---Yes.
14:47:04 7
14:47:04 8 During that meeting. Is it your recollection that in
14:47:18 9 effect Ms Gobbo was backing you up and suggesting or trying
14:47:22 10 to convince [REDACTED] that it was in his interests to
14:47:26 11 assist police to come on board?---It's my conclusion that
14:47:36 12 she must have provided that type of advice to [REDACTED]
14:47:39 13
14:47:41 14 Here we have a situation where [REDACTED] and you accept it
14:47:45 15 was only relatively recently that he finds out that Gobbo
14:47:49 16 is not actually acting in his best interests, well, at
14:47:52 17 least not acting solely in his best interests?---Yes.
14:47:55 18
14:47:55 19 He didn't know, in other words, that she was an agent for
14:47:58 20 the police?---No, he didn't.
14:47:59 21
14:47:59 22 He has told you that and you accept that?---Yes.
14:48:01 23
14:48:03 24 She's in there assisting you, as she had been doing since
14:48:10 25 she came on board as an agent of the police in September of
14:48:13 26 2005?---Yes.
14:48:15 27
14:48:15 28 Assisting you to convince him to roll over and assist the
14:48:20 29 police?---Yes.
14:48:21 30
14:48:23 31 And that process takes some time because it seems apparent
14:48:29 32 from the notes, and some other matters that I'll take you
14:48:32 33 to in due course, that the meeting seemed to go on for some
14:48:39 34 time, right. Accept that?---Well it was a two hour window,
14:48:44 35 so - and that includes the call to Ms Gobbo, her coming
14:48:48 36 back so, you know, it's within that two hour range.
14:48:53 37
14:48:54 38 All right, okay. There's some material which suggests, for
14:49:06 39 example, if we go to Mr White's - I'm sorry, according to
14:49:15 40 Mr O'Brien's notes at 19:55 the effect of those notes is
14:49:19 41 that you and Gobbo are still with [REDACTED] I think
14:49:24 42 that's in his notes, 19:55. Perhaps if we go to 20:13,
14:50:04 43 Mr Sandy White's notes indicate that at 20:13 he's updated
14:50:09 44 by Mr Smith. [REDACTED] is considering assisting, Gobbo
14:50:15 45 currently speaking to him. Clearly that's still going on
14:50:20 46 at quarter past 8?---Yes.
14:50:24 47

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14:50:24 1 And then there's a note - perhaps if we go to ICR p.260.
14:50:43 2 There's a note of a meeting at 9 pm which suggests that
14:50:47 3 between Smith, Green and O'Brien meet with Ms Gobbo at
14:50:53 4 Purana rear office. O'Brien then leaves the room. Do you
14:51:07 5 see that, 21:00? Meeting between Smith, Green and O'Brien.
14:51:15 6 They meet with Gobbo, Purana rear office. O'Brien leaves
14:51:19 7 the room and Ms Gobbo's concerned re who may know of her
14:51:24 8 role, i.e. police. She knew of O'Brien, concerned re
14:51:29 9 others and they arrange for Ms Gobbo to be escorted from
14:51:35 10 the building by investigators and RV shortly, rendezvous
14:51:41 11 shortly?---Rendezvous, yes.

14:51:42 12
14:51:43 13 Clearly it's finished by 9 pm so at some stage prior to 9
14:51:50 14 pm it's finished. Clearly it's some significant period of
14:51:55 15 time there's a meeting going on?---Yes.

14:51:57 16
14:52:00 17 By that stage he has agreed to come on board?---Correct.

14:52:09 18
14:52:10 19 And I'm told that Mr O'Brien has a note to the effect that
14:52:13 20 she arrived, Ms Gobbo arrived at quarter past 7?---Right.

14:52:18 21
14:52:19 22 Does that assist you?---I don't have any note to that
14:52:23 23 effect.

14:52:23 24
14:52:24 25 No?---That's 25 minutes after we initially spoke to [REDACTED]
14:52:28 26 [REDACTED] so that would be consistent with that.

14:52:31 27
14:52:31 28 Yes, okay. So in any event we can say, assuming that
14:52:36 29 note's right, the discussion starts. There's a discussion
14:52:42 30 between you, Smith, O'Brien and [REDACTED] He wants to speak to
14:52:47 31 his solicitor and she arrives at about quarter past 7 and
14:52:52 32 then O'Brien leaves and Smith leaves and then you and Gobbo
14:52:56 33 and [REDACTED] remain for certainly a period of time up until at
14:53:02 34 some stage prior to 9 pm?---Yes.

14:53:06 35
14:53:09 36 Do you agree with that?---Yes, I do.

14:53:11 37
14:53:11 38 Initially there's five of you in the room, [REDACTED] yourself,
14:53:17 39 O'Brien, Smith and Gobbo, when she arrives?---Yes.

14:53:26 40
14:53:26 41 Do you believe that Mr O'Brien was there when Ms Gobbo
14:53:31 42 arrived?---I suspect so. As - my recollection is that it
14:53:42 43 was Jim and myself that were driving the pitch, so yes, I
14:53:45 44 believe he was there.

14:53:46 45
14:53:46 46 And then he left shortly afterwards and you accept that it
14:53:50 47 was you, [REDACTED] and Gobbo in the room for the majority of the

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14:53:55 1 pitch?---Yes, we were there for some period of time, yes.
14:53:58 2
14:53:59 3 Do you know - clearly there would have been a discussion,
14:54:05 4 you would have got down to brass tacks I assume and that
14:54:08 5 would in his circumstance be what he's likely to get if he
14:54:12 6 assists?---Yes.
14:54:13 7
14:54:13 8 Do you know what figures were bandied about?---Really hard
14:54:16 9 to remember but I have a feeling that [REDACTED] years might have
14:54:19 10 been thrown around a little bit in the discussion.
14:54:25 11
14:54:25 12 So that's on the upside. "If you're not going to assist
14:54:29 13 us, you're now on [REDACTED]
14:54:33 14 you're looking at [REDACTED] years, you've got [REDACTED] you
14:54:36 15 won't see [REDACTED] until [REDACTED]", that sort of
14:54:39 16 pitch?---Yes.
14:54:39 17
14:54:39 18 "But if you assist", what sort of figures were put to him
14:54:43 19 then?---I don't know if we put any figures to him.
14:54:46 20
14:54:46 21 You think you might have though, because clearly he would
14:54:51 22 have wanted to know, wouldn't he? I mean you put the high
14:54:56 23 figures. That's if he doesn't assist. Surely he would
14:55:00 24 want to know what he'd get if he does assist?---That would
14:55:04 25 be a logical conclusion but I don't know. I can't recall
14:55:10 26 and as I sit here now I don't know how I could come to a
14:55:14 27 figure. I don't know how I could advise him on a figure
14:55:18 28 that I believe would be correct.
14:55:19 29
14:55:20 30 Do you think Mr O'Brien gave him figures?---Look, it's
14:55:23 31 possible.
14:55:24 32
14:55:25 33 I mean I suppose one of the problems with not recording any
14:55:28 34 details of these conversations now, whether it be now or
14:55:32 35 any other time earlier, you might have difficulty recalling
14:55:36 36 what was actually said?---Yeah, that's a fair point but in
14:55:41 37 relation to possible prison terms, I mean police can only
14:55:48 38 speculate, we can only suggest.
14:55:50 39
14:55:51 40 I know, I understand that?---It's a little bit easier to
14:55:54 41 speculate without the cooperation because we know it's
14:55:57 42 [REDACTED] charges he's facing, we
14:56:02 43 know the maximum penalty for each of those is [REDACTED] years
14:56:08 44 each. So a figure like [REDACTED] years sounds plausible but in
14:56:11 45 relation to discounts, I mean it all depends on how much
14:56:15 46 support he provides us, how much success we have from it,
14:56:18 47 there's a lot of factors - - -

.30/09/19

6829

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14:56:20 1
14:56:20 2 That's what you'd be saying to him?--Yes, that's right.
14:56:24 3 All I'm trying to suggest is it's difficult for us to say,
14:56:28 4 "If you do this, you do this you'll get [REDACTED] years".
14:56:30 5
14:56:30 6 I understand that?--We just don't know until we determine
14:56:34 7 how much assistance he actually provides and what type of
14:56:36 8 results we get from the information he does provide.
14:56:38 9
14:56:39 10 Do you think that [REDACTED] years rings a bell?---No, I don't.
14:56:42 11 I don't. I can't recall a low figure.
14:56:45 12
14:56:45 13 I understand that. But the reality is those are the sorts
14:56:48 14 of things when you're making a pitch and negotiating,
14:56:51 15 they're the sorts of things that the subject of the pitch
14:56:55 16 is going to want to know and I suggest you would have given
14:56:58 17 some thought to that before you went in there?---It's
14:57:05 18 possible. I don't mean to be evasive.
14:57:08 19
14:57:09 20 No, no, I understand that?---It's possible but I can't be
14:57:12 21 sure.
14:57:13 22
14:57:14 23 We know that Mr O'Brien spoke to the DPP about, or at least
14:57:20 24 to a barrister, I think Mr Horgan, about whether or not it
14:57:25 25 was possible to keep these people without charging
14:57:30 26 them?---Yes.
14:57:30 27
14:57:30 28 And that's what you wanted to do, assuming they decided to
14:57:35 29 come on board, at least [REDACTED] and then also [REDACTED] you wanted
14:57:38 30 to know whether you could keep them without charging them
14:57:41 31 and without putting them into the system to enable them to
14:57:46 32 do the job on [REDACTED] and [REDACTED],
14:57:49 33 et cetera?---Yes, it was a requirement on police to front
14:57:53 34 people, either release them unconditionally, bail them or
14:57:57 35 front them before the court, and we were seeking advice in
14:58:00 36 relation to how long - that all comes under a reasonable
14:58:05 37 time aspect and we were trying to determine what was a
14:58:08 38 reasonable time and whether doing what we eventually did,
14:58:11 39 whether that be accepted as reasonable time.
14:58:13 40
14:58:13 41 To that end we understand that there was contact made with
14:58:16 42 Mr Horgan?---I believe so, yes. I wasn't part of it, but
14:58:20 43 that's - - -
14:58:20 44
14:58:20 45 Mr O'Brien did?---Yes, that's right.
14:58:22 46
14:58:22 47 You didn't, you don't know whether Mr O'Brien did or didn't

.30/09/19

6830

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14:58:26 1 discuss with Mr Horgan possible figures?---I don't know.
14:58:32 2
14:58:33 3 Was there any discussion - we know there was a discussion
14:58:36 4 with Mr Coghlan I think on the [REDACTED] or [REDACTED] about the
14:58:41 5 potential of [REDACTED] Do you know whether there was
14:58:45 6 any discussion with him about potential figures?---I don't
14:58:47 7 know. It's possible but I don't know.
14:58:50 8
14:58:50 9 It would be something which was - I mean you knew at that
14:58:53 10 stage certainly when he was spoken to there was going to be
14:58:56 11 a pitch made. It might be useful to have in your pocket
14:58:59 12 the ability to go and say to the person, "Well look, we've
14:59:03 13 spoken to the DPP, ultimately it's up to the judge and it
14:59:06 14 might vary considerably depending on who you get, but we
14:59:10 15 know that if, for example, the DPP agrees this is an
14:59:14 16 appropriate range", back in those days, "Then you'd be
14:59:17 17 reasonably confident that would be about the sum that you'd
14:59:20 18 get if you assisted, depending on the nature of the
14:59:23 19 assistance"?---Certainly our pitch would be a lot stronger
14:59:26 20 with that type of back stop, yes.
14:59:28 21
14:59:29 22 Subsequently you recall that [REDACTED] was a bit annoyed
14:59:34 23 because he figured he got a bit more than he was hoping
14:59:38 24 for, at least more than it was suggested that he might get.
14:59:42 25 Do you recall him being a bit upset about that?---Yes, I
14:59:45 26 do.
14:59:45 27
14:59:47 28 And he was upset when he got a minimum of [REDACTED] years,
14:59:50 29 wasn't he?---Yes. Well I recall that at some stage the
14:59:55 30 expression of disappointment with that figure, yes.
14:59:57 31
14:59:58 32 Do you think that might be because there was a figure of
15:00:02 33 less than [REDACTED] years, perhaps [REDACTED] years, bandied about by
15:00:07 34 you and Mr O'Brien, if he provided maximum cooperation?---I
15:00:14 35 can't remember that. It's possible but I can't remember
15:00:17 36 it.
15:00:18 37
15:00:18 38 These are the sorts of things you would expect, even at
15:00:22 39 that stage, that you would be asked down the track if
15:00:25 40 someone want to test his credibility, what was held out to
15:00:29 41 him?---Yes, I expect those questions to be asked of [REDACTED]
15:00:33 42 [REDACTED]
15:00:33 43
15:00:34 44 And those would be fair enough questions, relevant
15:00:37 45 questions, wouldn't they?---Yes, they would.
15:00:39 46
15:00:39 47 Do you accept that?---Yes, I do.

.30/09/19

6831

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15:00:40 1
15:00:41 2 It would be certainly relevant if someone was trying to
15:00:44 3 test his credibility?---Yes.
15:00:46 4
15:00:46 5 To ask him what had occurred, what was said and so
15:00:49 6 forth?---Yes.
15:00:50 7
15:00:50 8 Were those questions ever asked of you?---Of what occurred
15:00:54 9 on the [REDACTED]?
15:00:56 10
15:00:56 11 And what sort of figures were offered, who was there, what
15:00:59 12 occurred, et cetera, et cetera?---I know that that's
15:01:02 13 definitely been explored in previous court matters, I just
15:01:07 14 can't remember the context of them, that's all.
15:01:10 15
15:01:11 16 It would be expected that those sorts of questions would be
15:01:13 17 relevant and reasonable questions to ask, not just of
15:01:15 18 [REDACTED] but of any person who had decided to assist
15:01:19 19 police? What did he think he was getting for it? Do you
15:01:25 20 accept that proposition?---I do but I just, my own belief
15:01:31 21 is that the actual figures aren't that important, it's
15:01:34 22 about getting assistance from the police in relation to
15:01:37 23 what it is, what actually is fact. Because, you know, as
15:01:39 24 you say, figures are just, it all depends on what court and
15:01:42 25 things like that. So it was more about us providing the
15:01:50 26 court information on the assistance we had received from
15:01:54 27 [REDACTED]
15:01:55 28
15:01:55 29 The people who are asked about those issues are the
15:02:00 30 investigators and [REDACTED], so it's not just [REDACTED] who is
15:02:05 31 asked about what was put on offer, the investigators are
15:02:09 32 going to be asked about those questions as well, aren't
15:02:12 33 they?---Yes, they are.
15:02:14 34
15:02:14 35 And you knew that?---Yes.
15:02:15 36
15:02:15 37 They would be relevant and reasonable questions to be asked
15:02:19 38 of an investigator who had made that sort of a
15:02:22 39 pitch?---Yes.
15:02:23 40
15:02:23 41 And you would expect therefore that it would be appropriate
15:02:27 42 to be in a position to answer those questions by making
15:02:30 43 clear and concise comprehensive notes?---Well, I could have
15:02:34 44 made more detailed notes, I accept that, but as I said,
15:02:40 45 there was no great secret to it, it was basically a
15:02:43 46 discounted, or Victoria Police supporting [REDACTED] in
15:02:49 47 court in relation to getting a discounted sentence.

.30/09/19

6832

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15:02:52 1
15:02:53 2 Supporting him on his plea, what I'm suggesting to you in
15:02:57 3 any case where [REDACTED] has given evidence it will be suggested
15:03:00 4 that his credibility is up for grabs and he's only saying
15:03:04 5 things to get a benefit, to get himself out of
15:03:07 6 trouble?---Well he's only saying things to get a reduced
15:03:10 7 sentences, yes, I'm just trying to make the point, you
15:03:13 8 appear to be trying to suggest we were tying down figures
15:03:18 9 and I can't recall that and the figures weren't that
15:03:20 10 important to me. It was more about us just saying, "No,
15:03:26 11 no, we'll come up here, we'll give evidence on your behalf.
15:03:29 12 We'll say we've had this success because you've helped us
15:03:34 13 with this".
15:03:34 14
15:03:35 15 It was, I suggest - at that stage when that second meeting
15:03:39 16 started Ms Gobbo had already told investigators that she
15:03:43 17 had been told in a private conversation, as a person who
15:03:47 18 was purporting, holding herself out to be, untruthfully, to
15:03:51 19 be his lawyer, I suggest, she had been told by him in
15:03:56 20 confidence that there are a [REDACTED] of guns at [REDACTED]
15:03:58 21 [REDACTED]?---Yes.
15:03:59 22
15:04:00 23 That information was then conveyed to police?---Yes.
15:04:03 24
15:04:05 25 And you know he got [REDACTED] years for that offence and he got
15:04:08 26 [REDACTED] years on top of whatever he got before, [REDACTED] months
15:04:12 27 rather, do you know that?---I only know his total
15:04:16 28 sentences. I was there when he was sentenced, I'll have it
15:04:19 29 written in my diary all the breakdown, but all I remember
15:04:23 30 was that he received a [REDACTED] year sentence with a [REDACTED] year
15:04:29 31 minimum.
15:04:29 32
15:04:29 33 Do you know the circumstances in which that information
15:04:32 34 came out about the guns? You can't recall, is that
15:04:35 35 right?---As we discussed prior to the break that during the
15:04:39 36 interview the guns were mentioned.
15:04:41 37
15:04:41 38 Yes?---At some stage I've instructed people that were
15:04:46 39 conducting the search to look out for the guns and to seize
15:04:50 40 them if they find them. It's possible that Mr O'Brien
15:04:53 41 passed on to me the information about the guns, I'm not
15:04:57 42 sure.
15:04:57 43
15:04:57 44 Do you know where the guns were found?---I just know they
15:05:01 45 were found at the [REDACTED]
15:05:03 46
15:05:08 47 In any event, after all of that you did interview him. The

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15:05:15 1 interview commenced at about 8 minutes past 9, is that
15:05:20 2 correct?---Correct.
15:05:21 3
15:05:24 4 I've got a copy of the record of interview and I don't know
15:05:45 5 - I wonder if you could just have a look at this document.
15:05:49 6 It's got on the back page VPL.0008.0001.150 and it's cut
15:05:59 7 off, I wonder if you could just have a look at that
15:06:03 8 document there?---Yes.
15:06:22 9
15:06:23 10 Just flick through it. Is that the record of interview
15:06:25 11 that you conducted with Mr Rowe?---So it's both, it's the
15:06:33 12 earlier interview that I conducted with Senior Constable
15:06:36 13 Farrar.
15:06:37 14
15:06:37 15 Yes?---At 4 o'clock, and then there's a second transcript
15:06:40 16 of the interview that started at 9.08 pm with Mr Rowe.
15:06:45 17
15:06:48 18 Commissioner, I'm going to tender it.
15:06:58 19
15:06:59 20 MR CHETTLE: I tendered it, it's Exhibit 365.
15:07:02 21
15:07:03 22 COMMISSIONER: Thank you Mr Chettle.
15:07:04 23
15:07:04 24 MR WINNEKE: Thanks.
15:07:28 25
15:07:28 26 COMMISSIONER: We're not sure whether that was in fact the
15:07:31 27 whole interview or just one question in the record of
15:07:35 28 interview.
15:07:35 29
15:07:36 30 MR CHETTLE: I purported to tender the whole lot, whether I
15:07:40 31 succeeded - - -
15:07:41 32
15:07:42 33 MR WINNEKE: It's VPL.0008.0001.1429.
15:07:48 34
15:07:48 35 COMMISSIONER: My note is that it's the whole record of
15:08:04 36 interview.
15:08:04 37
15:08:05 38 MR CHETTLE: There's two VPLs. The one I used was the
15:08:08 39 Supreme Court number, but I tendered it at the time,
15:08:12 40 Commissioner. The 365 was the number you gave it.
15:08:15 41
15:08:16 42 COMMISSIONER: Yes, I've got it that it's the whole record
15:08:19 43 but the official list says it's just question 430. Maybe
15:08:28 44 we could just - - -
15:08:46 45
15:08:47 46 MR CHETTLE: At p.5229 of the transcript I tendered the
15:08:51 47 whole record of interview.

.30/09/19

6834

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15:08:52 1
15:08:53 2 COMMISSIONER: That's an error then. We'll double-check
15:08:55 3 that, that's my note too, that it's the whole interview.
15:09:01 4
15:09:03 5 MR WINNEKE: Mr Flynn, there appears to be a number of,
15:09:06 6 amongst that document that you've got there appear to be a
15:09:09 7 number of different interviews, or at least a number of
15:09:12 8 documents starting from p.1. The first one is the tape
15:09:14 9 recorded interview that was conducted between you and
15:09:18 10 [REDACTED] with Anne Farrar and that commences at 4.14.
15:09:23 11 It's a five page document and it's effectively a no comment
15:09:27 12 record of interview?---Correct.
15:09:28 13
15:09:28 14 It indicates that he had spoken at question 7 to Ms Nicola
15:09:37 15 Gobbo, correct?---Yes.
15:09:38 16
15:09:38 17 And then asked, when the interview recommenced, at 9.08 pm
15:09:47 18 he says that - you ask him, "Do you agree that since the
15:09:52 19 interview your barrister", at your request I take it, "Has
15:09:57 20 actually turned up here"?---Yes.
15:09:58 21
15:09:58 22 "You've had detailed conversations with her", is that
15:10:01 23 correct?---Yes.
15:10:02 24
15:10:02 25 And he says, "Yes, I have". And, "Am I correct in saying
15:10:07 26 that you've now indicated you wish to speak to us again and
15:10:10 27 clarify a few matters you were questioned about
15:10:15 28 before"?---Yes.
15:10:15 29
15:10:15 30 And he says yes. In addition to having detailed
15:10:18 31 conversations with her he's also had detailed conversations
15:10:21 32 with you in her presence, hasn't he?---Yes.
15:10:25 33
15:10:26 34 And what he says is, "Can you tell me", in answer to the
15:10:29 35 question, "Can you tell me in your own, or just tell me in
15:10:34 36 your own words why you decided to speak to us?" And he
15:10:38 37 said, "Because I feel an injustice has been done to me,
15:10:41 38 this predicament that I'm in at the moment has led to the
15:10:45 39 people in question I will be revealing, one in particular
15:10:48 40 has put me in this position"?---Yes, that's correct.
15:10:50 41
15:10:51 42 Do you see that? That all resulted out of this detailed
15:10:56 43 conversation that you and Ms Gobbo had with him?---Yes.
15:11:00 44
15:11:00 45 In which she in effect supported you in making the
15:11:04 46 pitch?---Yes.
15:11:05 47

.30/09/19

6835

FLYNN XXN - IN CAMERA

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15:11:10 1 I asked you before at question 430, you say, in fact you go
15:11:21 2 back, if I go back to 429, "Is there anything else at the
15:11:24 3 premises, [REDACTED] that have been supplied by other
15:11:29 4 persons and people we've spoken about?" And he says, "You
15:11:33 5 know, nothing out of the ordinary. [REDACTED] I got myself,
15:11:36 6 that's basically it". And you say, "Earlier you mentioned,
15:11:40 7 you said something to me about firearms" and he says, "Yes,
15:11:44 8 in the event of, at one stage I was really being, um, with
15:11:47 9 the [REDACTED] incident", et cetera, and he explains he's in
15:11:52 10 fear of his life and he admits that there's firearms
15:11:57 11 there?---Yes.

15:11:57 12
15:11:57 13 I don't suppose you're in a position to say how that was
15:12:01 14 brought up in the conversation which occurred, the informal
15:12:06 15 conversation, whether he volunteered the information,
15:12:08 16 because clearly he didn't appear to volunteer it in that
15:12:12 17 case when you're asking him about anything else in the, at
15:12:16 18 the premises, did he? Because you asked him about whether
15:12:26 19 there was anything else at the premises, [REDACTED]
15:12:30 20 and he says no. Then you brought up the fact that, "You
15:12:34 21 said something to me about, um, firearms"?---That's
15:12:38 22 correct.

15:12:38 23
15:12:38 24 Right. We really don't know whether that came up or how
15:12:42 25 that came up in the early conversation really, do we?---No,
15:12:46 26 I'm just considering whether it was raised at the scene by
15:12:49 27 [REDACTED]

15:12:51 28
15:12:52 29 Right. You think it might have been raised at the
15:12:56 30 scene?---I remember, and I'm sure - I don't think firearms
15:13:00 31 are mentioned but I remember asking him a question about
15:13:04 32 dangers. I was worried about man traps and things like that
15:13:08 33 inside [REDACTED]

15:13:09 34
15:13:09 35 Right?---So I did ask him a question along that but I don't
15:13:14 36 think there's any mention of firearms there.

15:13:16 37
15:13:17 38 You would have written it down clearly if there was any
15:13:20 39 mention of firearms at the scene, that would be a very
15:13:22 40 significant matter which you would record?---You would
15:13:25 41 think so, yes.

15:13:26 42
15:13:26 43 You would think so. The evidence appears to be certainly
15:13:29 44 as far as Ms Gobbo is concerned, she believed that she'd
15:13:36 45 forgotten to tell the handlers something, she rang them up
15:13:39 46 at 18:35 and that information was immediately passed on to
15:13:43 47 O'Brien?---Yes.

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15:13:44 1
15:13:44 2 So by the time you commenced that informal discussion, the
15:13:49 3 likelihood is that you were in possession of that
15:13:51 4 information?---That's certainly possible, yes.
15:13:54 5
15:13:54 6 It may well be you raised that to him during the course of
15:13:57 7 the meeting?---It's possible. I can't remember how I come
15:14:02 8 across that information or how it was raised.
15:14:03 9
15:14:04 10 How it was raised?---The answer to the question would
15:14:07 11 suggest he's raised it me.
15:14:09 12
15:14:10 13 It may?---But I just can't remember.
15:14:12 14
15:14:12 15 "What you mention, you mentioned, you said something to me
15:14:15 16 about firearms." We don't know because there's no notes
15:14:19 17 made about it, do you say there's no recording made of
15:14:22 18 it?---No.
15:14:23 19
15:14:23 20 I'm just wondering if one of the reasons you didn't make
15:14:27 21 any notes of this is because there was a tape-recording of
15:14:30 22 it?---No, there's no tape-recording.
15:14:32 23
15:14:33 24 Why wouldn't you have tape recorded it
15:14:38 25 surreptitiously?---It wasn't a practice for us to tape
15:14:41 26 record, you know, pitches, if you like, to people that
15:14:46 27 we're trying to get to assist police.
15:14:49 28
15:14:49 29 Is that right?---Yes.
15:14:50 30
15:14:51 31 I mean we know, and there's been evidence, for example,
15:14:54 32 when Mr O'Brien went to speak to person, or [REDACTED] down
15:15:01 33 at [REDACTED] Prison he [REDACTED] him [REDACTED]
15:15:06 34 which was [REDACTED] I think or [REDACTED]. It
15:15:10 35 seems to be the practice at that stage, do you say there
15:15:14 36 was no practice to record these sorts of meetings?---There
15:15:18 37 was no practice to record. If you arrest an offender for
15:15:29 38 an offence and we're trying to get them to cooperate there
15:15:32 39 was no practice to record it at that stage.
15:15:34 40
15:15:34 41 Why is that?---Well because really we'd probably just, you
15:15:38 42 know, the majority of the times it's shutdown, we don't get
15:15:42 43 anywhere with it and it's just part of police practice, "Do
15:15:45 44 you want to assist? Do you want to help us? Do you want
15:15:48 45 to reduce your sentence or do this?", and generally we
15:15:51 46 don't do that.
15:15:52 47

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15:15:52 1 It would be of great assistance, wouldn't it, it would
15:15:55 2 dispel any suggestion down the track that there was
15:15:57 3 improper incentives held out, if that was suggested later
15:16:04 4 on, you'd have a tape and transcript and it would be all
15:16:08 5 quite apparent?---Possible but it was just not a practice
15:16:13 6 that we followed at the time.
15:16:14 7
15:16:15 8 Is one of the reasons why because the expectation is if it
15:16:18 9 was done it would be subpoenaed and it would be subject to
15:16:25 10 the necessity of disclosure?---I don't recall that being a
15:16:28 11 reason not to do it but it makes sense what you say.
15:16:31 12
15:16:32 13 Yes. It does make sense that if it is done, and if the
15:16:36 14 police do say anything wrong or do anything wrong then it
15:16:41 15 would be exposed by a subpoena or a request to disclose
15:16:46 16 it?---It was just not a practice that we followed at that
15:16:49 17 time. We did [REDACTED] you know, once we got to
15:16:54 18 the human source part of things and were reading
15:16:59 19 Acknowledgement of Responsibilities for people as a human
15:17:02 20 source, that's when [REDACTED] those but we didn't
15:17:05 21 do it just for offenders that we arrested day-in day-out
15:17:11 22 and - - -
15:17:12 23
15:17:12 24 But this is a pretty important offender. This is a pretty
15:17:18 25 important person who is going to be a witness against some
15:17:20 26 of the most significant figures in the drug trafficking
15:17:23 27 world in Melbourne, underworld in Melbourne?---Yes, he was
15:17:28 28 an important offender, yes.
15:17:30 29
15:17:30 30 Can you think of any good reason why you wouldn't have
15:17:33 31 recorded either in writing or by way of recording of this
15:17:40 32 information?---It was just not a practice we practised.
15:17:44 33
15:17:44 34 Aside from - - - ?---At the time.
15:17:46 35
15:17:46 36 Aside from practice, can you think of any good reason why
15:17:49 37 you wouldn't have done so in this particular
15:17:52 38 circumstance?---No.
15:17:52 39
15:17:55 40 COMMISSIONER: Is it police procedure or was it at the time
15:17:59 41 police procedure for a suspect to record every conversation
15:18:02 42 before they're charged?---No, it wasn't.
15:18:04 43
15:18:05 44 It wasn't?---No. So - there are plenty of conversations
15:18:10 45 that occur between police and a suspect. We try and create
15:18:17 46 some rapport with the people we're speaking to, but we know
15:18:20 47 that anything that's said, unless it's recorded it's not

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15:18:24 1 admissible, so we would come back, put them on tape as soon
15:18:29 2 as possible just to clarify that, "Yes, you've been
15:18:34 3 arrested, you've been offered your rights, you've been
15:18:36 4 given your caution", things like that, and then stopped,
15:18:38 5 taken away to prepare a more extended interview and then
15:18:42 6 come back. During that time we would have, you know,
15:18:45 7 breaks on whether they wanted coffee or anything else,
15:18:50 8 toilet breaks and all that, and there would be some notes
15:18:52 9 in the diaries, but we certainly didn't record anything
15:18:55 10 along those lines.
15:18:56 11
15:18:56 12 Is that still the case?---Commissioner, I've been out of
15:18:59 13 that area for about seven years so I suspect it is but it's
15:19:03 14 an uneducated comment because I haven't been involved in
15:19:07 15 processing an offender for about seven years.
15:19:10 16
15:19:11 17 Certainly in the days of mobile phones it's a very easy
15:19:14 18 matter, isn't it, to record every conversation?---Yes.
15:19:17 19
15:19:17 20 Yes?---Yes.
15:19:18 21
15:19:18 22 Yes Mr Winneke.
23
24 MR WINNEKE: Thanks Commissioner.
25
15:19:19 26 COMMISSIONER: I should note, Mr Chettle, while we have had
15:19:24 27 a break in Mr Winneke's examination, you were correct,
15:19:27 28 we've checked the transcript and the official record will
15:19:30 29 now be corrected.
15:19:31 30
15:19:32 31 MR CHETTLE: Thank you.
15:19:32 32
15:19:32 33 COMMISSIONER: Thank you.
15:19:33 34
15:19:34 35 MR WINNEKE: Our learned friend is generally correct. This
15:19:37 36 is just another example.
15:19:40 37
15:19:41 38 MR CHETTLE: Only when Ms Thies is here.
15:19:43 39
15:19:43 40 COMMISSIONER: I did note that.
15:19:46 41
15:19:52 42 MR WINNEKE: Clearly it wouldn't be admissible against
15:19:55 43 [REDACTED] because it wouldn't be, he wouldn't be advised,
15:20:00 44 et cetera, et cetera. But that's not a reason not to tape
15:20:03 45 it because it may well have been of assistance to you or an
15:20:08 46 accurate record of what occurred?---Arguably he has been
15:20:11 47 advised because he's been part of that earlier interview,

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15:20:16 1 but - - -
15:20:17 2
15:20:17 3 Right. So arguably it might have been?---But it's like,
15:20:26 4 you know, it's like when he was arrested at the scene and
15:20:30 5 we refuse him his rights because of concerns about the
15:20:33 6 fabrication or destruction of evidence. I know that if he
15:20:36 7 turns around and says, "You've got me, that's [REDACTED] in
15:20:40 8 there" then I've probably lost that evidence because he
15:20:47 9 hasn't been allowed that right. We understand that but
15:20:48 10 it's just part of a process. You know, he might not have
15:20:50 11 got on board and then there'd be no further involvement or
15:20:53 12 risk. If he did, well then we'd try and reconfirm things
15:20:57 13 on tape and that's what we use as the evidence.
15:20:59 14
15:20:59 15 There would have been within the St Kilda Road police
15:21:03 16 station capability of recording this conversation without
15:21:07 17 any difficulty at all, surely?--We did have access to
15:21:12 18 micro recorders at that stage I think, yes.
15:21:16 19
15:21:16 20 So it could quite simply have been done?---It could have
15:21:19 21 been, yes.
15:21:19 22
15:21:20 23 Indeed, we know early on that Ms Gobbo herself was recorded
15:21:25 24 in discussions that had been had with Messrs Rowe and
15:21:31 25 Mansell. So there was clearly that capacity to do
15:21:35 26 that?---Yes.
15:21:35 27
15:21:37 28 You accept that this was a very significant
15:21:41 29 conversation?---Well as it turns out, yes.
15:21:44 30
15:21:44 31 Even beforehand it was going to be a significant
15:21:47 32 conversation?---Well it wouldn't have been a significant
15:21:49 33 conversation if [REDACTED] decided not to cooperate.
15:21:52 34
15:21:52 35 No, I agree with that?---Yep.
15:21:54 36
15:21:54 37 I agree with that. But there was at least a chance, a
15:21:57 38 reasonably good chance because that was the whole purpose
15:22:00 39 of this plan, t his was a culmination of the
15:22:06 40 operation?---Well - - -
15:22:06 41
15:22:07 42 It was all directed towards getting him to do exactly what
15:22:11 43 he did do?---Yes, that's so. I mean the first part of it
15:22:14 44 is to catch him offending. That is the focus, our main
15:22:18 45 focus on the [REDACTED]
15:22:20 46
15:22:20 47 You already had him [REDACTED], the main focus was to get him

.30/09/19

6840

FLYNN XXN - IN CAMERA

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15:22:24 1 to assist with respect to other people?---That was the next
15:22:26 2 focus, yes.

15:22:27 3
15:22:28 4 Okay. The other person in all of this was [REDACTED]?---Yes.

15:22:40 5
15:22:42 6 You accept that in reality he didn't get independent legal
15:22:48 7 advice either because Ms Gobbo, who was the police agent,
15:22:50 8 was the one who provided him with legal advice, do you
15:22:53 9 accept that?---She did provide him legal advice, that's
15:22:56 10 correct.

15:22:56 11
15:22:58 12 And one of the things that you were trying to achieve was
15:23:03 13 to keep all this information within the environs of
15:23:10 14 Victoria Police and not get out and what that required was
15:23:13 15 cooperation from [REDACTED] at least to the extent that he
15:23:17 16 wouldn't want to either get charged, go into custody, go
15:23:25 17 before a Bail Justice, go before a Magistrate, you needed
15:23:28 18 that degree of cooperation, didn't you?---I did.

15:23:30 19
15:23:31 20 And he didn't get - we understand and you mentioned before
15:23:36 21 that you went to Mr Horgan to get the advice that it was
15:23:40 22 reasonable for the purpose of this investigation to hold
15:23:43 23 these people without charging them?---Yes.

15:23:45 24
15:23:46 25 That was the advice that you got?---Yes, that's correct.

15:23:50 26
15:23:50 27 [REDACTED] might have been entitled to independent advice to
15:23:53 28 say, "Look, that's nonsense advice, he should be entitled
15:23:57 29 to get before a Magistrate"?---Yes, that's possible.

15:24:00 30
15:24:00 31 But he wasn't given that opportunity, was he?---Well, no, I
15:24:05 32 suppose using the word independent, what you say is
15:24:08 33 correct.

15:24:08 34
15:24:10 35 You had Mr Horgan and he had Ms Gobbo who was effectively a
15:24:14 36 police agent?---Yes.

15:24:15 37
15:24:15 38 So he didn't, I suggest, get that opportunity?---Well, I
15:24:18 39 mentioned it earlier but, and I only speak for my own mind,
15:24:24 40 but I think that there was - you know, I was very much
15:24:27 41 focused on [REDACTED] and other members were looking after
15:24:31 42 [REDACTED] but certainly with him and less so with [REDACTED]
15:24:37 43 there might have been a thought process that perhaps she
15:24:40 44 could still give him legal advice.

15:24:42 45
15:24:42 46 What I suggest is if he'd been given independent legal
15:24:48 47 advice it might well have been that's nonsense, you don't

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15:24:51 1 have to be locked up for an hour long, you ought to be
15:24:55 2 released or ought to get before a Magistrate as is your
15:24:59 3 right?---Yes, that's possible.
15:25:01 4
15:25:02 5 A provided by the Crimes Act?---Yes.
15:25:04 6
15:25:06 7 COMMISSIONER: Will we take the afternoon break?
15:25:09 8
15:25:10 9 MR WINNEKE: Yes.
15:25:10 10
15:25:31 11 COMMISSIONER: We'll have a short break now.
15:25:33 12
13 (Short adjournment.)
14
15:47:42 15 COMMISSIONER: Yes, Mr Winneke.
16
15:47:44 17 MR WINNEKE: Thank you, Commissioner. Mr Flynn, very
15:47:48 18 shortly after the meeting that you had with Ms Gobbo and
15:47:56 19 [REDACTED] at the offices of Victoria Police, she went and
15:48:04 20 spoke to her handlers at the SDU and in effect she had a
15:48:12 21 discussion with them about some of the events that had
15:48:14 22 occurred and so in a fairly contemporaneous way she spoke
15:48:20 23 to them and what I want to do is put to you or play to you,
15:48:25 24 if I can, a couple of transcripts. Now, Commissioner - a
15:48:33 25 couple of tapes. We've got transcripts of these and we've
15:48:37 26 got audio. Can I say this: we haven't had the opportunity
15:48:40 27 to excise from the audio the Christian name of [REDACTED]
15:48:50 28 and some of the handlers. Now, we're in a private hearing.
15:48:57 29 The best evidence is that which is on the audio. Every now
15:49:01 30 and again we drop these names and it's always excised. Our
15:49:06 31 submission is that it's appropriate to play these things,
15:49:09 32 albeit that they do have those details. In our submission
15:49:15 33 the way in which these matters have proceeded suggests that
15:49:21 34 it's artificial not to play these tapes simply because they
15:49:26 35 refer to the names. When we all know the names, everyone
15:49:30 36 in the room knows the names.
37
15:49:35 38 COMMISSIONER: There's a non-publication order in respect
15:49:37 39 of the names. The transcript of today's hearing won't
15:49:43 40 transcribe the tapes.
41
15:49:44 42 MR WINNEKE: No.
43
15:49:46 44 COMMISSIONER: And in due course an amended or redacted
15:49:52 45 copy can be tendered.
46
15:49:55 47 MR WINNEKE: That's correct, Commissioner.

.30/09/19

6842

FLYNN XXN - IN CAMERA

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1
15:49:56 2 COMMISSIONER: That's what you're proposing, yes.
3
15:49:59 4 MR WINNEKE: The audio, if it's proposed - and I'll
15:50:03 5 obviously tender the audio and there's no way that the
15:50:06 6 audio will go on to the Internet, be available to the
15:50:10 7 public in the way in which it would be played.
8
15:50:14 9 COMMISSIONER: No. Yes, all right.
10
15:50:16 11 MR WINNEKE: Our submission is, Commissioner, that it's
15:50:17 12 reasonable to play these things so as we all know - - -
13
15:50:18 14 COMMISSIONER: Just to save some time, yes. Does anyone
15:50:21 15 have any submissions to the contrary, bearing in mind what
15:50:24 16 I've said? All right. There's some pained looks.
17
15:50:31 17
15:50:32 18 MR CHETTLE: I do have concerns, Commissioner. We've just
15:50:35 19 been told about this. There are statutory obligations that
15:50:38 20 I'm concerned about, that's all.
21
15:50:42 22 COMMISSIONER: Well - - -
15:50:42 23
15:50:43 24 MR CHETTLE: I've looked at the - if this is the [REDACTED]
15:50:45 25 Mr Winneke wants to play, there's reference to my client's
15:50:49 26 surname as well. I mean I've done it in the past, I know,
15:50:54 27 and the people here will all probably tell me his name
15:50:58 28 anyway, I accept that.
29
15:50:59 30 COMMISSIONER: Yes.
15:51:00 31
15:51:00 32 MR CHETTLE: But I'm worried about the statutory regime.
33
15:51:02 34 COMMISSIONER: The statutory regime allows me to have a
15:51:05 35 discretion in the end.
15:51:06 36
15:51:06 37 MR CHETTLE: I suspect you can do what you like,
15:51:09 38 Commissioner.
39
15:51:09 40 COMMISSIONER: Not quite. It does give me a discretion in
15:51:12 41 the end. I take note of what you say and I am cognisant of
15:51:17 42 that. Yes Ms Argiropoulos.
15:51:19 43
15:51:20 44 MS ARGIROPOULOS: Commissioner, Victoria Police shares the
15:51:21 45 same concerns. I'm not sure whether it's practical for the
15:51:26 46 playing of these to be deferred until tomorrow. I don't
15:51:31 47 know if these names can be excised overnight. I know

.30/09/19

6843

FLYNN XXN - IN CAMERA

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15:51:34 1 previously in recordings [REDACTED] name has been removed
15:51:37 2 and that was done fairly successfully. The preference
15:51:40 3 would be, if it's practically able to be done, that those
15:51:43 4 real names not be used for the reasons that Mr Chettle's
15:51:47 5 raised.
6
15:51:49 7 COMMISSIONER: Okay, thank you. Can they be excised? They
15:51:53 8 can be excised overnight. Does it interfere with your
15:51:57 9 examination of the witness if you defer this part until
15:52:02 10 tomorrow?
11
15:52:03 12 MR WINNEKE: Commissioner, I'm going to move on. The
15:52:05 13 reality is I'm going to move on. They can be played
15:52:09 14 tomorrow. I can put the transcripts to him, I can read out
15:52:12 15 what's read. But it's not the best evidence.
16
15:52:16 17 COMMISSIONER: Yes.
18
15:52:18 19 MR WINNEKE: My learned friends say the names are
15:52:22 20 mentioned. We know the names. We all hear the names. We
15:52:25 21 drop them every now and again. It's just absurd, in our
15:52:29 22 respectful submission, to be so precious about it. The
15:52:33 23 fact is there are non-publication orders. They can't be
15:52:41 24 reported, they won't be reported. And to say that people
15:52:46 25 in this room don't know the names is simply absurd.
15:52:49 26
15:52:50 27 MR CHETTLE: I didn't say that.
28
15:52:52 29 MR WINNEKE: In our submission you really - we're being
15:52:58 30 deprived of the best evidence. Yes, I can come back
15:53:00 31 tomorrow and do it but I'm hoping to move on. In any
15:53:06 32 event, that's my submission.
33
15:53:08 34 COMMISSIONER: Yes, all right. I'm conscious of the fact
15:53:10 35 that we are very behind schedule in our examination of
15:53:17 36 witnesses. I'm also conscious of the statutory
15:53:22 37 requirements in respect of these matters but I am satisfied
15:53:32 38 that if we proceed in the way that Mr Winneke's suggested,
15:53:40 39 that given the non-publication orders that are in place and
15:53:43 40 the fact that we are in a private hearing with a limited
15:53:47 41 number of people present, although it's less than ideal I
15:53:53 42 think that it is - the statutory considerations are
15:53:58 43 sufficiently met by the non-publication orders and I'll
15:54:02 44 allow Mr Winneke to proceed as he suggested.
45
15:54:05 46 MR WINNEKE: If it please the Commission. So what I want
15:54:11 47 to suggest to you is that - or play to you is a tape which

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15:54:17 1 is of a conversation on [REDACTED], the very day that these
15:54:21 2 events occurred, in which Ms Gobbo is speaking to the
15:54:27 3 handlers about the events that had recently occurred.
15:54:32 4 Commissioner, the tape is VPL.0005.0104.0001. That's the
15:54:42 5 transcript. The audio is VPL.2000.0002.4225 at time stamp
15:54:51 6 29 minutes and 3 seconds, p.22 of the transcript.

15:55:01 7
15:57:04 8 (Audio recording played to hearing.)

15:57:04 9
15:57:10 10 You could hear that and you could follow the
15:57:12 11 transcript?---Yes.

15:57:14 12
15:57:14 13 Firstly, do you accept that there was, you did have a
15:57:20 14 discussion in the presence of [REDACTED] and Ms Gobbo about
15:57:28 15 what was proposed, that is the way in which [REDACTED] would
15:57:33 16 assist and assist with respect to [REDACTED]?---The
15:57:40 17 conversation's about putting [REDACTED] back into the [REDACTED]
15:57:44 18 [REDACTED] that's ringing a bell with me, that that was
15:57:46 19 something that was raised or was brought up at some stage.

20
15:57:49 21 I think it's probably best to use [REDACTED], because that's
15:57:54 22 going to go into the transcript. Don't worry about it.
15:57:57 23 That's going to go on to the transcript, not the
15:58:00 24 audio?---Yep.

25
15:58:01 26 You recall that there was discussion about the possibility
15:58:03 27 of putting him back [REDACTED] but that had a whole lot
15:58:07 28 of difficulties associated with it?---Yes, just as I
15:58:09 29 listened and read the transcript that rang a bell with me.

30
15:58:13 31 All right. You recall Ms Gobbo said they'd spoken to
15:58:21 32 someone at the OPP and there was an advice or suggestion
15:58:27 33 that the person from the OPP, who we understand was
15:58:31 34 Mr Horgan?---Yes.

35
15:58:32 36 Really needed [REDACTED] to commit on tape, like a reverse
15:58:36 37 caution kind of a thing, right?---Yes.

38
15:58:39 39 Is that your recollection as to what occurred?---I don't
15:58:43 40 recall us running that second tape with [REDACTED] as a
15:58:48 41 direct result of that conversation. I just thought it was
15:58:51 42 our normal practice to commit him to a story but, you know,
15:58:56 43 I don't - I know there was some advice sought and I don't
15:59:00 44 disagree with anything that was said.

45
15:59:04 46 If I stop there and ask you this: I take it - perhaps let
15:59:12 47 me ask you, was it raised with Mr Horgan the complexities

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15:59:17 1 or the issues with respect to Ms Gobbo or not?---I wasn't
15:59:23 2 part of that conversation.
3
15:59:26 4 All right?---But I'd be reasonably confident to say that I
15:59:31 5 don't think it was ever be suggested that it was mentioned
15:59:32 6 that Ms Gobbo was human source with Victoria Police.
7
15:59:38 8 These discussions can be had with permanent prosecutors and
15:59:43 9 they are had on occasions, are they?---Yes.
10
15:59:46 11 About a person being an informer?---Well certainly when it
15:59:50 12 gets to a stage where we're seeking discounts and things
15:59:54 13 like that it becomes, we discuss that with the OPP, yes.
14
16:00:00 15 When it comes to questions of public interest immunity is
16:00:06 16 that normally done with your own legal advisors or the
16:00:13 17 VGS0?---I would depend on the circumstances I suppose.
18
16:00:15 19 Yes?---If it was just relevant to an ongoing prosecution it
16:00:16 20 would probably be done with a prosecutor. If it was
16:00:18 21 something that we didn't want it to get to that stage, well
16:00:20 22 then we'd seek legal advice.
23
16:00:22 24 There's sort of an intermediate position where you don't
16:00:26 25 want to put it out to the prosecution if you can avoid it
16:00:29 26 and you go to the VGS0 to get an advice from them or to
16:00:32 27 internal police lawyers; is that right?---That's correct,
16:00:34 28 yes.
29
16:00:34 30 If you had on this night decided, look, there were too many
16:00:40 31 complexities, it's way out of the experience of any of the
16:00:43 32 people involved in this operation, what's occurring
16:00:45 33 tonight, we really need to get some advice about it, who
16:00:48 34 would have been approached?---Well, I would suggest we
16:00:52 35 would go internally before we went externally. How that
16:00:56 36 would be done on this time of day or night I'm not sure but
16:01:00 37 that's what we'd look at.
38
16:01:05 39 Do you believe that Mr Overland was aware of these
16:01:09 40 complexities?---I only say that I do believe it, that he
16:01:20 41 was aware of it at some stage, whether it was - are you
16:01:25 42 asking on that particular night or not?
43
16:01:29 44 Yes?---I don't know. As I indicated earlier, I believe
16:01:34 45 Mr O'Brien was reporting to Mr Overland at some stage but
16:01:38 46 to what and what was discussed, you know, it would be a
16:01:39 47 reasonable presumption that all these issues would be

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16:01:41 1 discussed, I'd expect, considering Mr Overland's rank, but
16:01:45 2 again I'm only speculating.
3
16:01:51 4 It appears that Ms Gobbo is appraised of the issues with
16:01:54 5 respect to [REDACTED] because she's making suggestions to you
16:02:01 6 about "stashing [REDACTED] away in the cells in [REDACTED], do you
16:02:12 7 recall that?---I don't recall those words, no.
8
16:02:15 9 Would you think that's unusual for a lawyer to be making
16:02:19 10 those suggestions in an investigative process like
16:02:24 11 this?---Well, yes, the whole thing was unusual.
12
16:02:26 13 The whole thing was unusual?---Yes, but I do agree that it
16:02:30 14 was unusual.
15
16:02:31 16 All right then. I'd like also to play - - -
17
16:02:36 18 COMMISSIONER: Will we tender those?
19
16:02:39 20 MR WINNEKE: Commissioner, I tender that.
21
16:02:41 22 COMMISSIONER: What was the date of that?
23
16:02:43 24 MR WINNEKE: That's [REDACTED] 2006.
25
16:02:45 26 COMMISSIONER: Yes. The tape for [REDACTED] 2006 between
16:02:52 27 Nicola Gobbo and Green and Smith will be Exhibit 546A in
16:03:00 28 it's confidential form, B in its edited form and the
16:03:06 29 transcript will be C confidential, and D edited.
30
16:03:11 31 #EXHIBIT RC546A - (Confidential) Tape dated [REDACTED]/06
16:02:52 32 between Nicola Gobbo and Green and Smith.
33
34 #EXHIBIT RC546B - (Redacted version.)
35
36 #EXHIBIT RC546C - (Confidential) Transcript.
37
38 #EXHIBIT RC546D - (Redacted version.)
16:03:13 39
16:03:13 40 MR WINNEKE: Can we keep playing that? Mr Chettle asked if
16:03:14 41 we can keep playing that. Is that possible or is that
16:03:15 42 difficult? Just keep playing it over - - -
16:03:18 43
16:03:21 44 MR CHETTLE: It saves me having to come back to it later,
16:03:21 45 Commissioner.
16:03:24 46
16:03:25 47 COMMISSIONER: Sure. Good thinking, Mr Chettle.

.30/09/19

6847

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16:03:45 1
2 (Audio recording played to hearing.)
3
16:06:33 4 Is that enough?
16:06:34 5
16:06:35 6 MR CHETTLE: That's as far as I need, Commissioner.
7
16:06:37 8 MR WINNEKE: What she also says there is that she had very
16:06:43 9 frank discussions in [REDACTED] presence with
16:06:50 10 [REDACTED]?---Yes.
11
16:06:51 12 Does that jog your recollection? Did that occur, that
16:06:53 13 Ms Gobbo was able to speak to [REDACTED] these people at the
16:06:56 14 [REDACTED] in the [REDACTED] room?---Well, that would indicate
16:07:02 15 that she did.
16
16:07:04 17 Yes?---I can't remember it occurring then. I thought we
16:07:07 18 actually got them [REDACTED] several days later but that
16:07:11 19 would indicate that it did happen, so.
20
16:07:13 21 Right. I think I asked you questions about this before.
16:07:18 22 This again is another unusual aspect of this, allowing
16:07:22 23 these [REDACTED] people to speak [REDACTED] with a lawyer who's not
16:07:26 24 a lawyer, who's actually an agent of the Victoria Police,
16:07:29 25 with a view to having them [REDACTED]
16:07:33 26 way or another?---Yes.
27
16:07:34 28 Again, that would be another instance of this being
16:07:37 29 somewhat of a unique circumstance, wouldn't it?---Yes, that
16:07:41 30 is correct, yes.
31
16:07:41 32 It wouldn't have occurred in any other investigation that
16:07:44 33 you'd been involved in?---Correct.
34
16:07:47 35 Effectively what you've got is a person who is the subject
16:07:52 36 of a pitch, being [REDACTED] himself being engaged to see
16:07:59 37 if he could [REDACTED] to get him to cooperate
16:08:03 38 by, in effect, [REDACTED] and sitting tight for a few
16:08:07 39 days whilst Victoria Police went about their business with
16:08:11 40 [REDACTED]?---Yes, well that conversation would suggest to
16:08:16 41 me he might have even been trying more than that, but I
16:08:20 42 don't remember that. But do I remember what was of concern
16:08:24 43 to us was trying to appease [REDACTED] to cooperate by [REDACTED]
16:08:28 44 [REDACTED]
45
16:08:30 46 And really you needed cooperation from him ultimately,
16:08:33 47 didn't you, to assist in carrying out your plan?---We did.

.30/09/19

6848

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1
16:08:40 2 Because if he didn't cooperate the whole thing really would
16:08:44 3 amount to nothing - - - ?---It wouldn't have happened, yep.
4
16:08:49 5 It wouldn't have happened. When I say the whole thing, the
16:08:52 6 ██████████ of ██████████ and the getting ██████████ and
16:08:57 7 ██████████ on ██████████?---Yes, the risk would have been too
16:09:01 8 great.
9
16:09:02 10 Would have been too great, all right. Ultimately Ms Gobbo
16:09:08 11 ended up not only did she act in a sort of a situation of
16:09:14 12 somewhat, or of clear and frank conflict in the role that
16:09:22 13 she played, she ended up acting for ██████████, didn't she?
16:09:28 14 Sorry, ██████████ and doing a plea for him?---I think so.
15
16:09:33 16 That would be fairly extraordinary, I suggest, that the
16:09:41 17 police agent providing the advice really to assist the
16:09:45 18 police ends up appearing for him in court?---Yes, it is
16:09:50 19 extraordinary.
20
16:09:50 21 And making money out of him?---Oh, well, yes, if she made
16:09:56 22 money out of it, that's correct.
23
16:09:58 24 One assumes she charged him to do it. One assumes again he
16:10:03 25 was never told, she never told him she was in fact an agent
16:10:05 26 of the police?---I suspect she didn't.
27
16:10:12 28 Now whether or not ██████████ got a good deal or not, that's
16:10:15 29 not the point though, do you accept that
16:10:18 30 proposition?---Look, I haven't really turned my mind a lot
16:10:21 31 to ██████████ I have to ██████████ But yes, I accept what
16:10:27 32 you're saying.
33
16:10:29 34 Ultimately if you look at the way in which the system of
16:10:33 35 justice should operate, it's no real answer to say either
16:10:37 36 that ██████████ may or may not have got a good deal, do you
16:10:42 37 accept that proposition?---Well, yeah, I go back to what I
16:10:52 38 said last Friday about Ms Gobbo being there on the ██████████ and
16:10:58 39 providing advice on that day was something that if we had
16:11:01 40 our time again we would do differently.
41
16:11:04 42 I understand that. The mantra that police operate by the
16:11:11 43 rules, search for the truth, operate in accordance with the
16:11:14 44 law, holds, doesn't it, and it should hold?---Yes, it
16:11:21 45 should.
46
16:11:21 47 Regardless of whether you believe ██████████ guilty,

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16:11:25 1 whether you reckon you've got him bang to rights or whether
16:11:30 2 you reckon that he's only ever going to plead, the fact is
16:11:32 3 the rules have to be complied with by the police, by the
16:11:35 4 lawyers, by the judges, all the participants in the
16:11:37 5 criminal justice process?---Yes.

6
16:11:39 7 You accept that?---Yes.

8
16:11:40 9 Okay. Can I then move to the next transcript that I want
16:11:45 10 to play, p.26. Same transcript, [REDACTED] p.26. I don't
16:11:52 11 have a time stamp but I think Mr Skim's got - - -

12
16:11:56 13 COMMISSIONER: What pages are we tendering in the earlier
16:11:59 14 exhibit, please?

15
16:12:00 16 MR WINNEKE: Thanks Commissioner. The first one is p.100 -
16:12:05 17 if we can go back to the start of that I think it's p.22.

18
16:12:15 19 COMMISSIONER: Yes.

20
16:12:17 21 MR WINNEKE: Through to whenever that transcript stopped.
16:12:19 22 I didn't see where we got to eventually.

16:12:23 23
16:12:23 24 MR CHETTLE: 26.

25
16:12:25 26 MR WINNEKE: To p.26.

27
16:12:28 28 COMMISSIONER: Thank you. That just means that there's a
16:12:31 29 lot less to PII.

30
16:12:33 31 MR WINNEKE: Yes. Indeed, Commissioner, we actually played
16:12:35 32 the transcript that I wanted to next put to Mr Flynn.

33
16:12:40 34 COMMISSIONER: Yes.

35
16:12:42 36 MR WINNEKE: Which was this, that he knows - "I know [REDACTED]
16:12:47 37 and I've had very frank discussions with him. [REDACTED]
16:12:53 38 present with [REDACTED] If [REDACTED] can roll, [REDACTED]", et
16:12:58 39 cetera. Do you see that?---Yes.

40
16:13:06 41 Perhaps if you continue playing it because the next piece
16:13:09 42 of transcript I was going to put to the witness,
16:13:11 43 Commissioner, was at p.28. We might as well just keep
16:13:15 44 going if we can. Does that mean we have to go back to the
16:13:19 45 start? It doesn't.

46
47 (Audio recording played to hearing.)

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1
16:15:45 2 "I'm burnt anyway", do you see that?---Yes, I do.
3
16:15:50 4 Effectively what she's saying there is she's setting out
16:15:57 5 the process of what will occur with respect to [REDACTED]
16:15:59 6 and [REDACTED] picking up [REDACTED] or whatever it was. She
16:16:05 7 says that [REDACTED] will be pinched, he'll ring her, "I'll have
16:16:11 8 a conflict or may not be able to act for him", do you see
16:16:14 9 that?---Yes.
10
16:16:15 11 Later on in your statement what she predicts is in fact
16:16:21 12 right, it comes to pass, doesn't it?---Yes, it does.
13
16:16:24 14 She does go down, she does give [REDACTED], or she speaks
16:16:28 15 to [REDACTED] purports to provide him with legal advice; is
16:16:32 16 that right?---Yes.
17
16:16:33 18 I think in your statement you note that her appearing, or
16:16:39 19 at least advising [REDACTED] advising [REDACTED], who's
16:16:44 20 arrested shortly afterwards, posed even more
16:16:48 21 complexities?---Yes, that's correct.
22
16:16:49 23 Because you had a sort of a complexity on top of a
16:16:58 24 complexity. With respect to [REDACTED] it was her providing
16:16:59 25 information which leads to his arrest and then her advising
16:17:03 26 him, and then on top of all that, having done that, she
16:17:07 27 then appears for the very person who she's set out at the
16:17:09 28 very outset to assist police in bringing down?---Yes.
29
16:17:14 30 Or advises that person?---Yes.
31
16:17:15 32 That's the complexity of the even more complex situation
16:17:18 33 that you're referring to, correct?---Yes.
34
16:17:22 35 I take it you were very conscious of that prior to the
16:17:31 36 events of the [REDACTED] that is [REDACTED] 2006 occurring, that
16:17:37 37 is arresting [REDACTED] I suggest?---Well, it's an answer
16:17:42 38 I've been given before but my focus with them was just
16:17:45 39 running the investigation. All her involvement was run by
16:17:49 40 the SDU.
41
16:17:49 42 The reality is it's all very well to say the SDU are doing
16:17:55 43 this, but that doesn't deprive you of the ability to
16:17:58 44 perceive and understand what were obvious conflicts and
16:18:02 45 gross conflicts of interest?---Yes, that's correct.
46
16:18:04 47 And they would have been apparent to you at the time I

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16:18:07 1 suggest?---Well, I can't remember raising or dealing with
16:18:11 2 these issues with either my direct report, Mr O'Brien, or
16:18:18 3 the SDU. As I said, my focus was clearly on just running
16:18:22 4 the investigations, doing each phase of it, and perhaps
16:18:30 5 naïvely just thought other members will deal with those
16:18:33 6 issues.
7

16:18:33 8 As you accept as a member of Victoria Police Force and at
16:18:38 9 that stage an experienced member of Victoria Police, we
16:18:39 10 discussed this earlier on, you are aware of the legalities
16:18:43 11 of the criminal justice process, correct?---Yes.
12

16:18:48 13 And the importance of securing evidence in a way which is
16:18:53 14 lawful and makes the evidence admissible in a court of
16:18:57 15 law?---Yes, correct.
16

16:18:58 17 So it's all very well to say, "I was just focused on
16:19:05 18 carrying out an investigation". Every investigation you
16:19:07 19 carry out requires contemplation of whether or not the
16:19:13 20 evidence that you're seeking to obtain is lawfully obtained
16:19:14 21 or properly obtained?---Yes, it does. But as I indicated,
16:19:17 22 I haven't raised this with anybody and raised any concerns
16:19:23 23 with my direct report. It's just something that I wasn't
16:19:26 24 clear thinking about at the time.
25

16:19:28 26 Do you say now looking back that you didn't discuss it or
16:19:31 27 do you say now that you can't recall whether you did
16:19:34 28 discuss it or not?---Well between - you know, it's really
16:19:39 29 difficult to go back 13 years.
30

16:19:41 31 I understand that?---From the time of [REDACTED] arrest,
16:19:49 32 moving on for those next [REDACTED] and then even forward,
16:19:55 33 in my mind, and this might be mistaken, but it kind of had
16:20:01 34 been resolved at that stage. You know, the opportunity to
16:20:02 35 do any other action had gone because once we start
16:20:06 36 arresting people and they ask for a solicitor we're kind of
16:20:09 37 bound to supply them with what they want. So something had
16:20:14 38 to be done previously either to make Ms Gobbo or
16:20:17 39 unavailable or some other strategy put in place that that
16:20:20 40 didn't occur, and that didn't occur.
41

16:20:23 42 I mean ultimately you know, don't you, that if there's an
16:20:26 43 issue with respect to disclosing, if there's a need to
16:20:32 44 disclose material which you don't want to disclose, you as
16:20:37 45 a Victorian Police Officer have a choice, can you either
16:20:40 46 say, "Look, we're not going to disclose it, in which case
16:20:45 47 we pull the charge, we don't pursue the charge" or "We

.30/09/19

6852

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16:20:48 1 disclose it and we carry on with the consequences"?---Yes.
2
16:20:52 3 And it was open, I take it, at least to consider whether or
16:20:59 4 not you simply - you didn't charge these people?---It was
16:21:04 5 open to me but it's not a consideration we made at any
16:21:07 6 stage.
7
16:21:08 8 But you certainly - that wasn't going to occur in this case
16:21:11 9 because these were very, very serious criminal
16:21:15 10 offences?---They were serious criminal offences and they
16:21:19 11 were recidivist drug offenders that we were chasing.
12
16:21:23 13 You were neither willing, I suggest, to withdraw the
16:21:26 14 charges, nor to disclose what had occurred?---We never even
16:21:29 15 discussed withdrawing the charges.
16
16:21:32 17 No?---And we certainly never considered, and I think I've
16:21:36 18 answered this a few times, disclosing the fact that
16:21:39 19 Ms Gobbo was a human source.
20
16:21:41 21 You didn't consider disguising it, did you say?---No,
16:21:46 22 disclosing it.
23
16:21:49 24 Disclosing it, I'm sorry. Can we perhaps play the same
16:21:57 25 day. It's clip number 50, p.179, time stamp 2 hours 37
16:22:04 26 minutes and 5 seconds.
27
16:22:09 28 COMMISSIONER: Will I just extend the pages for Exhibit
16:22:15 29 546?
30
16:22:17 31 MR WINNEKE: Yes, I think so, Commissioner.
16:22:17 32
16:22:20 33 COMMISSIONER: Page 22 to 29.
34
16:22:49 35 MR WINNEKE: It's the same tape, the same transcript.
16:22:49 36
16:27:33 37 (Audio recording played to hearing.)
16:27:33 38
16:27:34 39 All right, thanks. I know it's difficult to hear that
16:27:39 40 but with the assistance of the transcript it does appear
16:27:46 41 that Ms Gobbo is describing what occurred when she
16:27:53 42 initially came into the room and you were there and Jim
16:27:58 43 O'Brien was there and Mr Smith introduced himself to
16:28:02 44 [REDACTED]?---Yes.
45
16:28:04 46 You accept that? She says that [REDACTED] burst into tears,
16:28:08 47 "He was pretty emotional, he burst into tears and he

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16:28:11 1 grabbed my arm in front of those guys and said, 'I'm in so
16:28:15 2 much trouble'", et cetera. Do you accept that is a
16:28:19 3 reflection of what occurred in the commencement of that
16:28:21 4 meeting?---I've got - I can't recall it occurring. I do
16:28:26 5 recall other occasions where [REDACTED] has been extremely
16:28:30 6 emotional but it's quite possible this is correct and
16:28:35 7 that's what did happen.
8
16:28:41 9 Do you recall how Mr Smith's presence was recorded or what
16:28:50 10 the explanation was for his presence, or at all?---No, I
16:28:59 11 can't recall. I would imagine he would just be part of the
16:29:02 12 investigation team or something along those lines.
13
16:29:04 14 No doubt he would have presented as someone who was new to
16:29:10 15 both Ms Gobbo and [REDACTED]?---Yes.
16
16:29:12 17 Consistent with the earlier notes that she wouldn't be
16:29:16 18 recognising overtly people who she obviously knew?---Yes,
16:29:20 19 that's right.
20
16:29:24 21 Okay?---It's possible that he may have indicated his
16:29:28 22 purpose in the fact that he was someone that would speak to
16:29:33 23 people and try and get them to assist police, I just can't
16:29:37 24 recall that.
25
16:29:39 26 Ms Gobbo said that Dale Flynn has been asking how much does
16:29:49 27 she know and [REDACTED] said, "I told him that you didn't
16:29:58 28 know anything, that is I lied to you and Dale Flynn knows
16:30:04 29 that I know a lot more about it". So effectively what
16:30:07 30 she's saying is [REDACTED] telling you that Gobbo didn't
31 know anything?---Yes.
32
16:30:16 33 That's obviously an indication that [REDACTED] is pretending
16:30:22 34 that she didn't know anything about it and in fact you
16:30:25 35 would have known that he was not telling you the
16:30:28 36 truth?---Yes.
37
16:30:38 38 In other words, he was protecting Ms Gobbo?---He was, yes.
39
16:30:57 40 Commissioner, I note the time.
41
16:30:59 42 COMMISSIONER: All right. You're welcome to finish if
16:31:01 43 you're wanting to finish off something but otherwise we can
16:31:04 44 adjourn.
45
16:31:06 46 MR WINNEKE: Perhaps just one more thing which I suggest is
16:31:14 47 apparent from that, is that you are said to have said in

.30/09/19

6854

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16:31:20 1 his presence, "Look, [REDACTED], I had my concerns and I
16:31:25 2 suggested you call another lawyer out but, you know, he
16:31:29 3 just said that is a throw off". What do you say about
16:31:35 4 that?---I don't remember saying those comments but it's
16:31:39 5 possible I did.
6
16:31:40 7 Yes, all right. If that's the case would it have been a
16:31:43 8 throw off?---Yeah, possibly. I can't think of why else I
16:31:56 9 would say that at that stage.
10
16:31:57 11 She said, "Dale did a good job in front of him in my
16:32:02 12 presence and he made" - she says that you made those
16:32:06 13 comments but you're not in a position to explain how that -
16:32:10 14 if that's in fact the case, why it was said or what the
16:32:13 15 purpose of it was?---No, I can't - as I said, I can't
16:32:19 16 recall it but from my take of reading it here and listening
16:32:22 17 to it maybe I was just trying - it was perhaps to protect
16:32:27 18 her.
19
16:32:29 20 Okay. In effect presenting to [REDACTED] a picture that
16:32:33 21 wasn't in fact the truth?---Yes, well I think what I was
16:32:36 22 trying to imply that there may have been some suspicion
16:32:41 23 around Ms Gobbo and that would just make him less likely to
16:32:45 24 think that she was taking the course that she took.
25
16:32:49 26 Which would have given you a fairly simple out in all of
16:32:53 27 this by way of saying to [REDACTED], "Look, I'm sorry, we've
16:32:56 28 got our suspicions about Nicola and we just don't want her
16:33:00 29 involved in this investigation"?---Well, it's possible I
16:33:03 30 could have tried that but I don't know, if [REDACTED] stuck
16:33:07 31 to his guns, whether I could say otherwise.
32
16:33:11 33 Yes, all right. Then ultimately what I suggest is she
16:33:16 34 makes it pretty clear that she really comes on board with
16:33:19 35 your program because she's talking about when he was
16:33:31 36 wavering, she comes in with saying, "I don't think I can do
16:33:35 37 this", she's talking about "[REDACTED]", you've
16:33:40 38 got to do it for [REDACTED]?---Yes, that
39 comment's there, that's right.
40
16:33:43 41 If that is a convenient time, Commissioner.
16:33:43 42
16:34:33 43 COMMISSIONER: Do you want that tendered as pp.179 to 182
16:34:37 44 of the tape of [REDACTED] 09 between Nicola Gobbo and - - -
45
16:34:45 46 MR WINNEKE: Yes. Commissioner, just excuse me. I'm going
16:34:50 47 to play a couple of others tomorrow, so maybe I won't

.30/09/19

6855

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These claims are not yet resolved.

16:34:53 1 tender it just yet.
2
16:34:55 3 COMMISSIONER: If you're playing some more tomorrow we've
16:34:57 4 got overnight so let's take out the names from the audio.
16:35:03 5 In future, if you're able to, if you have enough time to do
16:35:07 6 it, I would - to give overnight notice to our very capable
16:35:11 7 people. It would be best to have the names taken out.
8
16:35:15 9 MR WINNEKE: Yes, Commissioner, the only thing I'd say in
16:35:17 10 relation to that if it does mean that the tape - - -
11
16:35:21 12 COMMISSIONER: If it effects the quality of the tape.
13
16:35:24 14 MR WINNEKE: If it effects the quality of it or it loses
16:35:25 15 the - - -
16
16:35:26 17 COMMISSIONER: That's a different matter then. If it can
16:35:29 18 be done without affecting the quality of the tape I think
16:35:32 19 we should try and do it.
20
16:35:34 21 MR WINNEKE: Yes, thanks Commissioner.
22
16:35:35 23 COMMISSIONER: All right. Sorry, did you say we're going
16:35:40 24 to continue on, so you don't want to tender this at this
16:35:43 25 stage?
26
16:35:45 27 MR WINNEKE: There's a couple more extracts and I think
16:35:47 28 Mr Chettle wanted me to play something as well.
29
16:35:51 30 COMMISSIONER: Following on from 182?
31
16:35:54 32 MR WINNEKE: Yes. Perhaps if I leave that and I'll tender
16:35:54 33 them as a bundle tomorrow.
34
35 COMMISSIONER: Okay, that's fine.
36
16:35:57 37 MR WINNEKE: If it please the court.
38
16:36:25 39 COMMISSIONER: We'll adjourn until 9.30 tomorrow morning.
16:36:29 40
16:36:29 41 <(THE WITNESS WITHDREW)
16:36:31 42
16:36:33 43 ADJOURNED UNTIL TUESDAY 1 OCTOBER 2019
16:36:39 44
45
46
47

.30/09/19

6856

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