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TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

TUESDAY, 23 MAY 2023 AT 9.53 AM (AEST)

MS E. LONGBOTTOM KC with MR J. JONES and MS E. LYNCH appeared as Counsel Assisting

MR M. TEDESCHI KC with MS B. ANNIWELL appeared on behalf of MR S. DRUMGOLD SC

MS C. WEBSTER SC appeared on behalf of Ms JEROME

MR A. MULLER appeared on behalf of MR S. WHYBROW

MS K. RICHARDSON SC with MR C. MITCHELL and MS W. HALL appeared on behalf of the Australian Federal Police

MR C. GNECH appeared on behalf of thirteen AFP members

DR P. DWYER appeared on behalf of MS H. YATES

MR J. MACK appeared on behalf of MR M. GREIG

MR SMITH appeared for MS JOHNSON

<THE HEARING RESUMED AT 9.53 AM

THE CHAIRPERSON: Mr Tedeschi.

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MR TEDESCHI: Chairman, if I could please raise a procedural issue for your consideration.

THE CHAIRPERSON: Yes.

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MR TEDESCHI: Your inquiry solicitor has requested of us by today to notify the inquiry about those witnesses that we wish to be called.

THE CHAIRPERSON: Yes.

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MR TEDESCHI: The answer to that would depend to some degree -

THE CHAIRPERSON: On how you go?

MR TEDESCHI: No.

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THE CHAIRPERSON: Right.

MR TEDESCHI: No, upon what view you would take to whether or not the rule that's commonly known as the rule in *Browne v Dunn* applies in this case.

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THE CHAIRPERSON: I see.

MR TEDESCHI: For example, there are quite a few statements where witnesses have given differing versions of conversations to the evidence of our client, and I will give you one example. Our client gave evidence that he had a conversation on the phone with Mr Korn, and Mr Korn said to him, "Moller told me there were some important text messages. Do you know what he's talking about?" Words to that effect. Mr Korn in his statement denies such a conversation. Were the rule in *Browne v Dunn* were to apply -

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THE CHAIRPERSON: Yes.

MR TEDESCHI: Were you to draw any inference at all against Mr Drumgold by a failure to -

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THE CHAIRPERSON: Yes, you are raising a very good practical question. Because if every conflict between, for example, Mr Drumgold and somebody else were the subject of cross-examination by you, we might be here for a month just for that reason. So really you're saying there are some issues of - where witnesses are in conflict with each other, but they don't really matter to the larger issues that we are looking at. And so to the extent that Mr Drumgold says X and a witness says not X, it wouldn't serve any purpose for you to cross-examine that witness about it because in the end whichever way I find, whether it was X or not X, will not affect the substantive matters that I'm looking at. Is that something of what you are putting or what?

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MR TEDESCHI: Chairman, it goes a little bit beyond that because -

THE CHAIRPERSON: Yes. What do you say?

5 **MR TEDESCHI:** - we would be making a submission to you that you would accept Mr Drumgold's version -

THE CHAIRPERSON: I see. Yes. Yes.

10 **MR TEDESCHI:** - and that that conversation shows that Superintendent Moller was acting beyond the scope of what he should have done when he - if you find as a fact that he did inform Mr Korn about the significance of some text messages. So there might be some significance -

15 **THE CHAIRPERSON:** Yes. Let me think about it and let Ms Longbottom think about it, and some of your colleagues may have a stake in this. So let's revisit it a little later today. But at the moment, it may be that there's no way out of it, that you have to challenge these things.

MR TEDESCHI: What I would -

20 **THE CHAIRPERSON:** What's the vice in going in the orthodox fashion?

MR TEDESCHI: In a trial, we would have to do that -

25 **THE CHAIRPERSON:** Yes. Yes.

MR TEDESCHI: - because the witness has to be given an opportunity to refute it.

THE CHAIRPERSON: Yes.

30 **MR TEDESCHI:** But here, because the rules of evidence don't apply, one would perhaps assume that the witness is going to deny it if it's put to him or her.

THE CHAIRPERSON: But the cross-examination is more than the rule in *Browne v Dunn*; it's also the testing of evidence to see whether it's reliable or not.

35 **MR TEDESCHI:** Yes.

40 **THE CHAIRPERSON:** So that aspect exists here. And if you are going to submit on some - if you are going to submit at the end of the day that with respect to a matter that is of significance in your mind as pertaining to Mr Drumgold's interest, I should find one thing rather than the other, you really have to test the other thing, don't you? Anyway, I will think about it, you think about it -

45 **MR TEDESCHI:** Yes. Yes.

THE CHAIRPERSON: - and it may be that we should proceed in the orthodox way, if it seems that - in particular if it seems that we won't be spending too much time extra anyway.

50 **MR TEDESCHI:** It would certainly -

THE CHAIRPERSON: And you can pick and choose what matters.

MR TEDESCHI: It would require a substantial number of witnesses to be called.

5 **THE CHAIRPERSON:** Yes. Let me think about it, and I will talk to Ms Longbottom, and I will invite submissions from your colleagues in due course, maybe later -

MR TEDESCHI: Yes.

10 **THE CHAIRPERSON:** - today.

MR TEDESCHI: In order to avoid that necessity, you would have to indicate that you would not draw any adverse inference from the failure to ask for a witness to be called.

15 **THE CHAIRPERSON:** Yes. Yes. But I just am puzzled how I would prefer one witness over another if that witness is not tested.

MR TEDESCHI: Yes.

20 **THE CHAIRPERSON:** So I will think about it -

MR TEDESCHI: Yes.

25 **THE CHAIRPERSON:** - and then I will invite submissions later, after I'm more mentally prepared to receive them -

MR TEDESCHI: Yes.

30 **THE CHAIRPERSON:** - and we will deal with it.

MR TEDESCHI: Thank you.

THE CHAIRPERSON: Thank you. Mr Jones.

35 **MR JONES:** If Detective Superintendant Moller could be returned. Mr Chair, I just have three further questions for the superintendent before Mr Tedeschi starts cross-examination.

THE CHAIRPERSON: Yes. All right.

40 <SCOTT JOSEPH MOLLER, CONTINUING

<EXAMINATION BY MR JONES:

45 **THE CHAIRPERSON:** Mr Jones.

MR JONES: Thank you. Detective Superintendent, I have three further questions for you. At any stage of the investigation, the decision to charge or the trial, did you have any political pressure placed upon you in any way, shape or form?

50 **DET SUPT MOLLER:** No, I didn't.

MR JONES: At any stage of the investigation, the decision to charge or the trial, did you observe any other police officers have any political pressure placed upon them in any shape or form?

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DET SUPT MOLLER: No, I didn't.

MR JONES: And by "political pressure", I mean governmental pressure.

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DET SUPT MOLLER: Yes. I understand what you mean.

MR JONES: At any stage of the investigation, the decision to charge or the trial, did you receive a report from any other police officer that they had political pressure placed upon them in any way, shape or form?

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DET SUPT MOLLER: No, I didn't.

MR JONES: Thank you.

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THE CHAIRPERSON: Yes, Mr Tedeschi.

<EXAMINATION BY MR TEDESCHI:

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MR TEDESCHI: Thank you. Superintendent, I would like to begin by asking you some questions about the evidence that you gave yesterday. You gave evidence that you gave permission for the Victims of Crime Commissioner, Heidi Yates, to be interviewed by police for three reasons. The first reason you referred to was that she was present when a photograph of a drink was shown by Brittany Higgins on her phone to the police; is that right?

30

DET SUPT MOLLER: There was a photograph of a - a cocktail that - that she had stated that she had drunk on that night, and - and it was a photograph depicting not only a cocktail but the seating arrangements and stuff like that.

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MR TEDESCHI: And the second reason was some continuity evidence about the handing over of Brittany Higgins' phone to the police; is that right?

DET SUPT MOLLER: That's right, yes.

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MR TEDESCHI: And the third reason was to ascertain if there had been any significant disclosures by Brittany Higgins to Heidi Yates; is that right?

DET SUPT MOLLER: Well, no, I don't remember saying that, Mr Tedeschi. What I remember - the first two points I definitely articulated.

45

MR TEDESCHI: I thought you -

THE CHAIRPERSON: Sorry, what was that, Mr Moller?

DET SUPT MOLLER: I - I discussed the need - or how I provided authority for them to take a statement from Ms Yates in relation to the continuity of the phone - the evidence in relation to the phone, and also the independent evidence associated with the photos that were captured on that night.

5

MR TEDESCHI: Didn't you give evidence yesterday that you also gave permission for her to be questioned about whether there had been any significant admissions or disclosures by Brittany Higgins?

10 **DET SUPT MOLLER:** I think - I think -

MR TEDESCHI: Did you give that evidence?

15 **DET SUPT MOLLER:** I think you are being very specific in relation to the - and "permission" is not the right word, but the authority or the - I gave support for the conduct of that interview, and the conduct of the interview was in relation to those aspects that I've discussed.

20 **MR TEDESCHI:** Yes. Now, going to the photograph of the cocktail drink, you had video evidence of Ms Higgins at either one or both bars; is that right?

DET SUPT MOLLER: No, that's not right.

25 **MR TEDESCHI:** Did you have some video recordings that had been taken in one of the bars?

30 **DET SUPT MOLLER:** Not that I recall, no. We had video evidence from Parliament House, and my understanding was video evidence in relation to the bar - I don't recall seeing that video evidence. You may need to -

THE CHAIRPERSON: But there was video evidence of the group of people when they first assembled for drinks?

35 **DET SUPT MOLLER:** There was, yes.

THE CHAIRPERSON: I think that's what Mr Tedeschi is putting to you.

40 **DET SUPT MOLLER:** Yes. Yes. Sorry, yes, there was that video evidence. But there was no - there was no video evidence of them engaging inside the bar.

MR TEDESCHI: Wasn't there some video evidence that showed how many drinks Brittany Higgins had had?

45 **DET SUPT MOLLER:** Not that I recall.

MR TEDESCHI: Did you have witness statements from any of the witnesses who had been with Ms Higgins in either of those two bars?

50 **DET SUPT MOLLER:** They had a number of witness statements.

MR TEDESCHI: Do you remember how many witness statements you had?

DET SUPT MOLLER: No, I - I couldn't - I couldn't tell you.

5 **MR TEDESCHI:** Was it witness statements from both bars?

DET SUPT MOLLER: I can't remember exactly.

10 **MR TEDESCHI:** And by the time you gave authority for Heidi Yates to be interviewed, Mr Lehrmann had been interviewed, hadn't he?

DET SUPT MOLLER: I believe he had, yes.

15 **MR TEDESCHI:** And Mr Lehrmann had been asked questions about having been at these two bars with Brittany Higgins?

DET SUPT MOLLER: I think so, yes.

20 **MR TEDESCHI:** There was no dispute on his part, was there, that he had been present with Ms Higgins at these two bars and that they had both been drinking?

DET SUPT MOLLER: Well -

25 **MR TEDESCHI:** Is that right?

DET SUPT MOLLER: It was - you know, in my mind, when it was put to me, it was a legitimate line of inquiry.

30 **MR TEDESCHI:** Please answer my question.

DET SUPT MOLLER: I'm trying to, Mr Tedeschi.

35 **MR TEDESCHI:** Was there any indication from Mr Lehrmann that there was any challenge whatsoever to the fact that they had been together at two bars?

DET SUPT MOLLER: There was no challenge in relation to being together at two bars.

40 **MR TEDESCHI:** Was there any challenge at all that they had been drinking at those two bars?

DET SUPT MOLLER: No, I don't think there was any challenge to them drinking.

45 **MR TEDESCHI:** So would you agree with this: that a photograph of a cocktail added absolutely nothing to the police case against Mr Lehrmann?

DET SUPT MOLLER: No, I wouldn't agree to that.

50 **MR TEDESCHI:** Well, it was not a situation where you had any shortcoming of evidence about them having been at a bar drinking, was there?

DET SUPT MOLLER: Well, I think the collection of evidence is not - is not levelled by the shortcomings. I think, you know, if there's an opportunity for us to collect evidence and - and there's an opportunity to collect evidence that would extend the investigation, then there shouldn't be a limit on - on how we collect that evidence.

5

MR TEDESCHI: You had no reason to think that Mr Lehrmann would challenge having been at the bar, did you?

DET SUPT MOLLER: Well, I didn't know if he was going to challenge or not. I didn't know what was in his mind.

10

MR TEDESCHI: He had admitted in his interview that he had been there, had he not?

DET SUPT MOLLER: Like I said, I didn't know what was in his mind.

15

MR TEDESCHI: See, I suggest to you that having a photograph of a drink was not a genuine reason for asking for Heidi Yates to be interviewed.

DET SUPT MOLLER: Well, I think it's a genuine line of inquiry.

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MR TEDESCHI: Now, your second reason for authorising the interview of Heidi Yates was continuity of evidence regarding the handing over of Brittany Higgins' phone; correct?

DET SUPT MOLLER: That was - yes, that is correct.

25

MR TEDESCHI: Have you got any explanation to give for why, during the questioning of Heidi Yates during her interview, she was not asked a single, solitary question about the handing over of that phone?

DET SUPT MOLLER: No, I don't. It wasn't me that interviewed her.

30

MR TEDESCHI: I suggest to you that the continuity of evidence about that phone was not a genuine reason for the interview of Heidi Yates.

DET SUPT MOLLER: Well, when I gave authority - or "supported" is probably a better word. When I supported the taking or the interviewing of Ms Yates, that's why I made my decision.

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MR TEDESCHI: At the time that Heidi Yates was interviewed, she was a support person for Brittany Higgins and had been for some time already?

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DET SUPT MOLLER: Yes.

MR TEDESCHI: You would appreciate how important a support person is to a vulnerable complainant in a sex case?

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DET SUPT MOLLER: And, yes, I agreed with that yesterday. Yes.

MR TEDESCHI: Have you got support people here with you today?

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DET SUPT MOLLER: Yes, I do.

MR TEDESCHI: How many have you got here today?

5 **DET SUPT MOLLER:** One.

MR TEDESCHI: One support person?

DET SUPT MOLLER: Yes.

10 **MR TEDESCHI:** Plus your lawyers?

DET SUPT MOLLER: Yes, my lawyers are here today.

15 **MR TEDESCHI:** Plus any other persons from AFP?

DET SUPT MOLLER: I've got one support person, Mr Tedeschi.

MR TEDESCHI: Right. And do you agree it's important for witnesses to have access to support persons that they have confidence in?

DET SUPT MOLLER: I - I believe it's a very vital role to have support people, yes.

MR TEDESCHI: Would you have a look, please, at the request that was sent to you by Detective Frizzell - pardon me while I dig it up - on 8 September 2021. It's AFP.2003.0005.0043. That's an email from Senior Constable Frizzell to yourself on that date? Correct?

DET SUPT MOLLER: I'm just reading it, Mr Tedeschi. Yes, that's correct.

MR TEDESCHI: And in that email - if that could be - if the second paragraph could be highlighted, please. In that email, Senior Constable Frizzell says:

35 "Ms Yates has been present for a number of meetings between the investigation team and Ms Higgins, in particular in a meeting in which yourself and Detective Inspector Boorman met with Ms Higgins, at which time she provided information that is relevant to the matter currently before court."

Do you see that?

40 **DET SUPT MOLLER:** Yes.

MR TEDESCHI:

45 "Ms Yates will be able to offer corroborative and independent evidence in relation to this meeting."

Do you agree there is no mention there of any photograph of a drink?

50 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Do you agree there is no mention there of any continuity of evidence about a phone?

5 **DET SUPT MOLLER:** Yes, I do.

MR TEDESCHI: Do you agree that Senior Constable Frizzell has expressed the request in very vague terms as "a matter currently before court", "corroborative and independent evidence"? That's all she refers to?

10

DET SUPT MOLLER: That's what it says.

MR TEDESCHI: It's very vague as to what she wants to ask Heidi Yates about, isn't it?

15 **DET SUPT MOLLER:** Well, I think the email is not descriptive, but certainly, you know, I had a number of briefings - verbal briefings in relation to that request.

MR TEDESCHI: Prior to this request?

20 **DET SUPT MOLLER:** I had a number of briefings at the same time that request came through. So -

MR TEDESCHI: Prior to this request?

25 **DET SUPT MOLLER:** Yes, I had spoken to - I had spoken to one of the detectives prior to Detective Sergeant Rose - I had spoken to him prior to this request. And then the formal request came through and then - and then I remember having some other conversations about the request. But, you know, collectively, that was our thoughts - that was our - that was our thought about why we needed that.

30

MR TEDESCHI: Have you got any explanation to give to the inquiry as to why - having, as you said, had conversations with members of the team about the topics that Heidi Yates was going to be asked about, why Senior Constable Frizzell didn't mention any of those topics in this email?

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DET SUPT MOLLER: No, I don't. You would have to talk to her about that.

MR TEDESCHI: Would it be the case that at the time that she wrote this email, she had no idea at all what -

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MR BLACK: I object. It's asking for -

THE CHAIRPERSON: Yes. You are asking him about Senior Constable Frizzell's state of mind.

45

MR TEDESCHI: Is it the case that as at the date of this email, you had not had any discussions with Senior Constable Frizzell apart from the fact that Ms Yates was going to be interviewed but nothing about any topic she was going to be interviewed about?

DET SUPT MOLLER: No. Like I said, I had a number of conversations with different police, Detective Sergeant Rose in particular, in relation to this matter.

5 **MR TEDESCHI:** Did you make any diary notes of any meetings that you had with Sergeant Rose or Emma Frizzell about the interview with Heidi Yates?

DET SUPT MOLLER: I can't remember if I made a diary note about speaking to Detective Rose, but I can review my diary and see.

10 **MR TEDESCHI:** What do you say to the - what do you say to this hypothesis: that you instructed Emma Frizzell to send you just a vague request for Heidi Yates to be interviewed without any details about it because at that stage there had been no decision made by anybody, including you, as to what Heidi Yates was going to be questioned about?

15 **THE CHAIRPERSON:** Mr Tedeschi, how can you put that?

MR TEDESCHI: I will rephrase it. Did you instruct Emma Frizzell to send a vague email to you in terms of any topics that Heidi Yates might be interviewed about?

20 **DET SUPT MOLLER:** No.

MR TEDESCHI: In the normal course of events, if somebody of Heidi Yates' profile as a senior public official was going to be interviewed, wouldn't it be the normal course of events that the person seeking to interview would provide very specific detail about what that
25 interview was going to entail?

DET SUPT MOLLER: Not necessarily, no.

MR TEDESCHI: Have you ever before given permission for the Victims of Crime
30 Commissioner to be interviewed?

DET SUPT MOLLER: Well, I've never had the Victims of Crime Commissioner so personally involved in a matter before.

35 **MR TEDESCHI:** Could you answer my question, please. Have you ever given permission for Ms Yates or any other Crime Commission to be interviewed before?

DET SUPT MOLLER: I have never been involved in a matter like this with Ms Yates, so I've never had the opportunity or the need to do that. So, no, I haven't done it.
40

MR TEDESCHI: She is the head of an agency; correct?

DET SUPT MOLLER: Yes.

45 **MR TEDESCHI:** Have you ever given permission for another head of an agency - a government agency - to be interviewed?

DET SUPT MOLLER: Again, I've - I've never had the head of an agency - the commissioner of a - of another agency involved as a support person in a sexual assault
50 matter. So, no, I haven't done that before.

MR TEDESCHI: I suggest to you that if this was a genuine request for Heidi Yates to be interviewed for evidentiary reasons that you would have required very specific information to form the basis for such a request.

5

DET SUPT MOLLER: Like I said to you before in my other answers, there was significant discussion about this need to take a statement from Ms Yates. So, no, that's not right. And I don't agree with what you're saying.

10 **MR TEDESCHI:** You've told us that you appreciate how important a support person is. Did you realise at the time that you gave authority for Ms Yates to be interviewed that it might result in her having to withdraw as a support person for Brittany Higgins?

15 **DET SUPT MOLLER:** No. My consideration at the time was that it may limit possibility - I thought it would limit her being able to attend the court - the hearing - internal in the hearing.

MR TEDESCHI: If she was to be called as a witness in the trial, might that have the possible consequence that she was no longer able to act as a support person for Brittany Higgins?

20

DET SUPT MOLLER: No, I - I don't think - I don't think that's a consequence. I think the consequence was - and the one that I considered at the time for giving support for this to be done was the consequence that I considered was that Ms Yates would - given that she's made the statement, would be refrained from being - and observing the court proceedings.

25

MR TEDESCHI: Including as a support person for Ms Higgins in court?

DET SUPT MOLLER: Well, she wouldn't have been able to attend the court, but that doesn't - that doesn't stop her being the support person.

30

MR TEDESCHI: The fact of the matter is that you and the investigating team were very frustrated that Heidi Yates had placed herself as an intermediary between Brittany Higgins and the police; is that right?

35 **DET SUPT MOLLER:** Not exactly. Did it cause us concern? Yes, it did. Was it difficult? Yes, it was. But in saying that, we were working through those issues. So, no, I don't agree with you.

MR TEDESCHI: You thought it was inappropriate, didn't you?

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DET SUPT MOLLER: I thought a commissioner - a head of an agency working as a support person was inappropriate, yes, I did. No different to how I would think if my commissioner started investigating a sexual assault crime in - in the ACT. I would think that would be inappropriate. Can he do it? Yes, he can do it. But is it inappropriate? In my view, it's inappropriate. That's my view.

45

MR TEDESCHI: And you and your team were of the view that it complicated the investigation; is that right?

50 **DET SUPT MOLLER:** It made it difficult. It - it -

THE CHAIRPERSON: What was difficult?

5 **DET SUPT MOLLER:** The - the investigators working on the actual investigation, Commissioner, found it upsetting or -

DR DWYER: I object. I object. I object.

10 **THE CHAIRPERSON:** Yes, go on.

DR DWYER: The witness can give evidence of what he knows - well, what he observed or what he found to be difficult.

15 **THE CHAIRPERSON:** Yes.

DR DWYER: But he shouldn't be speaking about investigators, particularly when it's impossible to then test that evidence.

20 **THE CHAIRPERSON:** Well, let's just take it a step at a time. The objection is that if you - I asked you what the difficulties were. And so what I need to hear is evidence about your observation of what you perceived those difficulties to be.

DET SUPT MOLLER: Okay.

25 **THE CHAIRPERSON:** Some of that might be that somebody - one of the investigators complained to you or told you something about a difficulty. Some of it might be your own appreciation of a difficulty. But if you bear those things in mind and avoid general statements that it would be impossible to -

30 **DET SUPT MOLLER:** Sorry. Yes.

THE CHAIRPERSON: - examine, that would be the most helpful way to answer.

35 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: So what were the - I will ask you again. What were the difficulties that you saw in Ms Yates' role as a support - as the intermediary between the AFP and Ms Higgins?

40 **DET SUPT MOLLER:** So from my observations, the investigators appeared to be nervous when they were interacting with Ms Yates. They weren't comfortable. And certainly the feedback I had from the team was they found it - I'm trying to think of the words to use so I don't have another objection. But certainly the process was more difficult in that they couldn't communicate freely. They felt often that Ms Yates was speaking for Ms Higgins and not
45 allowing Ms Higgins to speak. And this is the feedback I was getting from them. And that, you know -

THE CHAIRPERSON: "Them" you refer to are?

50 **DET SUPT MOLLER:** The investigators.

THE CHAIRPERSON: And who are they?

5 **DET SUPT MOLLER:** Emma Frizzell, Trent Madders, Marcus Boorman. You know, I gave - he gave me this feedback as well. So, yes, that was the difficulty they had. So - yes.

THE CHAIRPERSON: Yes. Thank you. Mr Tedeschi.

10 **MR TEDESCHI:** On 9 September 2021, you received an email from commander Hall O'Meagher about this? You were asked about it yesterday?

DET SUPT MOLLER: Yes.

15 **MR TEDESCHI:** Can we bring up 2003.0004.8358. The top of the page. That's an email from Hall O'Meagher, who was your commander; correct?

DET SUPT MOLLER: Yes, that is correct.

20 **MR TEDESCHI:** To Peter Crozier, who was also a commander?

DET SUPT MOLLER: No, Assistant Commissioner.

MR TEDESCHI: Assistant Commissioner. Dated 9 September. Saying:

25 "I'm not certain the team have advised the DPP at this stage. However, I have discussed with Detective Superintendent Moller, and it is the intention that they will be consulted."

30 And then just - that was at 4.57. At 4.53, just below it, Peter Crozier had contacted Hall O'Meagher:

"Thanks, Hall. Can I presume the ACT DPP is aware?"

35 And then if we go further down, 4.51, which is before that, from Hall O'Meagher to Peter Crozier:

40 "Detectives believe that Ms Higgins may have made relevant disclosures to Heidi Yates in her role in support of the victim. As a result, Detective Superintendent Moller has made contact with her and intends to progress this aspect of the investigation with a view to requesting a witness statement from Ms Yates if it's ultimately deemed that it's necessary."

Were you made aware that your commander intended that the DPP was to be consulted?

45 **DET SUPT MOLLER:** Well, I think we saw an email yesterday where -

MR TEDESCHI: You were copied in.

50 **DET SUPT MOLLER:** - my acting commander had asked me to contact the DPP.

MR TEDESCHI: Yes. And correct me if I am wrong: I think yesterday you said that you thought that your team had done that?

DET SUPT MOLLER: Well, I wasn't sure. I - I gave evidence yesterday that I didn't do it.

MR TEDESCHI: Yes. Did you receive any sort of indication from any member of your team to inform you that they had contacted the DPP and the DPP had said, "Yes, go ahead and interview Ms Yates"?

DET SUPT MOLLER: I don't recall.

MR TEDESCHI: I suggest to you that there was no such message to you.

DET SUPT MOLLER: Well, I - I don't remember if there was or not.

MR TEDESCHI: I want to suggest to you you were never informed that the DPP had been consulted or that the DPP had given permission for Heidi Yates to be interviewed. What do you say about that?

DET SUPT MOLLER: Well, I just said I don't recall.

MR TEDESCHI: I suggest - I withdraw that. Did you deliberately neglect to ask the DPP for advice about the interview of Ms Hall because you knew perfectly well what his response would be?

DET SUPT MOLLER: No.

MR TEDESCHI: Was the real reason why you authorised the interview of Ms Yates because you thought it might result in her having to withdraw as a support person for Brittany Higgins and that would meet with favour in the investigative team?

DET SUPT MOLLER: I never considered that taking a statement from Ms Yates would have her withdraw from her support to Ms Higgins -

THE CHAIRPERSON: Mr Tedeschi, the premise of your question is that if Ms Yates was made a witness that she would have to cease being Ms Higgins' support person under the statute. And, of course, one of the effects of making her a witness - making her a witness, not just interviewing her - interviewing her is nothing, but making her a witness in the case would mean that she could not be present in court while Ms Higgins was giving evidence. And that's a serious thing. But on what basis do you put it that making her a witness would mean that Ms Yates could no longer interact with Ms Higgins as a support person?

MR TEDESCHI: Because -

THE CHAIRPERSON: Witnesses deal with each other all the time.

MR TEDESCHI: - support people are, by definition, independent of the case completely. They have no role as witnesses. They have no role by way of providing evidence, even if they are not called as witnesses. And as a support person who had been interviewed, it could have

resulted in her having to withdraw as a support person entirely, but at the very least, would have resulted in her being unable to be in court.

5 **THE CHAIRPERSON:** I can understand the last part, which is significant. I'm not sure about the first part, but I haven't made up my mind. Anyway, you proceed because you may be perfectly correct.

10 **MR TEDESCHI:** Are you aware that when the DPP found out that Ms Yates had been interviewed, he immediately said that Heidi Yates would not be a witness in the case?

DET SUPT MOLLER: I don't recall. I don't recall being given that information, no.

15 **MR TEDESCHI:** You said in evidence yesterday that you were concerned that it appeared to you that the DPP might be collecting information about the police during the course of this case and perhaps with a view to complaining afterwards, I take it you meant, and that you wanted to do everything perfectly. Do you remember saying that yesterday?

DET SUPT MOLLER: Yes, I did say that yesterday. Yes.

20 **MR TEDESCHI:** I suggest to you that if you really wanted to do everything perfectly, you would have made sure that the DPP was consulted about the Heidi Yates interview.

25 **DET SUPT MOLLER:** Well, I think, Mr Tedeschi, it's - I think your client actually was the one that said we did a very thorough investigation, was independently reviewed and the comments from that independent review that it was a very thorough investigation. We have tried our best. We have done everything we can to make this the most thorough investigation we could. So, no, I don't agree with what you're saying.

30 **MR TEDESCHI:** Superintendent, I don't think that anybody is criticising your investigation. What I'm asking you about is the interview with Ms Yates.

DET SUPT MOLLER: Which was part of our investigation.

35 **MR TEDESCHI:** And what I want to suggest to you is that if you had really wanted to do everything perfectly, you would have consulted the DPP before interviewing Ms Yates.

DET SUPT MOLLER: Well, I'm not saying they weren't consulted. I'm saying that I didn't consult them.

40 **MR TEDESCHI:** You would have ensured that the DPP was, in fact, consulted and obtained some response from him.

DET SUPT MOLLER: Again, I'm not sure they weren't consulted.

45 **MR TEDESCHI:** Now, I would like to ask you about the second electronic interview with Ms Higgins. Do you recall being asked questions about that yesterday?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And I think you agreed that after two police officers - I think it was Madders and Frizzell that conducted that second interview?

DET SUPT MOLLER: Yes.

MR TEDESCHI: After that, that you and two other police officers came into the room and spoke to Ms Higgins?

DET SUPT MOLLER: Yes, that's right.

MR TEDESCHI: Were Ms Higgins and Ms Yates seated on a low couch when you came into the room?

DET SUPT MOLLER: I - I can't remember, Mr Tedeschi. I'm sorry, I can't remember that. I didn't have any notes of that and, to be honest, I've got a very vague recollection of - of that meeting.

MR TEDESCHI: Was it in an interview room?

DET SUPT MOLLER: It was in the SACAT office, as I remember.

THE CHAIRPERSON: In the what?

DET SUPT MOLLER: In the sexual assault area.

THE CHAIRPERSON: Yes.

DET SUPT MOLLER: That's - that's how I - I think -

MR TEDESCHI: Is there a low couch there?

DET SUPT MOLLER: There's a number of low couches there.

MR TEDESCHI: So after this interview - correct me if I am wrong - there were four male police officers and one female police officer speaking to Ms Higgins?

DET SUPT MOLLER: I would agree there's a number of police. I can't remember exactly how many.

MR TEDESCHI: What do you say to the suggestion that at a certain stage whilst you were speaking to Ms Higgins that the tone of the conversation changed?

DET SUPT MOLLER: I - I've got a very vague recollection of it, Mr Tedeschi, so I - I would say that - yes, I've got a vague recollection of it.

MR TEDESCHI: Did that happen? Did the tone change?

DET SUPT MOLLER: I don't remember the tone changing, no.

MR TEDESCHI: Do you recall saying words to this effect to Ms Higgins, "Things are going to get so much harder from here"?

DET SUPT MOLLER: I don't remember saying those particular words.

MR TEDESCHI: "There should not be any further contact with the media. You've got to stop talking to the media"?

DET SUPT MOLLER: Look, I said that a number of times to - to Ms Higgins about the media. So I don't remember saying those exact words, but I'm not - I'm not saying I didn't.

MR TEDESCHI: "If you're speaking to the media, and this can't go ahead, it will all be for nothing." Do you remember saying that?

DET SUPT MOLLER: I don't remember saying those words.

THE CHAIRPERSON: Yes.

MR BLACK: Mr Chair, I object to this. It's just repetitive of what the examination yesterday was.

THE CHAIRPERSON: Yes, no, hang on. He's cross-examining on behalf of Mr Drumgold's interests.

MR BLACK: I appreciate that. But my objection is that these propositions were already put yesterday.

THE CHAIRPERSON: Yes, yes. But Mr Tedeschi is free to put them again for different purposes.

MR BLACK: Thank you.

THE CHAIRPERSON: Go ahead, Mr Tedeschi.

MR TEDESCHI: Ms Higgins had just been questioned by Madders and Frizzell about inconsistencies in her evidence; is that right?

DET SUPT MOLLER: I believe she went through another interview, yes.

MR TEDESCHI: About inconsistencies in her evidence?

THE CHAIRPERSON: You mean the second EICI?

MR TEDESCHI: The second - this is all about the second EICI.

DET SUPT MOLLER: Yes.

MR BLACK: I object.

THE CHAIRPERSON: Yes.

MR BLACK: In fairness, the witness should be - it should be ascertained whether the witness knew what had just happened in that interview.

5 **THE CHAIRPERSON:** I'm not hearing you, Mr Black.

MR BLACK: Sorry. It should be ascertained first whether the witness knew what happened in that interview, because the evidence is that he did not do the interview.

10 **THE CHAIRPERSON:** Yes. I understand, Mr Black, but I think the - Superintendent Moller is able to answer what's being put to him and is able to distinguish between what he knows and doesn't know and what he was present for and not present for and what he learned second-hand. Go ahead, Mr Tedeschi.

15 **MR TEDESCHI:** I think, Superintendent, you gave evidence yesterday that the purpose of the second interview was to put inconsistencies to her; is that right?

DET SUPT MOLLER: Well, that was my briefing, yes.

20 **MR TEDESCHI:** Yes. And so far as you knew, that's what had happened during this second EICI?

DET SUPT MOLLER: Well, I wasn't in the interview, but my briefing was that that's what was going to happen.

25

MR TEDESCHI: That can be quite confronting, can't it, to a complainant, to have inconsistencies put to her during an interview with police?

30 **DET SUPT MOLLER:** Well, I think our whole strategy in relation to interviewing is to make them feel comfortable - to make complainants feel comfortable, so it's not confronting, so it's not damning. So, you know, we go to great lengths to try and make it not confronting.

MR TEDESCHI: But do you agree that it could be confronting to a complainant to have inconsistencies in her evidence put to her?

35

DET SUPT MOLLER: Like I said, we go to great lengths to make it not confronting. We go to great lengths to make it, so complainants feel comfortable and freely talk to the investigators during these EICs. So I can't say whether Ms Higgins felt confronted. What I can say is that we try very hard, and our strategies are such that, you know, we go every length we can to make it not confronting.

40

MR TEDESCHI: Do you agree that having five police officers in the room with her could have been very confronting, after her interview, to Brittany Higgins?

45 **DET SUPT MOLLER:** I - I can't say whether there were five police in there or not. I would - I would think from the conversation yesterday that - that I was shown, which - I have got a very vague recollection, but I believe Ms Yates recorded some. No, I would say from that conversation the way that conversation reads that it's not confronting.

MR TEDESCHI: I want to suggest to you that for a sexual assault complainant who has just been questioned about inconsistencies in her evidence, to have five police officers around her after the interview is potentially very confronting. What do you say about that?

5 **DET SUPT MOLLER:** I disagree with you.

MR TEDESCHI: She could have been very fragile at that stage, might she not?

10 **DET SUPT MOLLER:** Yes, but she had a support person with her. So, you know, equally, I think - and like I said, the police go to great lengths to make it not confronting. I mean, the whole sexual assault area where we conduct these investigations has been specifically built and designed to reduce that stigma of confrontation and, you know, being in a police station. It's at a completely different area. There's no - there's no identifying features of police, you know, equipment. There's couches so people can feel comfortable. And - and Ms Yates
15 herself was involved in the design of this - of this facility. So I am really struggling to answer you precisely, Mr Tedeschi, because, no, I don't think it is confronting.

MR TEDESCHI: I want to suggest to you that for five police officers to be in a room with a complainant after she's just been interviewed is not victim-centric behaviour.
20

DET SUPT MOLLER: I don't agree.

MR TEDESCHI: You agree that you are required to engage in victim-centric behaviour with a complainant in a sex case?
25

DET SUPT MOLLER: Well, I have given evidence to that yesterday. And I've told you that, you know, in terms of my own personal views, it's very important.

MR TEDESCHI: Do you agree that the disclosure to the defence of Brittany Higgins' counselling notes would have understandably concerned her?
30

DET SUPT MOLLER: Well, I think we agreed that it wasn't disclosed. The defence -

MR TEDESCHI: The defence.
35

DET SUPT MOLLER: The defence never accessed those.

MR TEDESCHI: It was sent - let's use a word that you can agree with.

40 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: It was sent to the defence; correct?

DET SUPT MOLLER: Yes, it was sent.
45

MR TEDESCHI: They were in possession -

DET SUPT MOLLER: There was an administration error, and it was sent. Yes.

50 **MR TEDESCHI:** They were in possession of the notes, the defence?

DET SUPT MOLLER: Well, it was sent to them, yes.

MR TEDESCHI: For about six weeks?

DET SUPT MOLLER: And they never accessed them.

MR TEDESCHI: For about six weeks, you didn't know whether they had accessed them or not; correct?

DET SUPT MOLLER: They never accessed them.

MR TEDESCHI: Can you answer my question, please.

DET SUPT MOLLER: They - they never - I'm trying to.

MR TEDESCHI: For about six weeks, you didn't know -

THE CHAIRPERSON: The question is whether for a six-week period after the notes were delivered as part of the brief to defence counsel, AFP and you in particular did not know whether or not they had been accessed.

DET SUPT MOLLER: No, I didn't.

MR TEDESCHI: And I want to suggest to you that, understandably, Ms Higgins would have been upset about these notes being disclosed or sent to the defence.

DET SUPT MOLLER: Yes.

MR TEDESCHI: Do you agree that the second interview might have caused her to believe that you didn't accept her veracity?

DET SUPT MOLLER: I'm sorry. Can you just ask that question again? I'm not -

MR TEDESCHI: Do you agree that holding a second EICI might have caused her to believe that you didn't accept the veracity of her complaints?

DET SUPT MOLLER: That inference could be drawn because we were, you know, making further inquiries. So there's a possibility, but you would have to ask her. I'm not sure.

MR TEDESCHI: Do you agree that by interviewing Ms Yates, it may have been viewed by Ms Higgins as a deliberate attempt to isolate her and remove her support person?

MR BLACK: I object to that. It is calling for this witness -

THE CHAIRPERSON: Yes, I think that's a step too far. The other thing is - what's the proposition that's being advanced, that police interviewed Ms Yates in order to disqualify her as a support person? All right. Why would they want to do that?

MR TEDESCHI: Because the investigative team viewed her as a hindrance to their communicating directly with Ms Higgins.

5 **THE CHAIRPERSON:** But how would that - how would removing Ms Yates achieve anything? A new support person would be engaged to be the intermediary with police.

MR TEDESCHI: Perhaps a support person that wasn't as experienced and proficient and professional and supportive as Ms Yates.

10 **THE CHAIRPERSON:** So the theory is that police interviewed Ms Yates to make her a witness to disqualify her from acting as a support person -

MR TEDESCHI: In some respect.

15 **THE CHAIRPERSON:** - in giving - at least in supporting her in court, and that would help police because although she could perhaps remain as a support person for all other respects, if she couldn't, another person would come in to be the intermediary and that person would not cause an obstruction as the communication channel?

20 **MR TEDESCHI:** As Ms Yates had.

THE CHAIRPERSON: And how - anyway, you will tell me at the end, no doubt. You go ahead.

25 **MR TEDESCHI:** The question that I asked was: do you agree that by interviewing Ms Yates, you ran the risk that it could have been viewed by Ms Higgins as an attempt to isolate her?

30 **DET SUPT MOLLER:** I - I didn't consider that.

MR TEDESCHI: Do you agree that from all of those actions that I've just mentioned that a reasonable person in the position of Ms Higgins could believe that you were unsupportive of her?

35 **MS RICHARDSON:** I object to this questioning.

THE CHAIRPERSON: Yes, I think -

40 **MS RICHARDSON:** I would seek to do it in the absence of the witness.

THE CHAIRPERSON: Your objection, I take it, is that he is asking about what he thinks Ms Higgins' state of mind was.

45 **MS RICHARDSON:** Well, I have a specific basis for the objection.

THE CHAIRPERSON: Sorry?

MS RICHARDSON: There is a specific basis for the objection -

50 **THE CHAIRPERSON:** Yes. What is it?

MS RICHARDSON: - that I would like to raise it in the absence of the witness.

THE CHAIRPERSON: All right. Would you excuse us, Superintendent?

<THE WITNESS STOOD DOWN

MR TEDESCHI: Perhaps I should state what my purpose is and -

MS RICHARDSON: I will just take the objection.

THE CHAIRPERSON: Let Ms Richardson make her objection and then you can respond, Mr Tedeschi.

MS RICHARDSON: My learned friend has put a number of questions to this witness premised on an understanding of Ms Higgins' - her response to these actions -

THE CHAIRPERSON: I understood - sorry, just so that we are on the same - speaking on the same basis. I understood that what Mr Tedeschi was putting was not - he was not asking Superintendant Moller what Ms Higgins was thinking as a consequence or how she was reacting, but whether he thinks that the way he and his colleagues behaved might have caused Ms Higgins to react in a particular way. And I guess the question is being put upon the footing that, "Did you think for a moment that if you do this, a complainant in Ms Higgins' position might react badly?" Something that he ought to have done.

MS RICHARDSON: In my -

THE CHAIRPERSON: So is that how you understood the question or not?

MS RICHARDSON: No. Some of the questions were put along that vein, but it's going broader. And the premise in a number of the questions, including in particular the last one, is that Ms Higgins did, in fact, have a particular response to these actions. And - so query the basis upon which my learned friend is putting that, given that Ms Higgins is not his witness. And we also have, in terms of the documentary record before the inquiry, a recorded conversation between Ms Higgins and Samantha Maiden on 2 June 2021, which is about a week after the second EICI where she expresses the view - this is a week after the second EICI - we have just had a suite of questions suggesting that Ms Higgins felt intimidated by it - where she says:

"The normal detectives are great. They are lovely. It's the fact that we have got the superintendent and someone else involved that's been difficult."

And then Maiden says to her:

"Because they are paranoid about the media?"

And Ms Higgins says:

"Yes, very much so. Very paranoid about the media. They are paranoid about it if it goes to court and the circus. I think the DPP team is much more on side."

And then Higgins says:

5 "It is just the superintendent, and I forget his name. They are not fans, but that's okay."

THE CHAIRPERSON: They are not what?

MS RICHARDSON:

10 "They are not fans, but that's okay. The police and I don't love each other, but that's okay."

15 So a week after the second EICI, Ms Higgins' position expressed in a frank conversation - the only inference with that is that she was not upset by the second EICI and that the commonality out of that inference is that Superintendent Moller spoke to her about speaking to the media and the importance of (indistinct) was the takeaway message, that they are paranoid about the media, but otherwise the detectives are great. They are lovely. So I query the basis upon which any of these –

20 **THE CHAIRPERSON:** That is to say, your objection is that the questions could have no factual basis and, therefore, should not be put in the form in which they are put because what - there is no basis or, alternatively, to the extent that we know anything on the material that the Commission has, is to the contrary. Is that the point?

25 **MS RICHARDSON:** Yes. And also because of the comments you, Commissioner, have made and the concerns the parties have had in terms of the media reporting of this matter, that questions that are put out as hypotheticals can get reported even if the answer is "no" or "I don't accept it" - the inflammatory nature of the question is reported, and that that type of language - that type of questioning that has no basis in the record (indistinct) should be road-tested on a hypothetical basis when it is so emotive and likely to be reported in an adverse way, in my submission.

30 **THE CHAIRPERSON:** Yes. Mr Tedeschi.

35 **MR JONES:** Just before Mr Tedeschi goes, there is probably one email that Mr Tedeschi should have regard to - or, Chair, you should have regard to, just to put that in its full context. It is AFP.2003.0011.4557. That may lend support to what Mr Tedeschi is doing, and I'm not sure whether he's got it -

40 **THE CHAIRPERSON:** Yes. Let's have a look at it.

MR JONES: If that can be brought up. But there are, in my respectful submission, still propositions being put. For example, it was directly put to Mr Moller that -

45 **THE CHAIRPERSON:** Just a moment. Let's read this if you say it's significant. This is - the second interview - what was the date of the second interview, Mr Jones?

MR JONES: May 26.

50

THE CHAIRPERSON: I see.

5 **MR JONES:** This is a reference, in my respectful submission, most likely, to the conversation about no media after the second EICI. So I just say out of completeness for the rest of this legal argument, you should have regard to that email. Mr Tedeschi may want to make some submissions about that.

DR DWYER: I object, your Honour. I -

10 **THE CHAIRPERSON:** Just hang on a minute. I can only listen to one person at a time. Please. I will come back to you. I will come back to you.

MR JONES: You can object after my submissions.

15 **DR DWYER:** Certainly. Sorry.

MR JONES: Second of all, there are still propositions being put that are not founded in any fact. For example, it was put to Superintendent Moller that none of his staff consulted with the office of the DPP about doing the interview with Ms Yates, for example. Now, there may
20 not be any evidence about - in the positive of that in the statements, but there is certainly, from what I'm aware of, no evidence in the negative that it didn't happen. So there are propositions being put without evidential foundation. I join in the objection.

25 **THE CHAIRPERSON:** Just - Ms Richardson, did you want to say anything about this email?

MS RICHARDSON: No. In my submission, it's consistent in the sense of the admonition from Superintendent Moller about not speaking to the media. It's clear -

30 **THE CHAIRPERSON:** But what Mr Tedeschi was putting was to the effect, "Don't you think the way you approached Ms Higgins after the second EICI with five of you in the room, particularly after an interview of the kind that had just taken place - don't you think that was prone to be very distressing?" That's the line of examination. And your proposition was that that was a question without a proper factual foundation, even put as a hypothesis, because a
35 week later when Ms Higgins spoke to Samantha Maiden, a journalist, she was praising the decency of police.

MS RICHARDSON: Yes. And the only basis in the record would be that perhaps she was upset about the warning or admonition from Superintendent Moller that she should stop
40 speaking to the media.

THE CHAIRPERSON: Yes.

45 **MS RICHARDSON:** The basis of these questions (indistinct) on a much broader basis.

THE CHAIRPERSON: Yes. Excuse me for a moment. Ms Purya, did you want to raise something?

50 **DR DWYER:** No, I was trying to assist counsel assisting. I can do it in - I will do it in my own examination.

THE CHAIRPERSON: All right. Mr Tedeschi, you have heard what's put.

5 **MR TEDESCHI:** Chairman, you summarised the way in which I'm seeking to
cross-examine this witness very accurately, that I'm not seeking to get from him what was in
Brittany Higgins' mind. What I'm seeking to get him to agree is that the way that he and the
investigative team had been conducting themselves - that they either realised or should have
realised or could have realised that a person in Ms Higgins' position might have felt very
concerned, might have felt intimidated and might have felt completely unsupported. So I'm
10 not asking him what's in her mind; I'm asking him what his view was and is now about
whether - putting all of that behaviour together, whether a reasonable person in Ms Higgins'
position would have felt that.

15 **THE CHAIRPERSON:** Yes. I think it's legitimate, Ms Richardson.

MS RICHARDSON: May it please.

THE CHAIRPERSON: Bring Mr Moller back.

20 **MR BLACK:** Sorry, Mr Chair, just before the witness is brought back -

THE CHAIRPERSON: Yes.

25 **MR EDWARDSON:** - there is another issue that I wanted to raise in his absence, and it goes
to the underlying premise of this line of questioning, that is, the proposition of the motivation
of attempting to have Ms Yates removed. The timing of this interview is September 2021. If I
could have a document brought up. It's DPP. -

30 **THE CHAIRPERSON:** But that questioning is finished.

MR BLACK: Well, the - as I understood it from the summary that had just been agreed to,
that's where -

35 **THE CHAIRPERSON:** He wants to question Superintendant Moller about the fitness or
propriety or suitability of their way of going about telling Ms Higgins things and whether the
way they went about it was going to lead to problems, to put it at its lowest. But in terms of
manoeuvring to get rid of Ms Yates - that proposition - I think he's covered it. Have you
finished with that? So -

40 **MR BLACK:** Well, if -

THE CHAIRPERSON: - there's nothing more to come on that, Mr Black.

45 **MR BLACK:** No. Thank you.

THE CHAIRPERSON: So let's have the witness back, please.

<SCOTT JOSEPH MOLLER, CONTINUING

50 **<EXAMINATION BY MR TEDESCHI:**

THE CHAIRPERSON: Yes, Mr Tedeschi.

5 **MR TEDESCHI:** Superintendent, what I was putting to you is that the combination of the disclosure or sending of the counselling notes, the fact of a second EICI in which her veracity was being challenged and the interviewing of Ms Yates - that all of those actions, in your mind, you either realised or should have realised that somebody in Ms Higgins' position may have seen the police as being completely unsupportive. What do you say about that?

10 **DET SUPT MOLLER:** Could you just reframe that question? Sorry.

MR TEDESCHI: Sure. Those three aspects that I've referred to - the sending of the counselling notes; the second EICI in which her discrepancies were being challenged; and the
15 interviewing of her support person - I'm suggesting to you that if you had thought about it at the time, that you would have realised that somebody in Brittany Higgins' position would feel completely unsupported. What do you say about that?

DET SUPT MOLLER: I would say no, I disagree.

20 **MR TEDESCHI:** Now, yesterday when you were giving evidence, in answer to a number of questions you described the really serious pressure that you were under, and the investigative team. Do you remember -

DET SUPT MOLLER: Yes, we were under pressure.

25 **MR TEDESCHI:** - giving evidence about that?

DET SUPT MOLLER: Yes.

30 **MR TEDESCHI:** I think you said it was constant?

DET SUPT MOLLER: Yes.

MR TEDESCHI: It was probably one of the most stressful cases you've done; is that right?

35 **DET SUPT MOLLER:** It's been a very stressful case, yes.

MR TEDESCHI: And I think that you said that the pressure came firstly from the media?

40 **DET SUPT MOLLER:** No, I didn't put it in order, Mr Tedeschi.

MR TEDESCHI: Well, without putting it - without giving it any hierarchy, was the media one of the sources?

45 **DET SUPT MOLLER:** The media was a contributing factor to the pressure.

MR TEDESCHI: Was Ms Higgins one of the sources?

DET SUPT MOLLER: No, I don't know Ms Higgins was.

50

MR TEDESCHI: Did you say that pressure came from the upper echelons of the police force?

DET SUPT MOLLER: Well, I said the organisation, yes.

MR TEDESCHI: The organisation.

DET SUPT MOLLER: Certainly there was pressure from my organisation.

MR TEDESCHI: From the upper echelons, the lower echelons or what? Where was the pressure coming from?

DET SUPT MOLLER: Well, pressure from my organisation and above me, I suppose, is what you could say.

MR TEDESCHI: All right.

DET SUPT MOLLER: But, you know, pressure in terms of progressing the investigation, getting it done and, you know, progressing.

MR TEDESCHI: Where did the pressure come to progress the matter, apart from the upper echelons above you of the police force?

DET SUPT MOLLER: Well, the pressure from the media.

MR TEDESCHI: See, I just asked you that and you said, no, it wasn't the media.

DET SUPT MOLLER: No, you asked me if Brittany Higgins -

THE CHAIRPERSON: No, he said it was partly that.

DET SUPT MOLLER: I said the media. And then you said, "Was Brittany Higgins part of that pressure?" And I said, no, she wasn't.

MR TEDESCHI: All right. So the media and the upper echelons of the police force were the source of the pressure. Is that what you are saying?

DET SUPT MOLLER: No, that wasn't all of it.

MR TEDESCHI: Where else was it coming from?

DET SUPT MOLLER: The DPP.

MR TEDESCHI: The DPP, yes.

DET SUPT MOLLER: So there was pressure from the DPP to progress this matter. There was pressure from our organisation. There was pressure from the media.

MR TEDESCHI: Yes.

DET SUPT MOLLER: So, you know, there was a significant amount of pressure on all of us.

5 **MR TEDESCHI:** You also said that certainly at some stage you did not believe genuinely that the evidence justified the charging of Mr Lehrmann?

DET SUPT MOLLER: Yes.

10 **MR TEDESCHI:** Now, you described, did you not, a meeting that you had with the Deputy Chief Police Officer, Michael Chew, on 17 June 2021 when you were with Mr Chew, together with Chief Inspector Boorman?

DET SUPT MOLLER: I think that's the date. Can we bring it up?

15 **MR TEDESCHI:** Yes. Look, I will bring it up. Could you have a look at paragraph 118 of your statement.

DET SUPT MOLLER: Yes. Yes.

20 **MR TEDESCHI:** Do you agree that in that paragraph, what you say is that:

"At that meeting on 17 June 2021 at approximately 10 am, with DI Boorman, I met with DCPO..."

25 That's Mr Chew?

DET SUPT MOLLER: Correct. That was -

30 **MR TEDESCHI:**

"...and we had a discussion in relation to his direction to forward the brief of evidence to the DPP for advice. I informed DCPO I thought there was insufficient evidence to proceed."

35 So at that meeting, you stated your view to Commander Chew?

DET SUPT MOLLER: Yes.

40 **MR TEDESCHI:** Okay. And then you refer to your diary notes dated 17 June, which were exhibited as an attachment to your statement?

DET SUPT MOLLER: Yes.

45 **MR TEDESCHI:** Now, if we could just bring up that diary note, which is AFP.2003.0003.8123. I think you have your actual diary with you; is that right?

DET SUPT MOLLER: Yes, I do, Mr Tedeschi. Thank you.

50 **MR TEDESCHI:** Can I take you to your diary on 17 June.

DET SUPT MOLLER: Yes.

MR TEDESCHI: Now, on that day, you had a discussion with Mr Chew in which Mr Chew, you say, said these words - and I quote - correct me if I'm reading your very difficult handwriting properly.

DET SUPT MOLLER: Yes.

MR TEDESCHI:

"If it were my choice, I wouldn't proceed."

Right?

"But it is not my choice. There is too much political interference."

Is that what he said to you?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Now, you thought that this conversation was so important that you wrote it out in longhand, in full -

DET SUPT MOLLER: Well -

MR TEDESCHI: - in your diary; is that right?

DET SUPT MOLLER: Well, I thought it was important to record it, yes, Mr Tedeschi. I don't know about the reference "in longhand". I don't have a shorthand. I - as you can see, my writing is not the best. I have one type of writing that I record things in.

MR TEDESCHI: You don't write every conversation you have in the course of your work in your diary?

DET SUPT MOLLER: No, I thought that was important -

MR TEDESCHI: Yes.

DET SUPT MOLLER: - and that's why I recorded it.

MR TEDESCHI: And when he said to you that there is too much political interference, did you ask him, "Where is it coming from?"

DET SUPT MOLLER: No, I didn't.

MR TEDESCHI: Did he ever say to you, "Look" - later on after this (indistinct) on another day, did he say, "Look, that conversation I had with you about political interference, it's gone away"? Did he say that?

DET SUPT MOLLER: No, he didn't.

MR TEDESCHI: Now, if Mr Chew said those words, and if you have correctly recorded it, and if he seriously meant what he said -

5 **THE CHAIRPERSON:** Wait a minute. Where are you going with this, Mr Tedeschi? Mr Drumgold withdrew any claim that there had been political interference in the sense that politicians were interfering improperly with the administration of justice. So what are you going to put to this man?

10 **MR TEDESCHI:** Can I suggest that he should go outside.

THE CHAIRPERSON: Yes. Certainly. Would you excuse us, Mr Moller?

<**THE WITNESS STOOD DOWN**

15 **MR TEDESCHI:** And, Chairman, to have a frank discussion, can I suggest we should go offline.

20 **THE CHAIRPERSON:** Yes. I'm sorry, Ms Dwyer. I called you by the wrong name. I was confused.

DR DWYER: Not at all, your Honour.

25 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: Chairman -

THE CHAIRPERSON: Yes. Just a moment. I direct that there be no publication of the proceeding from this moment until I make a further order.

30 **MR TEDESCHI:** Chairman, we are not suggesting that there was any political interference.

THE CHAIRPERSON: Yes.

35 **MR TEDESCHI:** The relevance of these questions is two-fold. Firstly, there are two versions of this conversation that are diametrically opposed. There is this witness, and there is Mr Chew. This witness has - thought it was so important he wrote it down. Mr Chew doesn't give evidence of anything like that. What Mr Chew says basically is that
40 he stated his view that the proper way forward was for the charge to be laid and for the matter to go to court.

THE CHAIRPERSON: Yes.

45 **MR TEDESCHI:** So it's a very different conversation. So, the first reason why I'm seeking to cross-examine Superintendant Moller about this is to question him so that you will be in a position to make a decision about which version is correct. The second reason is that this diary note came to the attention of Mr Drumgold - I can't remember exactly
50 when.

THE CHAIRPERSON: It doesn't matter. It came to his attention, yes.

MR TEDESCHI: In May 2022.

5 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: Attached to - it was a statement of 8 April of Mr Moller. It caused him grave concerns and was one of the reasons why he was suspicious about whether there was any political interference.

10

THE CHAIRPERSON: Yes.

MR TEDESCHI: So, the relevance is two-fold, as I've explained, and we are not seeking to suggest that there was any political interference, but I'm seeking to seriously question this witness about -

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THE CHAIRPERSON: Well, you want to test the witness as to whether this conversation you recorded actually happened - is that right - upon the basis of Mr Chew's statement? Is that right?

20

MR TEDESCHI: That's the first ground, yes.

THE CHAIRPERSON: And the second thing is you want to use this note really to explain Mr Drumgold's reaction -

25

MR TEDESCHI: Yes.

THE CHAIRPERSON: - after he saw it.

30 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: But the note is the note. It says that. The implications are obvious from what it says to somebody reading it. The available implications are obvious. Mr Drumgold picked up one of those implications and ran with it.

35

MR TEDESCHI: Yes.

THE CHAIRPERSON: This man can't say anything about what Mr Drumgold should or should not have made of it.

40

MR TEDESCHI: No. No.

THE CHAIRPERSON: So apart from putting to him it didn't happen - we will come back to that in a minute - what would you ask him about the note that could assist Mr Drumgold's position? I can understand - I understand perfectly that Mr Drumgold saw this note at some point - it was, know, a pivotal point in the affair - and reacted in the way that he reacted. And that's something that has to be looked at. But what is it you are going to get out of Mr Moller in relation to Mr Drumgold?

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50 **MR TEDESCHI:** Well, if this version is correct, then his superior officer, Commander

Chew, has given him a direction to proceed with the charging of Mr Lehrmann having specifically said that he didn't think there was a sufficient evidentiary basis for it. So here is this officer, who is also of that view, that there was no sufficient basis -

5 **THE CHAIRPERSON:** Well, you had better find out because I hadn't read it as - that he had attributed to Mr Chew a belief that the evidence was insufficient. But you may be right.

MR TEDESCHI: No, his view was the evidence was insufficient.

10

THE CHAIRPERSON: That's right.

MR TEDESCHI: Here is Mr Chew saying he thinks the evidence is insufficient.

15 **THE CHAIRPERSON:** That's what I'm saying to you.

MR TEDESCHI: But he's prepared to go ahead.

20 **THE CHAIRPERSON:** That's what I'm saying to you. I hadn't read - excuse me a moment. I hadn't read the note as imputing to Mr Chew a belief that the evidence was insufficient. I took those as - those references to the insufficiency of evidence as a reference to Mr Moller's belief and his statements to Chew to that effect. But I might be wrong.

25 **MR TEDESCHI:** If you -

THE CHAIRPERSON: You can ask him about it.

30 **MR TEDESCHI:** I will just bring up the whole conversation, if I may - pardon me - that I would like to read.

THE CHAIRPERSON: But, Mr Tedeschi, to cut through that, am I correct in thinking that what you want to put to him is, "Although we now accept that there was no actual political interference, if, according to you, Mr Moller, you were told that although you believe - you, Moller, believe there was insufficient evidence, there is political pressure to charge, so react to that political pressure and charge him"?

35 **MR TEDESCHI:** Yes.

40 **THE CHAIRPERSON:** Is that what you want to put?

MR TEDESCHI: Yes, that's right.

45 **THE CHAIRPERSON:** So, "On the hypothesis that at the time that you were being told this, isn't it correct that your decision to charge - your charging of Mr Lehrmann was a reaction to actual political pressure that you thought existed?"

MR TEDESCHI: Yes. To political pressure that Mr Chew had referred to that you thought existed.

50

THE CHAIRPERSON: Yes, yes, yes. I guess - and that depends upon what the witness thought was the political pressure, because -

MR TEDESCHI: Yes.

5

THE CHAIRPERSON: I don't know what he's going to say, but if -

MR TEDESCHI: Yes.

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THE CHAIRPERSON: So, let's assume you ask him, "What did you understand the political pressure to constitute?" And he says, "I thought politicians were interfering." Then you put to him, "Well, it's being put to you by your boss that you should charge because there is - politicians are pressuring it to happen, and you did so." And he says, "Yes, I did." And you say, "Well, that's a terrible thing, to charge somebody as a result of that." And - all right. So far, so good.

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MR TEDESCHI: Or if he says -

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THE CHAIRPERSON: What's the point of that questioning, to show that he's a terrible person or something? Because I thought your client's case was that there was sufficient evidence to charge, and it was proper to charge.

MR TEDESCHI: Yes, indeed.

25

THE CHAIRPERSON: So where are we going with this ante theory?

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MR TEDESCHI: Where we are going is that here is a police officer who is prepared to charge because he's been given a direction to, who has been given that direction by somebody who has referred to political interference, be it outside or within the police force - we (indistinct). So he has, by this account, possibly acted improperly in initiating a charge that he has no -

THE CHAIRPERSON: Which your client thought was a proper thing to do.

35

MR TEDESCHI: Yes. Which he has no genuine belief in.

THE CHAIRPERSON: So where do we go from there? So he's a terrible man. What do we do then?

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MR TEDESCHI: It -

THE CHAIRPERSON: What do I do then with that information?

45

MR TEDESCHI: It explains the incredible hostility towards the DPP during the course of the next 12 months. It explains -

THE CHAIRPERSON: What explains the hostility?

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MR TEDESCHI: That here is a man who has been put in the position of charging somebody that he doesn't think should be charged because of some advice from the DPP,

and he blames the DPP for that, and then over the course of the next 12 months, undermines the prosecution case because he believes that this man should never have been charged.

5 **THE CHAIRPERSON:** But that - we know that - we already know without going through this lengthy elaborate process of reasoning linking it to political pressure that Mr Moller and certainly Mr Boorman believed that no charge should be brought -

MR TEDESCHI: Yes.

10

THE CHAIRPERSON: - and that Mr Lehrmann should not have been charged -

MR TEDESCHI: Yes.

15

THE CHAIRPERSON: - and that it was injustice that he was charged. So you know that and, therefore, if you're - one of the propositions you're going to submit at the end of the day to me is that police behaved unprofessionally towards the prosecutor's office, you have got your motive, namely, it's because they thought this charge was unjust. You don't need to -

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MR TEDESCHI: But it goes even further than that, Chairman.

THE CHAIRPERSON: Yes. Where does it go?

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MR TEDESCHI: Well, this was the man who actually signed the summons.

THE CHAIRPERSON: Yes, that's right.

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MR TEDESCHI: He was the one who swore that there was a cause of action under section 25.

THE CHAIRPERSON: So I understand it - and I'm not belittling it by putting it in these terms. "You were told to charge because of political pressure. You didn't believe that should happen. But to say - you sacrificed yourself rather than require a junior - more junior officer to do it. You did it yourself. You hated doing it, and you resented Drumgold for putting you in this position by his mistaken advice that there was sufficient evidence." Is that how it runs?

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MR TEDESCHI: And, "Within days, you had drafted a report, and you got Boorman to draft a report, in which you both did your level best to convince, first, the DCPO Chew and then the DPP that this matter should not proceed. And despite that - you also sought to sideline the Director so that the police force got independent evidence from some other private barrister because you knew perfectly well what the DPP was likely to advise."

40

THE CHAIRPERSON: But it gets down to this, doesn't it: that you want to put to - you want to establish that Mr Moller, and some of his colleagues perhaps, believe that the charge should not be brought because there wasn't sufficient evidence, and the charge having been brought against their firm moral views, they then set about sabotaging the case or assisting the defence or doing everything that they could do to ensure that it either didn't proceed or, if it did proceed, it failed.

50

MR TEDESCHI: Yes.

THE CHAIRPERSON: Is that the idea?

5

MR TEDESCHI: Yes.

MS RICHARDSON: Could I raise one -

10 **THE CHAIRPERSON:** Yes. Go ahead, Ms Richardson.

MS RICHARDSON: The timeline that my learned friend has put in relation to focusing on 17 June, that is a particular point in time. And Superintendent Moller has given evidence at 162 and 163 that Drumgold's advice - Mr Drumgold's advice was relevant to his decision-making, in effect -

15

THE CHAIRPERSON: Yes, yes. But there are criticisms - you are pointing out to me criticisms of this theory. But it's one that he's entitled to put, isn't it?

20 **MS RICHARDSON:** Well, the way my learned friend is putting it is that things crystallised on the 17th in terms of, "You were directed to charge. You didn't want to charge." That is inconsistent with Superintendent Moller's evidence.

25 **THE CHAIRPERSON:** Yes, yes. But those are holes in the theory, and it doesn't - there may be many holes in the theory, but he's entitled to put it. I can't put to Mr Tedeschi that you are not entitled to pursue a theory about motivation for behaviour that upset the DPP because I can see holes in.

MS RICHARDSON: May it please the inquiry.

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THE CHAIRPERSON: Yes. Now, Mr Jones - sorry, Mr Black. Just one moment.

MR JONES: I was going to join with Ms Richardson and just bring up yesterday's evidence, which -

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THE CHAIRPERSON: Yes. Well, he can deal with that, Mr Jones, don't you think?

MR JONES: He can deal with it?

40 **THE CHAIRPERSON:** Mr Moller can deal with it.

MR JONES: Yesterday's evidence?

45 **THE CHAIRPERSON:** No, no, no. With the answers to these propositions. No doubt there are a series of questions, and you will be re-examining, and Ms Richardson will be asking (indistinct). So it will all come out in the end, whatever it is.

MR JONES: I think he has given evidence yesterday, but he can be tested.

50 **THE CHAIRPERSON:** Yes. Well, he can be cross-examined on what he was asked about

by you. Mr Black.

MR BLACK: Thank you, Mr Chair. Two points. I just wanted to make sure that the propositions are put on a proper factual basis. Because in terms of timing - and I may have misheard, but I thought Mr Tedeschi said this. 17 June is before Mr Moller and Mr Boorman's minutes and notes - executive briefing. But that's not right. Those occurred before this. They were on 4 and 7 June respectively. This is the conversation after those notes where -

THE CHAIRPERSON: I'm sorry, I've just lost you. He's putting questions about charging as a consequence of a direction given to him by Mr Chew in circumstances where Mr Chew said, "It's just political. You've got to do it," or words to that effect. And he's going to ask him whether that's why he did it and was that a proper thing to do. What's your point?

MR BLACK: I understood Mr Tedeschi to say that then only days later, Mr Moller has authored the executive briefing trying to evince against a -

THE CHAIRPERSON: That's what Mr Tedeschi said to me, yes.

MR BLACK: Yes. But that's not right. That executive briefing was 7 June, 10 days before.

THE CHAIRPERSON: Well, he will put that to him, and Mr Moller will say, "Well, that's not right. That was done on 7 June."

MR BLACK: I just wanted to make sure -

THE CHAIRPERSON: Yes. Thank you.

MR BLACK: - that it does advance on the correct factual basis.

MR TEDESCHI: I will.

THE CHAIRPERSON: Yes. But he will be stuck with that. I mean, if he put as a mistaken premise, you will object and correct it, and it will be corrected.

MR BLACK: Yes.

THE CHAIRPERSON: Yes. Now is not - I can't do it ahead of time because I haven't heard the question yet.

MR BLACK: No, no. But I just wanted to clear that up before it -

THE CHAIRPERSON: Yes. Now, I'm - Mr Tedeschi, did you want to say anything else before we proceed? Is there any reason why the members of media who are present can't report everything that's been said?

MR TEDESCHI: I don't take any position either way.

THE CHAIRPERSON: Ms Richardson.

MS RICHARDSON: I don't have any instructions about that.

5 **THE CHAIRPERSON:** No. Mr Jones.

MR JONES: No, I don't. I do have one more point to make.

10 **THE CHAIRPERSON:** Just wait a minute, then. I vacate the non-publication order that I made at the beginning of this private session. Let's go back on stream and then Mr Jones can raise something. I'm sorry. Did you want to say something -

MS RICHARDSON: It is actually a separate matter, if I might raise - that I am required to raise urgently.

15 **THE CHAIRPERSON:** Yes. Keep us offline, thanks. Yes, go ahead.

MS RICHARDSON: The conversation that I referred to between Ms Higgins and Samantha Maiden - after referring to that in my objection, I'm told there may be a
20 difficulty about that as to whether it attracts a Harman undertaking because it was material produced under subpoena in the criminal trial, and it was exhibited to Superintendant Moller's statement, which is the basis upon which I read it out. But could I ask for a temporary NPO be given in relation to the material I read out so that I can -

25 **THE CHAIRPERSON:** All right. I direct that the extract that Ms Richardson read relating to Ms Higgins' conversation with Ms Maiden not be published. Otherwise, the media are at liberty to publish the proceedings this morning that were conducted offline.

MS RICHARDSON: May it please the inquiry.

30 **THE CHAIRPERSON:** Yes. Let's go back online and then I will say something.

MR JONES: And -

35 **THE CHAIRPERSON:** Just wait till we go online, Mr Jones, and then I want to say something and then I will hear you.

We have come back on stream. I'm reluctant to have any part of the hearings conducted in private, as you can imagine, and the last time we did this I think was when Mr Whybrow
40 was giving evidence, and some point was taken by somebody, and we went into a private hearing and Mr Whybrow happened to be in the witness box when that happened. But he was almost immediately asked to leave the room so that we could discuss matters freely, and we did that. And the discussions related to matters of law that affected how the cross-examination could go. However, I saw in some parts of the media that some people
45 thought that evidence was taken in private from Mr Whybrow, which didn't happen. So at no stage has this Commission during the course of these public hearings gone private at these public hearings in order to take witnesses. So I can assure everybody listening that you haven't missed any evidence; you have only missed legal argument.

The reason we go into private hearings for legal argument is because it's necessary for counsel to be open, candid and comprehensive in the matters that they raise. And some of the matters they raise are raised in a particular legal context, but if taken out of context, can be inflammatory or cause harm to people. That's why we do it in private, so that that risk is avoided. But you don't miss anything, I think, by missing the legal argument. At least you don't miss anything very much. As to what we've just gone through, the media are at liberty - there are media present, and they are at liberty to report everything that happened with one exception, which related to some evidence that was read out that for the moment we will keep private because it's capable of being misused. Now, Mr Jones, you wanted to raise something in relation to one of the things that we have been talking about.

MR JONES: It's a little bit late, I'm sorry, but it seems that Mr Tedeschi made a submission to you that the two positions of Mr Moller and Mr Chew were diametrically opposed in terms of this file note and this conversation. Between paragraphs 58 and 62 of Chew's statement, he denies that any political pressure was put on him but does not deny the conversation that he had -

THE CHAIRPERSON: All right. We will see how we go.

MR JONES: - with Mr Moller that he has recorded.

THE CHAIRPERSON: Thank you.

MR EDWARDSON: Mr Chair, is that a convenient time for the morning break?

THE CHAIRPERSON: You are always asking for a breaks, but it happens to be a convenient time.

MR TEDESCHI: Before you rise, could I just explain one thing that - you might recall, Chairman, that the question that I asked before the objection was raised had a number of ifs in it.

THE CHAIRPERSON: Yes, yes. You were talking about -

MR TEDESCHI: It was deliberate on my part because I want to make it very clear that we are not - we are not asserting that there was any political pressure.

THE CHAIRPERSON: No, I understand.

MR TEDESCHI: And -

THE CHAIRPERSON: You are putting a hypothesis.

MR TEDESCHI: Yes.

THE CHAIRPERSON: And having put the hypothesis, you are going to ask a question of the witness for his opinion based upon an assumption that what you put is correct.

MR TEDESCHI: Yes.

THE CHAIRPERSON: And whether any what you put is correct we will see in due course.

MR TEDESCHI: Yes.

5 **THE CHAIRPERSON:** I understand.

MR TEDESCHI: That's right.

10 **THE CHAIRPERSON:** It's a hypothetical question. All right. Well then, we will adjourn until a quarter to 12.

<**THE HEARING ADJOURNED AT 11.23 AM**

15 <**THE HEARING RESUMED AT 11.49 AM**

<**SCOTT JOSEPH MOLLER, CONTINUING**

<**EXAMINATION BY MR TEDESCHI:**

20 **THE CHAIRPERSON:** Yes, Mr Tedeschi.

MR TEDESCHI: Yes. Thank you, Chairman. Could we bring up the diary note again for 17 June, DPP.001.001.495. Superintendent, I think just before the break I was attempting to decipher your notes here. Correct me if I am wrong. What it says is:

25 "Meeting with Chew DCPO. Discussion re Operation COVINA. Sexual assault Higgins."

It then says:

30 "Insufficient evidence to proceed."

Do I take it from your statement at paragraph 118 that that was something that you said to Commander Chew?

35 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Your view was that there was insufficient evidence to proceed?

40 **DET SUPT MOLLER:** Yes. Yes.

MR TEDESCHI: Now - then it says:

45 "DCPO advised he had a meeting with DPP who stated they will recommend prosecution."

DET SUPT MOLLER: Correct.

50 **MR TEDESCHI:** Now, did you understand him to be telling you that he had already found out what the position was that the DPP was going to take?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Then it says:

"DCPO stated, 'If it was my choice, I wouldn't proceed. But it not my choice. There is too much political interference.' Then I said, 'That's disappointing given I think there is insufficient evidence'."

DET SUPT MOLLER: Correct.

MR TEDESCHI: Have I read that correctly?

DET SUPT MOLLER: Yes.

MR TEDESCHI: All right. Now, Commander Chew referred there to political interference. What did you understand him to mean by that?

DET SUPT MOLLER: Well, I guess you would have to ask him, but my - my view was that there was a lot of pressure on him, and they were the words that he used. I wasn't aware of any political interference. So, yes, you would have to ask him what he meant by that.

MR TEDESCHI: But what I'm asking is, what did you think at the time he was referring to?

DET SUPT MOLLER: The pressure.

MR TEDESCHI: Pressure from where?

DET SUPT MOLLER: The - the collective pressure.

MR TEDESCHI: Pressure from within the police force? Pressure from outside the police force?

DET SUPT MOLLER: Yes, the collective - the collective pressure. Inside, outside. The pressure from DPP, the pressure from the media. You know, I - you know, that's how I interpreted what he had said to me.

MR TEDESCHI: Now, if Commander Chew said those words, and if you have correctly recorded it, and if he meant what he said, do you agree that what he was saying to you was, in effect, that he was prepared to proceed with charging Mr Lehrmann even though he did not think that there was a sufficient evidentiary basis for it?

DET SUPT MOLLER: No. No, I wouldn't agree with that. His - his discussion with me was based on his discussion with the prosecution - sorry, with the DPP. So, you know, my thoughts were he's already spoken to the DPP, the DPP have told him that they believe there's sufficient evidence and he's passing that on to me. And that's how I took it.

MR TEDESCHI: But what he said to you was, "If it was my choice, I wouldn't proceed."

DET SUPT MOLLER: Yes, that's right.

MR TEDESCHI: Did you understand that to mean that if it was his choice, he wouldn't proceed to take the matter any further, including charging Mr Lehrmann?

5 **DET SUPT MOLLER:** Yes, that's how I took it.

MR TEDESCHI: And that the only reason that he was proceeding was because of what he called political interference and what you inferred was pressure?

10 **DET SUPT MOLLER:** No. No, I wouldn't agree with that. Like I said, he had a meeting with DPP who stated they will recommend prosecution.

MR TEDESCHI: What he said to you was, "It's not my choice. There's too much political interference." Did you understand him to be saying that he didn't have a choice whether or
15 not to charge, that it was because of what he called political interference that the matter was proceeding?

DET SUPT MOLLER: No. I didn't take it that way.

20 **MR TEDESCHI:** How did you understand it?

DET SUPT MOLLER: Like I said, I understood it that he had a meeting with the DPP and the DPP had recommended that they believed there was sufficient evidence. And because of the ongoing pressure and the collective pressure that he was feeling, and because he had had
25 that advice from the DPP, we should go ahead. Now, his decision - or his choice - well, he sums it up there in that conversation. You know, he didn't - he - he wouldn't proceed. But given, I guess, that advice and the ongoing pressure, we are going ahead. And I - you know, my view was, well that's disappointing given I think there's insufficient evidence, but okay.

30 **MR TEDESCHI:** What was disappointing in your mind?

DET SUPT MOLLER: Well, it was disappointing that - that the - or the view was that we would go ahead. That was disappointing to me.

35 **MR TEDESCHI:** Was it disappointing to you that it was going to go ahead despite the fact that you thought there was insufficient evidence, and it would appear that Mr Chew thought there was insufficient evidence?

DET SUPT MOLLER: Well, it was disappointing to me that it was going ahead when I
40 thought there was insufficient evidence.

MR TEDESCHI: And it was obvious to you that Mr Chew was of the same view based upon this note, wasn't it?

45 **DET SUPT MOLLER:** I - I can only tell you what was in my mind, and I was disappointed that it was going to go ahead, specifically when I thought there was insufficient evidence.

MR TEDESCHI: Did it appear to you that he was saying that, in effect, he had no choice, that he had to progress the matter because of pressure from elsewhere?
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DET SUPT MOLLER: No. I wouldn't agree.

5 **MR TEDESCHI:** Did Mr Chew in this meeting of 17 June 2021 say this to you, that he expressed his view to you that despite the issues that had been identified during the investigation, that the most appropriate place for the matter to be adjudicated on was in court at trial?

DET SUPT MOLLER: I don't recall that.

10 **MR TEDESCHI:** Did he say to you that he had formed the view that there was sufficient evidence to commence a prosecution?

DET SUPT MOLLER: I don't recall that.

15 **MR TEDESCHI:** As at 17 June 2021, you've told the hearing that you thought Mr Lehrmann should not be charged. You had been told on that day that there was pressure on the police to charge him; correct?

20 **DET SUPT MOLLER:** No. That's not correct.

MR TEDESCHI: You had been told that there was political interference that was having an effect on the police?

25 **DET SUPT MOLLER:** No. No, Mr Chew made a comment about that, but that's - I mean, I've recorded that in my notebook and I've -

MR TEDESCHI: Yes. What he said to you was that it was not his choice to proceed, but that there was too much -

30 **THE CHAIRPERSON:** Mr Tedeschi, we are getting -

MR TEDESCHI: Sorry.

35 **THE CHAIRPERSON:** I think you have exhausted that topic.

MR TEDESCHI: I agree. What Mr Chew said to you on that day, on 17 June, was that he, in effect, was prepared to accede to whatever view the DPP had; is that right?

40 **DET SUPT MOLLER:** He supported the view of the DPP.

MR TEDESCHI: Yes. He was prepared, whatever his own views were, to take the advice of the DPP. Is that what he said to you?

45 **DET SUPT MOLLER:** You would have to ask Mr Chew that. From my -

MR TEDESCHI: Is that what he said to you?

DET SUPT MOLLER: No, that's not what he said to me.

MR TEDESCHI: This diary note was included by you with a note that found its way to Mr Drumgold. Were you aware of that?

DET SUPT MOLLER: No, I'm not aware.

MR TEDESCHI: He had a statement dated 8 April 2022 which attached this diary note. Are you aware of that?

THE CHAIRPERSON: Whose statement?

MR TEDESCHI: Of this witness.

THE CHAIRPERSON: Mr Moller's statement?

MR TEDESCHI: Yes. Yes. Were you aware of that?

DET SUPT MOLLER: I'm not sure whether it went with the statement or not. I'm not sure.

MR TEDESCHI: Do you agree that a reasonably minded person, on seeing this diary note of 17 June, would - or could hold a suspicion that there may have been some improper influence bought to bare -

MR BLACK: I object.

THE CHAIRPERSON: Well, yes, the answer is not going to help me. You could ask that question of anybody. Mr Moller's opinion about that is of no greater use to me in making any findings of fact than asking any witness in this case. And what you are really doing is putting a proposition that ought to form your submission at the end of the day to me, that the person who reads this - somebody in Mr Drumgold's position, for example - might well form a particular view.

MR TEDESCHI: I accept that.

THE CHAIRPERSON: I can see that there's some sense in that.

MR TEDESCHI: I accept that. Superintendent, 11 days after that meeting, you received an advice from the DPP that there were reasonable prospects of conviction; is that right?

DET SUPT MOLLER: I received advice, yes, from the DPP.

MR TEDESCHI: 28 June, I think you received that advice; is that right?

DET SUPT MOLLER: Yes. Well, I will take your word for that. I don't have it in front of me.

MR TEDESCHI: And having received that advice, did you change your mind about whether, in your view, there was sufficient evidence to charge Mr Lehrmann?

DET SUPT MOLLER: I certainly relied on - on Mr Drumgold's advice that there was sufficient evidence. Absolutely.

MR TEDESCHI: Had that resulted in you changing your mind as to whether the evidence was sufficient to charge him?

5 **DET SUPT MOLLER:** Yes, it did. Yes.

MR TEDESCHI: So by 6 August when you signed the summons in relation to charging Mr Lehrmann, you had accepted, had you, that there was sufficient evidence to charge Mr Lehrmann?

10

DET SUPT MOLLER: Based on the advice from the DPP, yes.

MR TEDESCHI: And had Mr Chew at that stage told you that he was of the same view?

15 **DET SUPT MOLLER:** No. I don't remember a conversation with Mr Chew on that day.

MR TEDESCHI: However, despite the fact that you had accepted that position as at 6 August, your investigative team, including Chief Inspector Boorman, were not of that view, were they?

20

DET SUPT MOLLER: The team - the team hadn't formed that view.

MR TEDESCHI: And, in fact, Mr Boorman was so strong in his views that he had told you that he refused to sign the summons?

25

DET SUPT MOLLER: I think a better summary of that is that the team weren't comfortable progressing the prosecution at that time. Like I - like my previous evidence, I was satisfied with the advice that came from Mr Drumgold, who was our leading legal -

30 **MR TEDESCHI:** Would you please answer my question.

DET SUPT MOLLER: I'm trying to.

MR TEDESCHI: Did Chief Inspector Boorman tell you that he refused to sign the summons?

35

DET SUPT MOLLER: Like I said, I think the team - certainly after reading the advice, I was of the opinion that we should go ahead. And the team held a view that they weren't at that threshold yet to go ahead. And certainly they all expressed that view to me, as well as Detective Boorman.

40

MR TEDESCHI: And Detective Boorman specifically said to you that he refused to sign the summons; correct?

45 **DET SUPT MOLLER:** No. No, that was - I don't remember that conversation at all.

MR TEDESCHI: A summons is not normally signed by a superintendent, is it?

DET SUPT MOLLER: No.

50

MR TEDESCHI: When was the last time before this occasion that you had signed a summons?

5 **DET SUPT MOLLER:** Well, let me just say that I've not signed a summons before, previously, in the AFP.

MR TEDESCHI: And it would be unusual even for a chief inspector to sign a summons; is that right?

10 **DET SUPT MOLLER:** Absolutely unusual. It's unusual that I signed the summons. I would agree with that.

MR TEDESCHI: No, no. Chief Inspector Boorman, it would be unusual for him to sign it too?

15 **DET SUPT MOLLER:** No, I don't think so. I think if - if you were to ask Inspector Boorman that, I'm sure he would have progressed summonses previously in the AFP.

MR TEDESCHI: It's more common than a superintendent?

20 **DET SUPT MOLLER:** Yes, but it's - it's quite common.

MR TEDESCHI: Would you agree that normally the person who signs the summons is the case manager, who is generally a sergeant?

25 **DET SUPT MOLLER:** No, I wouldn't agree with that. Constables sign it. Sergeants sign it. Inspectors sign it. I absolutely agree with you, it's unusual that a superintendent signed it, yes.

MR TEDESCHI: The reason why you signed this one is because, as you've told us, the rest of the team were not yet at that time accepting of the fact that there was sufficient evidence to charge Mr Lehrmann?

30 **DET SUPT MOLLER:** That's correct.

35 **MR TEDESCHI:** Would it be fair to say that the team under you from Inspector Boorman down, felt that the DPP had been the one who had forced the issue of charging Mr Lehrmann?

DET SUPT MOLLER: I don't think that's fair to say.

40 **MR TEDESCHI:** Did they indicate that they were resentful of the DPP's role in the charging of Mr Lehrmann?

DET SUPT MOLLER: Absolutely not. The team were absolutely professional. And once I had made a decision to move forward and charge, they were absolutely committed to the prosecution.

MR TEDESCHI: Now, I would like to take you back some months to 31 March 2021.

50 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: You know that on that day, Chief Inspector Boorman went - sorry. On that day, I think, the DPP came - or there was a meeting on that day between Boorman and the DPP?

5

DET SUPT MOLLER: There was.

MR TEDESCHI: I can't remember if it was at a police station or at DPP premises. It was at a police station, I'm told.

10

DET SUPT MOLLER: On what date?

MR TEDESCHI: 31 March 2021.

15 **THE CHAIRPERSON:** Did Superintendant Moller attend that meeting?

MR TEDESCHI: No. Were you aware that Mr Boorman had been to see the DPP on 31 March?

20 **DET SUPT MOLLER:** I can't recall.

MR TEDESCHI: You've told the hearing that Chief Inspector Boorman was regularly keeping you updated on what was happening?

25 **DET SUPT MOLLER:** He did, yes.

MR TEDESCHI: Yes. And if he went and saw the DPP to discuss the case, that would be something that he would tell you about?

30 **DET SUPT MOLLER:** It depends on - it does depend on the contents of that meeting and if he needed to tell me.

MR TEDESCHI: Yes. Did Chief Inspector Boorman tell you on or after 31 March that the DPP had expressed his preliminary views about the case?

35

DET SUPT MOLLER: I'm sorry. You said the DPP had expressed -

MR TEDESCHI: Yes. Did Chief Inspector Boorman tell you on or after 31 March 2021 -

40 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: - that the DPP had expressed to him the DPP's preliminary views about the Lehrmann case?

45 **DET SUPT MOLLER:** I think during this whole matter, certainly the interactions of the team with the DPP, the team were of the view that Mr Drumgold - and this is what they've expressed to me, that Mr Drumgold had a position where he was going to prosecute this matter no matter what, basically. So they were always of the view - or the briefings I had was that Mr Drumgold was committed to prosecute this matter.

50

MR TEDESCHI: And you knew that on or shortly after 31 March?

DET SUPT MOLLER: Well, it's - it was something that had been discussed numerous times in the office.

5

MR TEDESCHI: Having been told that about the DPP by the members of the investigative team, did you and Boorman decide that you wanted to seek independent legal advice in relation to the Lehrmann prosecution?

10 **DET SUPT MOLLER:** Well, it wasn't - I wouldn't say it was because of that, but I would agree that we wanted to seek independent legal advice, yes.

MR TEDESCHI: And was that because you did not like the position that it appeared to you the DPP had taken about this case?

15

DET SUPT MOLLER: No, it wasn't. It was - it was because I felt, and certainly the briefings I had had, that Mr Drumgold had lost objectivity in this matter.

20 **MR TEDESCHI:** You didn't like his approach, so you wanted to get some alternative advice; is that right?

DET SUPT MOLLER: I thought it was best practice to get supplementary advice.

25 **MR TEDESCHI:** At that stage, you had hadn't spoken to the DPP yourself about this case, as at 31 March; correct?

DET SUPT MOLLER: I don't think I had.

30 **MR TEDESCHI:** See, I suggest to you that the reason why you wanted to get independent legal advice was because you didn't like that the DPP seemed intent or seemed accepting of the fact that there was a viable case against Mr Lehrmann.

35 **DET SUPT MOLLER:** No. Like I said, independent legal advice was something that I believed was a good strategy to make sure that we were presenting the best possible matter before the court, should we go there. So, you know, my view is independent legal advice is a good process, and it's something that the AFP undertakes with very high-profile matters.

40 **MR TEDESCHI:** Are you aware of the agreement between the ACT Government and the Australian Federal Police which has a clause in that says that the ACT Police will obtain their legal advice in relation to criminal proceedings from the ACT DPP?

DET SUPT MOLLER: I am aware of that now, Mr Tedeschi.

45 **MR TEDESCHI:** And that is - in the past, that has been the invariable practice, hasn't it, to get legal advice about criminal matters from the DPP?

DET SUPT MOLLER: Well, certainly on matters that I've had with the DPP, the DPP have sought independent legal advice. And -

50 **MR TEDESCHI:** The DPP has sought -

DET SUPT MOLLER: External legal advice. And certainly matters that I've been involved in in the AFP, we have sought legal advice as well externally. So it's a good and thorough process to seek - to get the best information we can.

MR TEDESCHI: See, at this stage, the DPP hadn't produced any formal advice, had he? He had just indicated orally a view?

DET SUPT MOLLER: He had been - he had been indicating an oral view for some months.

MR TEDESCHI: Well, in particular to Chief Inspector Boorman on 31 March; correct?

DET SUPT MOLLER: Well, I mean, I haven't seen that. But if that's what you're telling me, I will accept it.

MR TEDESCHI: On 27 May 2021, you saw Commander Chew and requested Commander Chew the authority to get independent legal advice about the matter, didn't you?

DET SUPT MOLLER: Yes, we had had a conversation about seeking independent legal advice. Yes.

MR TEDESCHI: And what you say in your statement is that on that day, 27 May, you started off having a meeting with the investigation team about some matters concerning Ms Higgins' phone, and a short time later you had a discussion with DCPO - I presume that means Mr Chew?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And briefed him on the contents of the phone. He - and then it says:

"He directed me to finalise the report on the investigation. I also requested independent legal advice for the investigation. However, DCPO stated he had discussed this with CPO..."

That's the -

DET SUPT MOLLER: Chief Police Officer.

MR TEDESCHI: - Chief Police Officer?

DET SUPT MOLLER: Yes.

MR TEDESCHI:

"...and their view was that the ODPP would provide ACT Police with legal advice."

Correct?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And so having asked for permission to get independent legal advice, the Chief Police Officer and the Deputy Chief Police Officer had basically turned you down?

DET SUPT MOLLER: Well, they didn't agree with my submission, yes.

MR TEDESCHI: They said, "No, you are going to rely upon the advice of the DPP"?

DET SUPT MOLLER: Well, yes, they didn't agree with my submission. Yes. Which is something that regularly happens.

MR TEDESCHI: Yes.

THE CHAIRPERSON: I'm sure you didn't mean it that way.

DET SUPT MOLLER: Well, I don't mean - yes, yes. No, not regularly. But - but, yes, it happens.

MR TEDESCHI: Now, at that time, as at 27 May, not only had the DPP not given any formal advice, but he hadn't even received a brief yet; correct?

DET SUPT MOLLER: No.

MR TEDESCHI: Is that right?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And having been refused permission by the CPO and the DCPO to get independent legal advice, you and Chief Inspector Boorman went to see the DPP on 1 June?

DET SUPT MOLLER: Yes, I had a meeting with - with - I will just check. Yes, I did, on 1 June.

MR TEDESCHI: And during that meeting on 1 June, you tried to convince the DPP that there was insufficient evidence to proceed against Mr Lehrmann by detailing to the DPP all of the - what you thought were the deficiencies and discrepancies in the evidence of Ms Higgins; is that right?

MS RICHARDSON: I object to that question.

THE CHAIRPERSON: Yes.

MS RICHARDSON: It's inconsistent with the evidence of Mr -

THE CHAIRPERSON: I'm sorry?

MS RICHARDSON: It is inconsistent with the evidence of Mr Drumgold.

THE CHAIRPERSON: Yes, in what respect? Remind me of the evidence of Mr Drumgold.

MS RICHARDSON: I think I should do this in the absence of the witness.

THE CHAIRPERSON: Yes, yes.

MR TEDESCHI: I'm prepared to withdraw the question and I will be more specific.

THE CHAIRPERSON: All right. Well, let's see where we go, Ms Richardson.

MR TEDESCHI: Is this what happened on 1 June: Mr Drumgold, Ms Jerome, yourself, Mr Boorman were present?

DET SUPT MOLLER: I had a meeting with Mr Drumgold, yes.

MR TEDESCHI: Is that right?

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: And was Mr Boorman and -

DET SUPT MOLLER: Yes. Mr Boorman was there and, yes, Skye. Yes.

THE CHAIRPERSON: Yes.

MR TEDESCHI: You advised the DPP that there was a second EICI with Ms Higgins; is that right?

DET SUPT MOLLER: I don't have that down in my notes, but we spoke about the case.

MR TEDESCHI: Yes. And you and Mr Boorman then ran through a series of perceived weaknesses in the prosecution - potential prosecution case; is that right?

DET SUPT MOLLER: I think the way I would phrase that is that Mr Boorman, using the - using the evidence matrix that had been collected, went through all of the evidence that had been collected - and the inconsistencies, but all of the evidence that we had collected.

MR TEDESCHI: I suggest that there was a particular reference by yourself and Mr Boorman about the perceived weaknesses and that they were actually detailed very precisely what those alleged weaknesses were.

DET SUPT MOLLER: I would certainly agree that I highlighted weaknesses. Absolutely would agree with that.

MR TEDESCHI: And did the Director then say to you that things are not automatically - that those things - those weaknesses are not automatically inconsistent with an honest and believable complaint, that it was all about context and that he would need to see the entire brief for context?

DET SUPT MOLLER: Look, we had a -

MR TEDESCHI: Was that said?

DET SUPT MOLLER: I don't remember those particular words, no.

MR TEDESCHI: All right. And did he request that he be provided with the entire phone content of Ms Higgins' phone, rather than messages selected by investigators?

DET SUPT MOLLER: I don't remember that particular conversation either.

MR TEDESCHI: Did the Director then run with through with you the two different tests required, the one under section 26 of the Magistrates Court Act for laying of an information and the second being the test for the DPP, namely, whether there are reasonable prospects of conviction?

DET SUPT MOLLER: So I did write some notes in relation to section 26 of the Magistrates Act. So - and we did have a conversation about that, definitely.

MR TEDESCHI: And - pardon me. Would it be correct to say that you and Mr Boorman articulated your concerns regarding the evidence obtained during the investigation, the credibility of Ms Higgins and also your concerns regarding her mental health?

DET SUPT MOLLER: Yes. I spoke about - about the potential issues that I thought were in the brief of evidence.

MR TEDESCHI: Now, was it your aim during that meeting to try and convince the DPP that there was not sufficient evidence to charge Mr Lehrmann?

DET SUPT MOLLER: No.

MR TEDESCHI: Did the DPP make it clear to you and Mr Boorman during this meeting that his preliminary view was that he thought there was a viable case but that he wanted to see the brief first before making any sort of definite indication of what he thought about the case?

DET SUPT MOLLER: I think his preliminary view was, "This matter is going to go to trial. Can you send the brief as quick as you can so I can review it?"

MR TEDESCHI: You were not happy with the attitude of the DPP, were you?

DET SUPT MOLLER: Well, Mr Tedeschi, I didn't agree that Mr Drumgold should be making an assessment of this matter prior to actually reading the brief. I didn't agree with that. But I certainly - once Mr Drumgold gave us his advice, I was committed to the prosecution.

MR TEDESCHI: And - but after this meeting on 1 June 2021, were you disappointed or unhappy with the views that had been expressed by the DPP that he thought - on the basis of the information that he had been given, he thought his preliminary view was that it was a viable case?

DET SUPT MOLLER: Mr Tedeschi, I was concerned that the investigation was - wasn't significant enough to move forward with a prosecution, and I was worried that Mr Lehrmann

could potentially be placed before the court when we didn't believe there was enough evidence.

MR TEDESCHI: Yes.

5

DET SUPT MOLLER: That's what I was concerned about.

MR TEDESCHI: Yes.

10

DET SUPT MOLLER: And I was trying to convey that, like the other investigators did, to Mr Drumgold, who continually, over many months, dismissed our propositions about this matter. But like I said, once Mr Drumgold reviewed the evidence and - and made his decision, we were absolutely committed to this prosecution, like we were absolutely committed to the investigation and trying to find the truth of the matter.

15

MR TEDESCHI: Was there a discussion during that meeting on 1 June where the Director pointed out to you that there was, in fact, corroboration of the complainant?

20

DET SUPT MOLLER: I didn't record all the - all the conversation because it was quite lengthy. And I don't specifically remember that. We had a lengthy conversation about elements of the case.

MR TEDESCHI: Could I take to you to paragraph 156 of your statement. You say this:

25

"Mr Drumgold did qualify the statement by saying that the way..."

I don't know whether I should put this on the record or not. I'm in your hands, Chairman.

30

THE CHAIRPERSON: Well, the witness can read the paragraph -

MR TEDESCHI: Yes. Yes.

THE CHAIRPERSON: - and you ask the questions you like.

35

MR TEDESCHI: Yes. You have read that paragraph?

DET SUPT MOLLER: Yes.

40

MR TEDESCHI: Was there a discussion in which the Director pointed out to you that there was corroboration of the complainant?

DET SUPT MOLLER: Yes.

45

MR TEDESCHI: And are you aware that there are many sex cases that are prosecuted where there's no corroboration?

DET SUPT MOLLER: Yes, absolutely I'm aware of that.

50

MR TEDESCHI: In fact, in historical child sex cases, it is unusual to have any corroboration at all; correct?

DET SUPT MOLLER: I don't know if I would go that far. But I certainly accept that sex cases could be run without corroboration.

5 **MR TEDESCHI:** And successfully?

DET SUPT MOLLER: Yes.

10 **MR TEDESCHI:** And this was a case where the Director was telling you that there was corroboration?

DET SUPT MOLLER: Well, this is where he made a comment about it. Yes.

15 **MR TEDESCHI:** Yes. Now, after this meeting, you were very concerned, weren't you?

DET SUPT MOLLER: Well, Mr Tedeschi, like I've said, I was - I was worried about the investigation certainly. And - and, you know, I was concerned because we didn't view the evidence I guess the way that Mr Drumgold was viewing it.

20 **MR TEDESCHI:** Yes.

DET SUPT MOLLER: We had a differing -

25 **MR TEDESCHI:** And that concerned you, that Mr Drumgold viewed the evidence in a different way to you and the investigation team; is that right?

DET SUPT MOLLER: I was concerned for the investigation. You are making it personal towards Mr Drumgold, and I'm not like - I'm not - I wasn't like that.

30 **MR TEDESCHI:** Your concern was the DPP was not willing to accept the advice from the investigation team; is that right?

DET SUPT MOLLER: No. No, that's not correct.

35 **MR TEDESCHI:** Did he show little or no interest in the views of the investigation team?

DET SUPT MOLLER: Well, he was dismissive of the investigation team, of - of the elements that we found. Yes, I would agree.

40 **MR TEDESCHI:** And he exhibited his disinterest in the investigation team's view during this meeting of 1 June?

DET SUPT MOLLER: Well, he was dismissive, yes.

45 **MR TEDESCHI:** And that concerned you to such a degree that you briefed Commander Chew in relation to your concerns?

DET SUPT MOLLER: Well -

50 **MR TEDESCHI:** Is that right?

DET SUPT MOLLER: I briefed Commander Chew, yes.

THE CHAIRPERSON: Mr Tedeschi, all of that was in his statement.

5

MR TEDESCHI: Yes. I'm -

THE CHAIRPERSON: I just - we are taking up time proving what's in his statement.

10 **MR TEDESCHI:** Yes. I agree it's in his statement. I will try and get to the point. On 3 June, two days after this meeting, did you have a discussion with Chief Inspector Boorman?

DET SUPT MOLLER: Yes, I constantly spoke to Inspector Boorman.

15 **MR TEDESCHI:** And at that stage, Chief Inspector Boorman and the investigation team were still of the view that you hadn't reached the threshold to charge Mr Lehrmann?

DET SUPT MOLLER: Yes, they were.

20 **MR TEDESCHI:** And it was on that day that you made the decision that you would forward reports to DCPO Chew?

DET SUPT MOLLER: I would have to have a look in my report to see what day we forwarded the reports through.

25

MR TEDESCHI: The reports were made on 4 June and 7 June. What I want to suggest to you is on 3 June that you decided that these reports would be produced for forwarding to the Deputy Chief Police Officer.

30 **DET SUPT MOLLER:** No, I wouldn't agree with that.

THE CHAIRPERSON: I think you elicited earlier that on 27 May, Mr Chew directed Mr Moller to finalise his report.

35 **MR TEDESCHI:** Yes. You say this in your statement at paragraph 115, that on 3 June -

DET SUPT MOLLER: Sorry, what number?

40 **MR TEDESCHI:** 115. You had a discussion with DI Boorman, and you requested a brief be prepared for forwarding to the DCPO for decision?

DET SUPT MOLLER: Yes.

45 **MR TEDESCHI:** On 7 June - sorry, on 4 June, you have told the hearing that Mr Boorman had prepared his minute? You told us that yesterday.

DET SUPT MOLLER: Well, yes, that's the date on it. Yes.

50 **MR TEDESCHI:** And on 7 June, you prepared your report known as the Moller report? You told that.

DET SUPT MOLLER: Yes.

MR TEDESCHI: Now, on 7 June, did you also ring the DPP?

DET SUPT MOLLER: On the 7th of - sorry, when?

MR TEDESCHI: On 7 June, did you ring the DPP?

DET SUPT MOLLER: I don't have a note in my diary about that.

MR TEDESCHI: On 7 June, I suggest that you rang the DPP, spoke to Mr Drumgold and asked him for guidance on the charging powers of the police.

DET SUPT MOLLER: That - I may have, because I had a number of conversations with him.

MR TEDESCHI: And he again ran through the material that he had mentioned in the meeting on 1 June about the test under section -

DET SUPT MOLLER: 26 of the Magistrates -

MR TEDESCHI: - 26 of the Magistrates Court Act and the test for the DPP of reasonable prospects of conviction; is that right?

DET SUPT MOLLER: Well, I've had a conversation with him about that, yes.

MR TEDESCHI: Yes. Now -

DET SUPT MOLLER: So I don't remember that phone conversation that you (indistinct) Mr Tedeschi. I just have to clarify that. I've certainly had a conversation with him about that, about the Magistrates Act.

MR TEDESCHI: Going to the Boorman minute and the Moller report, you were asked some questions by Mr Jones yesterday about those reports?

DET SUPT MOLLER: Yes, I was.

MR TEDESCHI: Do you agree that not in any - I withdraw that. Do you agree that in neither report is there any analysis of Ms Higgins' level of intoxication?

DET SUPT MOLLER: I don't think I've mentioned it, no.

MR TEDESCHI: And is that something that's relevant to the complainant's capacity to consent to sexual intercourse?

DET SUPT MOLLER: Intoxication would be relevant.

MR TEDESCHI: Do you agree that there was no analysis in either report of her capacity to consent?

DET SUPT MOLLER: I think yesterday we went through this, and - and I didn't detail everything in my report because my report was attached to the evidence matrix.

5 **MR TEDESCHI:** Do you agree that there was no analysis of the evidence concerning her capacity to consent?

DET SUPT MOLLER: So can we just confirm which report you are talking about.

10 **MR TEDESCHI:** Both the Boorman minute and the Moller report.

DET SUPT MOLLER: So there is nothing in the Moller - in the executive briefing that I did to Mr Chew in relation to intoxication.

15 **MR TEDESCHI:** Do you agree that in neither document is there any analysis of her capacity to consent to sexual intercourse?

DET SUPT MOLLER: There is nothing in my executive brief in relation to that.

20 **MR TEDESCHI:** Or Moller's?

DET SUPT MOLLER: Well I would have to read it again now to make sure. But, you know, I can tell you from my perspective, from my report, no.

25 **MR TEDESCHI:** Do you agree that there was no analysis in either report of whether there was any evidence that amounts to corroboration of sexual intercourse?

DET SUPT MOLLER: Again, nothing in the report but detailed in the evidence matrix that was attached.

30 **MR TEDESCHI:** There is no analysis of corroboration in either report, I suggest.

MR BLACK: Mr Chair, could I just ask that perhaps each report be dealt with separately. The witness has indicated -

35 **THE CHAIRPERSON:** That's a good idea, Mr Tedeschi.

MR TEDESCHI: If the court pleases. Do you agree that there's no analysis in your executive briefing about whether there was any corroboration of sexual intercourse?

40 **DET SUPT MOLLER:** So the executive briefing for my commander -

MR TEDESCHI: Your document.

45 **DET SUPT MOLLER:** The executive briefing for my commander, I would agree with that.

MR TEDESCHI: And the Boorman minute?

50 **DET SUPT MOLLER:** I would have to read that. Do you want me to read it now, Mr Tedeschi?

MR TEDESCHI: No, I don't. Do you -

THE CHAIRPERSON: If it's not there, just put that it's not there.

MR TEDESCHI: Yes. I suggest to you that there's no analysis of whether or not there's corroboration of sexual intercourse. Do you agree that in your document there was no analysis of whether there was any corroboration of knowledge by Mr Lehrmann of lack of consent?

DET SUPT MOLLER: Again, I would say that the entire details of the offence and the evidence was attached. But in my executive summary, I hadn't mentioned that, no.

MR TEDESCHI: Do you agree that in your document there is no analysis of the evidentiary value of the four different reasons that Mr Lehrmann had given to different people at different times as to why he went to Parliament House?

DET SUPT MOLLER: There's no analysis in there of that.

MR TEDESCHI: Do you agree also in Mr Boorman's minute that there was no analysis of that?

DET SUPT MOLLER: I would have to read it.

MR TEDESCHI: Could I take you, please, to your document. The executive briefing. You refer on the first page to potential evidentiary and psychological issues that may affect any future prosecution?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And you describe Ms Higgins as having been evasive, uncooperative and manipulative?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Now, if I could take to you the second page, the first full paragraph below the dot points, "Ms Higgins' creditability."

DET SUPT MOLLER: Yes.

MR TEDESCHI:

"Ms Higgins' creditability is the cornerstone of the prosecution case, and given the above articulated issues and that there is..."

THE CHAIRPERSON: He needn't read it, Mr Tedeschi.

MR TEDESCHI: Sorry. Do you see -

THE CHAIRPERSON: Just ask your question, please.

MR TEDESCHI: Yes. Do you see there's a reference there to "limited corroborative evidence of sexual intercourse"?

5 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: I suggest to you that that was a misdescription of the evidence to say that there was limited corroborative evidence of sexual intercourse.

10 **DET SUPT MOLLER:** Mr Tedeschi, this executive briefing is a - is - is a - well, firstly, let me say executive briefings are supposed to be kept at a minimum of - at a maximum of two pages. They are a summary for our executive to understand - or to understand the issue that we are trying to articulate. So trying to compound a year and a half of investigative work into two pages is, firstly, very difficult. But then also, you know, trying to convey my thoughts at
15 the time was also extremely difficult. So I accept that if I was writing a paper for people to understand all the evidence, it would be a lot more lengthy. But given the timeframe that I had to prepare this document, the pressures that were on us at the time, these were the pertinent things that were in my mind at the time that I thought my - my commander needed to be aware of, as well as all the other things that I had been telling him for the last, you
20 know, 12 months in our verbal briefings. So if there's something that I've omitted from this document, I would accept that.

MR TEDESCHI: Superintendent, I'm not suggesting that you have omitted something. What I'm suggesting is that it was seriously understating the evidence by describing it as limited
25 corroborative evidence.

THE CHAIRPERSON: You had better identify the evidence you are referring to as corroborative. Are you referring to Ms Higgins being found in a state of undress?

30 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: Anything else?

MR TEDESCHI: And the - well, in relation to sexual intercourse taking place, yes.
35

THE CHAIRPERSON: Well, that's the corroborative evidence, isn't it?

MR TEDESCHI: Yes.

40 **THE CHAIRPERSON:** So there is one piece of corroborative evidence.

MR TEDESCHI: Yes.

THE CHAIRPERSON: And you say he's wrong to call that limited.
45

MR TEDESCHI: Yes.

THE CHAIRPERSON: Yes, go on.

MR TEDESCHI: And you also refer to limited corroborative evidence of consent being withdrawn or not provided; correct?

DET SUPT MOLLER: Well, yes, I say that.

MR TEDESCHI: The evidence of Ms Higgins' intoxication was relevant to the question of consent? Do you think it was fair to describe that evidence of her intoxication as limited corroborative evidence?

DET SUPT MOLLER: Yes, I do.

MR TEDESCHI: There is no mention at all in this document that you had already been to see the DPP who had expressed his view about the way forward?

DET SUPT MOLLER: There was no mention in this document because I had spoken to Mr Chew daily about those incidents.

MR TEDESCHI: See, I suggest that in this document, you wanted to convince DCPO Chew that the matter should not progress.

DET SUPT MOLLER: I think I was highlighting, you know, the issues and my thoughts at the time so my commander knew exactly where my position was. But I don't think - sorry, that's what I did. I wanted him to be completely aware of what my position was, and the investigation team's position was.

THE CHAIRPERSON: Well, your position, I think, as you candidly stated, is you thought there was insufficient evidence, and the case should not go ahead -

DET SUPT MOLLER: That's correct.

THE CHAIRPERSON: - if it was up to you.

DET SUPT MOLLER: That's correct.

MR TEDESCHI: And you were trying to convince the DCPO to come to the same view?

DET SUPT MOLLER: Well, I think - I don't like the way you use "convince". I was certainly putting our position in front of the commander.

MR TEDESCHI: And you were hoping that the commander would be of the same view as you?

DET SUPT MOLLER: No, I was - I was giving him my view.

MR TEDESCHI: However, the decision that came back was on a one-page document from DCPO Chew in which he indicated his decision that the brief should be referred to the ACT DPP for assessment and consideration of prosecution?

DET SUPT MOLLER: And -

MR TEDESCHI: I will come to that. Do you agree?

DET SUPT MOLLER: Yes.

5 **MR TEDESCHI:** So that must have been a disappointment to you?

DET SUPT MOLLER: No, Mr Tedeschi. It's not a disappointment to me. And - and to be honest, it's kind of offensive that you keep saying it is disappointing because it wasn't. We were committed to this investigation and - and, you know, I was highlighting some of the
10 issues that I found. I don't think you need to overstate that it was, you know, disappointing to me.

MR TEDESCHI: You see, what I'm suggesting to you is that you were trying to convince the DCPO to come to the view that the matter shouldn't progress, but he decided instead to
15 refer the matter to the DPP for an advice.

DET SUPT MOLLER: Which was a great decision.

MR TEDESCHI: And he also ordered a report to be produced by - or review - a red team
20 review; is that right?

DET SUPT MOLLER: That's right.

MR TEDESCHI: And that was done by Commander Smith?
25

DET SUPT MOLLER: It was, yes.

THE CHAIRPERSON: Why, in your opinion, was it a great decision to brief the DPP for an opinion about prospects?
30

DET SUPT MOLLER: Because I think it was the - you know, from my perspective, Commissioner, it was, "Let's have a look at the investigation" - so in terms of sending for the red team, I was really supportive of that because I wanted some independent advice in relation to the investigation we've done. Is there anything that, you know, was outstanding?
35 Did we need to do anything more? But also, you know, to actually get the Director's view on paper. I think we were at that point where we needed something. We needed - all this discussion and talk was about, "Yes, you're going to go ahead. You're going to go ahead." The team thought there wasn't enough. I did too. I thought it was time - let's - that's why I put that on paper, because I wanted a decision to be documented and progressed or not
40 progressed, one way or the other. So, for me, Mr Chew made a very - a really good decision at that time by progressing our stuff to the DPP.

THE CHAIRPERSON: Thank you.

45 **MR TEDESCHI:** Having got that decision by the DCPO Chew, you and Inspector Boorman met him on 17 June; is that right?

DET SUPT MOLLER: Yes.

50 **MR TEDESCHI:** You met with Chew on that day, 17 June?

DET SUPT MOLLER: Yes.

5 **MR TEDESCHI:** And I think I've - and despite the fact that he had directed that the DPP should be asked for an advice, you again tried to convince him that there was insufficient evidence to proceed; is that right?

10 **DET SUPT MOLLER:** No, I didn't try to convince him. I was conveying my opinion. I thought there was insufficient evidence.

MR TEDESCHI: In your statement at paragraph 118, you say:

"I informed DCPO that I thought there was insufficient evidence to proceed."

15 This is on 17 June. That's - despite the fact that he had asked for an advice from the DPP, you were still - you and Boorman were still trying to convince DCPO Chew that there was insufficient evidence to proceed?

20 **DET SUPT MOLLER:** No, I think you are overstating that. I think certainly I was conveying my position, which was I thought there was insufficient evidence.

25 **MR TEDESCHI:** And you conveyed that view - even though you had already told DCPO Chew what your view was, you conveyed that view in order to try and convince him not to proceed; is that right?

DET SUPT MOLLER: No.

MR TEDESCHI: On 18 June, you prepared your cover letter for the brief to go to the DPP?

30 **DET SUPT MOLLER:** I think - I would have to look at the dates on that.

MR TEDESCHI: I think it's dated 18 June. I will see if I can bring it up. It's DPP.005.001.5660. Is that your cover letter that you sent to Mr Drumgold with the brief to advise?

35 **DET SUPT MOLLER:** Yes, that's the - that's a letter that I've sent to Mr Drumgold on 18 June.

40 **MR TEDESCHI:** That was the cover letter that you sent to Mr Drumgold, that he received on 21 June, asking him to advise?

DET SUPT MOLLER: Well, that's one I've sent to him, yes.

45 **MR TEDESCHI:** And once again, in that cover letter, you only identify credibility issues in relation to Brittany Higgins and you don't address any of the positive aspects of the case?

DET SUPT MOLLER: Positive aspects of the case?

50 **MR TEDESCHI:** Any strengths of the prosecution case.

DET SUPT MOLLER: Well -

MR TEDESCHI: Do you agree or disagree?

5 **DET SUPT MOLLER:** Well, I highlight some issues. Yes, I agree with that. But -

MR TEDESCHI: The issues that you highlight are this - the second paragraph:

10 "The investigation has identified a number of concerns regarding this matter to date, including inconsistencies in disclosure, credibility concerns and other evidentiary issues that may affect any potential prosecution."

DET SUPT MOLLER: Yes.

15 **MR TEDESCHI:** Do you agree that there's only a reference to the deficiencies or potential deficiencies in the case and not to any strengths of the case?

DET SUPT MOLLER: And then it goes on to say:

20 "Investigators are attempting to obtain additional statements from seven interstate witnesses and further three witnesses within an office in 2019 regarding disclosures by Ms Higgins or the suspect, Mr Bruce Lehrmann, in relation to this matter. In addition to the analysis of Ms Higgins' mobile telephone and access to both Ms Higgins and Mr Lehrmann's iCloud accounts is ongoing. Investigators believe the
25 outstanding statements will not influence any decisions. However, examination of both Ms Higgins and Mr Lehrmann's iCloud accounts may identify additional evidentiary material of an inculpatory or exculpatory nature."

30 So, no, I don't agree with that - with your suggestion, Mr Tedeschi. I think I'm giving a summary of exactly where we are up to in the investigation.

MR TEDESCHI: That third paragraph is to inform the Director that there is still some statements to be obtained. It doesn't in any way describe the strengths of the prosecution case, does it?

35 **DET SUPT MOLLER:** But it talks about that, you know, there's a possibility that the cloud accounts may identify additional evidentiary material of an inculpatory or exculpatory nature. So it doesn't detail the evidence; it is saying we may get it, we may not. So in your words, I guess, what I'm saying is that I - I was highlighting to the Director where the investigation
40 was up to.

MR TEDESCHI: The only analysis of the evidence is in that second paragraph where you highlight inconsistencies, credibility issues and evidentiary issues that may affect the prosecution; correct?

45 **DET SUPT MOLLER:** I - I don't think that's analysis of the - of the evidence. That's my opinion. And I would think, really, that the Director would welcome my opinion. He doesn't have to use it, but, you know, it's something that he - I would think that he would be interested in.

50

MR TEDESCHI: And you received the advice from the DPP on 28 June?

DET SUPT MOLLER: I will accept that's the date.

5 **MR TEDESCHI:** You referred to the fact earlier that DCPO Chew had obtained a red team review, and I think you described to Mr Jones what a red team review is, I think. It's an independent review of the investigation by a completely independent team within the police force?

10 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: And he was very complimentary about the actual investigation, was he not?

15 **DET SUPT MOLLER:** Well, thank you, Mr Tedeschi. Yes, he was.

MR TEDESCHI: However, do you agree that in relation to whether or not there was sufficient evidence to prosecute, what Commander Smith said was this - and I'm referring to the fifth page -

20

DET SUPT MOLLER: Can we have the document up so I can read it?

MR TEDESCHI: Yes. AFP.2003.005.0665. I direct your attention to the - 2003.0005.0665. Thank you. Can we have the fifth page, please. Up the top. If you could highlight the first four paragraphs. Thank you. Do you see there just above the dot point notes, Commander Smith has written this:

25

"The review team acknowledges that the court is the proper authority for these issues to be determined."

30

And then he refers to some of the issues that would arise at a trial?

DET SUPT MOLLER: That's what he says.

35 **MR TEDESCHI:** It would appear from that, would it not, that Commander Smith was of the view that this was a proper matter to be litigated in court?

DET SUPT MOLLER: Mr Smith doesn't make any recommendations in relation to that.

40 **MR TEDESCHI:** He doesn't make a recommendation, but he expressed that view, didn't he, on behalf of the review team?

DET SUPT MOLLER: I can see what he says in there, but he certainly never made any recommendations. So I can read what he says there, and I guess you would have to ask Mr Smith what he recommended. But, you know, from, my reading of that, he acknowledges that the court is the proper authority for these issues to be determined.

45

MR TEDESCHI: What I want to suggest to you - pardon me. Do you agree that after receiving the DPP's advice on 28 June that not only did you read it, but Chief Inspector Boorman read it as well?

50

DET SUPT MOLLER: Well, I forwarded it on to the (indistinct) for everybody to read.

MR TEDESCHI: And, of course, DCPO Chew had read it, right?

DET SUPT MOLLER: I'm not sure.

MR TEDESCHI: And would this be the case: that despite the fact that the DPP had set out in quite some detail the reasons for his view that there was a reasonable prospect of conviction, that Chief Inspector Boorman and the rest of his team - not you, the rest of his team under him - were still of the view that it was not appropriate for a summons to be signed?

DET SUPT MOLLER: Well, once I received that - that advice and I forwarded that advice to the team and I - I gave them the direction that we were moving forward to prosecution, they were absolutely on board and did everything they could to have this matter progressed.

MR TEDESCHI: Were the - was the whole of the investigation team from Boorman down upset at the fact that Mr Lehrmann had been charged?

DET SUPT MOLLER: They were concerned. Certainly their views were they were concerned still that they believed there was insufficient evidence.

MR TEDESCHI: They knew that it was because of the DPP's advice that Mr Lehrmann had been charged?

DET SUPT MOLLER: Well, we were moving forward on the advice of the DPP.

MR TEDESCHI: And they knew that you and Inspector Boorman had argued against it with DCPO Chew?

MR BLACK: Well, can that be clarified. Argued against what?

MR TEDESCHI: Argued -

THE CHAIRPERSON: Against prosecuting.

MR TEDESCHI: - against a prosecution.

DET SUPT MOLLER: Well, they were aware of - of my views and Inspector Boorman's views, absolutely, yes. Yes, they were.

MR TEDESCHI: And as a result, did they exhibit to you hostility towards the DPP because they blamed the DPP for this situation?

DET SUPT MOLLER: No.

MR TEDESCHI: Would it be correct to say this: that the relationship between the investigation team and the ODPP - that's the Office of the Director of Prosecutions - during

the investigation became tense after DCPO Chew's decision directing the matter be sent to the DPP for advice?

5 **DET SUPT MOLLER:** There - there was - there was certainly a fracture in the relationship, if I can put it that way.

THE CHAIRPERSON: And why was that, in your opinion?

10 **DET SUPT MOLLER:** I think, Commissioner, because the investigators' view was that it shouldn't go ahead, and they were concerned that - they were concerned for the presumption of innocence. They were worried about putting Mr Lehrmann before the court when they didn't believe there was enough evidence. And that was sort of the principal view that they held.

15 **THE CHAIRPERSON:** And when you got Mr Drumgold's written opinion, you and your colleagues didn't change your own opinion?

DET SUPT MOLLER: Well, I certainly did.

20 **THE CHAIRPERSON:** It had an effect on what had to be done, but -

DET SUPT MOLLER: Yes.

25 **THE CHAIRPERSON:** - in terms of your own opinions, having read his opinion, you disagreed with it?

DET SUPT MOLLER: Yes. So there was a - the consensus was - if I'm talking about a consensus, the view was that they still believed there wasn't enough evidence.

30 **THE CHAIRPERSON:** And you believed that?

DET SUPT MOLLER: What, I believed there wasn't enough evidence or -

35 **THE CHAIRPERSON:** Yes. Yes.

DET SUPT MOLLER: I -

40 **THE CHAIRPERSON:** Did you hold to your original belief, having read his opinion, that in your opinion there was still not enough evidence?

DET SUPT MOLLER: No. When I read Mr Drumgold's advice, for me, I was satisfied that that was sufficient for me to move forward.

45 **THE CHAIRPERSON:** Thank you.

MR TEDESCHI: Would it be correct to say this: that prior to the trial, the relationship between the police and the ODPP had become tense and strained as a result of a number of issues after the submission of the preliminary brief to the DPP and the receipt of his advice?

DET SUPT MOLLER: Okay. So there's a number of questions in there. Was the relationship strained? Is that the first question?

MR TEDESCHI: Well, is it correct to say that prior to the trial, the relationship had become tense and strained as a result of a number of issues after the submission of the brief to the DPP and the receipt of advice?

DET SUPT MOLLER: Okay. The relationship became strained, yes. I absolutely agree with that.

MR TEDESCHI: And did it become even more strained when there was a suggestion by the DPP that police had failed to provide all of the CCTV footage?

THE CHAIRPERSON: Well, that's a new subject. Shall we move on to that after lunch?

MR TEDESCHI: I'm content to do that.

THE CHAIRPERSON: Yes. 2.15.

<THE HEARING ADJOURNED AT 12.59 PM

<THE HEARING RESUMED AT 2.17 PM

THE CHAIRPERSON: Mr Tedeschi, that point you raised about Browne v Dunn - I think it was you, Ms Richardson, who gave Ms Longbottom a copy of the ICAC practice direction?

MS RICHARDSON: Yes.

THE CHAIRPERSON: Yes. I will arrange for all of you to have a copy of that. But the practice that ICAC has adopted seems to make sense to me, with respect. There are three parts to it, and I will just tell you briefly what it is, but you will see this in due course. If - number 1, if I'm to be expected to - invited to reject or not accept evidence of somebody on a material fact or issue on the ground that the witness is giving false evidence or the evidence is unreliable or the witness is mistaken or something of that nature, then the grounds of that kind of a proposition must be put to the witness to allow the witness to respond, offer an explanation.

Secondly, that obligation does not mean that you have to put minor inconsistencies and insignificant differences to a witness. And if somebody has already put the proposition, you don't have to put it again on behalf of your client. And if it's obvious from the material that, say, Mr Drumgold rejects something in somebody else's statement, well then, you can take it that that's been put. And then, finally, once somebody has put - has cross-examined on a particular issue, nobody else will be permitted to cross-examine on the same issue unless there's some different complexion or perspective or something new being put. So that probably answers your - what you raise. But have a look at it, all of you, and - when you get it, and we can talk about it in the morning.

MR TEDESCHI: Thank you. In light of that, could we please have a little bit more time to decide which witnesses we need to have recalled.

THE CHAIRPERSON: Of course. Yes. Take - yes.

MR TEDESCHI: Thank you.

5 **THE CHAIRPERSON:** But it's just a matter of witness convenience and, you know, consideration to people who have other business.

MR TEDESCHI: Yes.

10 **THE CHAIRPERSON:** So let us know, even in dribs and drabs, who you are going to need. Thank you. Go ahead, Mr Tedeschi.

MR TEDESCHI: Superintendent, I think before lunch -

15 **THE CHAIRPERSON:** Sorry, Ms Longbottom. There was one other matter, Mr Tedeschi, that doesn't - that partly concerns you.

MS LONGBOTTOM: Mr Chair, yesterday you referred to a letter that you had written to the editor of The Australian with respect to an article that appeared concerning Mr Drumgold.
20 You received a response to that letter yesterday. I propose to tender your letter, the response and two copies of the article concerned. Operator, can you please display the tender list? And if it assists, Mr Sofronoff, I can hand up a hard copy of the article.

THE CHAIRPERSON: Hand up the hard copies, thanks. And otherwise, those documents
25 can go up on the website in due course. And they will be marked with the numbers that you've got on the tender list number 4. Thank you for that. And could you give Mr Tedeschi a copy of those documents?

MS LONGBOTTOM: Certainly. I can attend to that now, Mr Sofronoff.
30

THE CHAIRPERSON: Thank you. And having received and read the response from the editor of The Australian, I can say that I'm appreciative of her prompt response and thank her for the considered way she has replied to my letter, and I consider the matter closed. Yes,
35 Mr Tedeschi, when you're ready.

MR TEDESCHI: Thank you. Could I just have a moment to read this?

THE CHAIRPERSON: Yes, of course. You can deal with it later, if you like. If you want to say anything else about it later, you feel free.
40

MR TEDESCHI: Superintendent, before the luncheon adjournment, I was asking you questions about the deterioration in the relationship between the police and the ODPP. And is this the case: that when the DPP suggested to the police that not all of the CCTV footage of Mr Lehrmann and Ms Higgins at Parliament House had been provided in the trial brief, that
45 that caused further tension and strained relationships between the ODPP and the police?

DET SUPT MOLLER: Well, it was another unfair accusation that was directed at the police.

50 **MR TEDESCHI:** Was it seen as an accusation or just an inquiry into what had happened?

DET SUPT MOLLER: Well, the briefing I received was that the ODPP had - had accused the investigators of deleting evidence, being that CCTV footage. And that - sorry, if I can just finish. Sorry.

MR TEDESCHI: Yes.

DET SUPT MOLLER: And that allegation was taken very seriously. And so a number of investigators worked for a lengthy period of time to try and give the Director some confidence that that hadn't happened.

MR TEDESCHI: Yes. And extensive inquiries were made at Parliament House?

DET SUPT MOLLER: Yes. Yes.

MR TEDESCHI: And an attempted review was done of the hard drive on which the advice brief had been provided, but without success?

DET SUPT MOLLER: They went - they went to lengths -

MR TEDESCHI: Yes.

DET SUPT MOLLER: - to satisfy the Director.

MR TEDESCHI: Have you heard the explanation that Mr Drumgold has advanced in this hearing about why there might have been another source of video as a result of another inquiry?

DET SUPT MOLLER: No, I haven't heard. But, interestingly, I can say that if you have a look at the Director's advice to me - or to the police, you will notice on page 4 of his advice he talks about:

"The CCTV picks up the complainant and suspect arriving inside Parliament House at 1.42 am."

MR TEDESCHI: Yes. Sorry.

DET SUPT MOLLER: So he - he - he notes -

MR TEDESCHI: What -

DET SUPT MOLLER: - in his advice to me that the CCTV footage that he has reviewed identifies the complainant and the suspect arriving inside Parliament House at 1.42 am.

MR TEDESCHI: What he was after was arrival at a gate, wasn't it? He claimed to have seen -

DET SUPT MOLLER: Yes.

MR TEDESCHI: He and Ms Jerome claim to have seen arrival of Mr Lehrmann and Ms Higgins at a gate -

DET SUPT MOLLER: Outside of Parliament House.

MR TEDESCHI: - outside of Parliament House.

DET SUPT MOLLER: Yes.

MR TEDESCHI: Is that right?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And it was that that the Director was after?

DET SUPT MOLLER: Well, no, it was that that the Director was confused about.

MR TEDESCHI: Yes. But he thought that he had seen it, and his inquiries were, "What's happened to that?"

DET SUPT MOLLER: No. He thought that police had deleted that evidence - deleted it from the file, and that was his accusation towards the police.

MR TEDESCHI: And that caused a lot of resentment?

DET SUPT MOLLER: Well, it - it caused concern -

MR TEDESCHI: Is that right or wrong?

DET SUPT MOLLER: It caused concern, yes.

MR TEDESCHI: Yes. Yes. Was there another inquiry into a completely different aspect of the case?

THE CHAIRPERSON: Sorry, hang on.

MR TEDESCHI: Sorry.

THE CHAIRPERSON: That's too wide a question.

MR TEDESCHI: Were you aware of some other body conducting an inquiry into some aspect of the case other than the sexual assault of Ms Higgins?

DET SUPT MOLLER: I'm sorry -

THE CHAIRPERSON: Are you talking about a parliamentary department inquiring into a security breach or something of that kind?

MR TEDESCHI: Yes, something like that.

THE CHAIRPERSON: Yes. Yes, I don't think that's a secret, if that's why you were being a little obscure. Parliamentary Services was looking into -

5 **DET SUPT MOLLER:** They were. They had a - they had an investigation running at the same time.

MR TEDESCHI: Running parallel, about the security breach?

10 **DET SUPT MOLLER:** I - I don't know exactly what it was about.

THE CHAIRPERSON: Constituted by the entry of two people.

MR TEDESCHI: Yes.

15 **THE CHAIRPERSON:** Is that right?

MR TEDESCHI: And did they gain access to audio-visual materials from Parliament House?

20 **DET SUPT MOLLER:** Mr Tedeschi, I'm not aware of anything they did in their investigation.

MR TEDESCHI: Was there any communication between your team and their team?

25 **DET SUPT MOLLER:** Not that I'm aware. And it was run independently from us, as it should be. And I'm not aware of anything in relation to that investigation. I can't assist you at all.

30 **MR TEDESCHI:** Can you say that there definitely was or wasn't communication between the two?

DET SUPT MOLLER: I don't know.

35 **MR TEDESCHI:** Yes. Thank you. Would you agree with this: that in 2021, there was another reason why there was a deterioration of the relationship between the police and the ODPP, and it included this, that there were a number of external factors in 2021 impacting on the conduct of sexual assault investigations, including the professional trust and rapport between agencies that appeared to have diminished following the preparation of the SAPR report. Do you agree with that?

40

DET SUPT MOLLER: Do I agree that report was published or -

MR TEDESCHI: No.

45 **DET SUPT MOLLER:** A breakdown of the relationship.

MR TEDESCHI: Do you agree that the relationship deteriorated further as a result of the SAPR report?

50 **THE CHAIRPERSON:** When was that report published?

MR TEDESCHI: December '21.

5 **DET SUPT MOLLER:** I think - did it - did it contribute to issues that the - the two offices were having? Yes, I suppose it would have. Yes.

MR TEDESCHI: In what way?

10 **DET SUPT MOLLER:** I just think it was a discussion point and - and, you know, we were aware that Mr Drumgold had fed into that report in relation to, you know, prosecutions and stuff like that about sexual assault. So -

15 **MR TEDESCHI:** Was the view on the part of the police generally that the report had come about because of his actions in bringing the suggestion of undercharging to the attention of ACT parliamentarians?

DET SUPT MOLLER: No.

20 **MR TEDESCHI:** Was it considered that he was primarily responsible for the fact that the report was requested?

DET SUPT MOLLER: No.

25 **MR TEDESCHI:** Was there resentment at the fact that the report had recommended that, in effect, his office review several hundred cases?

DET SUPT MOLLER: Were the police happy about having, you know, several hundred cases reviewed?

30 **THE CHAIRPERSON:** Mr Moller, just so that I understand it and everybody else does, this report we are speaking about was published, I'm told, in December '21, and it was the result of what - some issue arising about whether police were vigorously enough - prosecuting vigorously enough the complaints made by complainants in sexual offence cases, the proposition being that you weren't charging in cases where charges should have been
35 brought - that's what we will call undercharging - so that the proposition was that you were undercharging. And am I right in thinking that the DPP or his office then looked at a whole series of files to determine whether cases fell within that category, that complainants had put forward matters, investigations had been undertaken but no charges had resulted and whether
40 police were at fault - whether there was a failure on the part of police, and the report dealt with that suggest matter?

DET SUPT MOLLER: Yes.

45 **THE CHAIRPERSON:** So am I right that that's what it was?

DET SUPT MOLLER: Yes. Yes, you are.

THE CHAIRPERSON: You were being asked whether that caused discomfort, disquiet or upset or any kind of negative feelings in the ACT Police.

50

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: So what's the answer to that?

5 **DET SUPT MOLLER:** So certainly the sexual assault team was taken back by the report. They were hurt, I guess. They were upset because it - it pointed to their professionalism, I suppose. So they were - they were upset about - about that. But -

10 **THE CHAIRPERSON:** Was Mr Drumgold instrumental in the production of a report of that kind or was he involved in it?

15 **DET SUPT MOLLER:** He was involved in it - absolutely involved in it, as were a number of other agencies. But I don't agree with Mr Tedeschi saying that Mr Drumgold was the driving force behind it and the police were upset with him because of that, because it wasn't - in my view, it wasn't like that. Certainly there was - the investigators had feelings that - that they weren't professional. You know, they felt offended by that.

20 **THE CHAIRPERSON:** The allegation in the report was that they weren't acting professionally in this important -

25 **DET SUPT MOLLER:** Yes, that's right. And they weren't progressing these - these complaints like they should, and that offended them. You know, they are very professional police, very dedicated to their role and - and, you know, they turn up every day and do the best job they can. So, yes, it - you know, yes, it was upsetting to them.

THE CHAIRPERSON: Mr Jones.

30 **MR JONES:** May I just raise something that might assist. The operator has page 64 or 65 of the report. And the report did not, in fact, identify that there were low rates by the ACT Police. They identified nationally that sexual offences -

THE CHAIRPERSON: But, Mr Jones - I don't want to get into the report. It's Mr Tedeschi's line of cross-examination.

35 **MR JONES:** Absolutely. But the conclusions that are being put to him or are being elicited aren't, in fact, accurate on the report. The report is, as created now, a review which is determining that very question, whether they are -

40 **THE CHAIRPERSON:** But we are talking about the 2021 document. Is that what you are talking about?

MR JONES: Yes.

45 **THE CHAIRPERSON:** All right. What is it you want to do? You want to say if you have a look at the document, it might not be accurate to describe it as critical as Mr Tedeschi put it.

MR JONES: That's right.

50 **THE CHAIRPERSON:** Well, Mr Tedeschi can deal with. Thank you. You go ahead, Mr Tedeschi.

5 **MR TEDESCHI:** Would it be accurate to say this in relation to the SAPR report: that there has been a shift in attitude within ACT Policing from feeling unfairly criticised by some external partners, principally the DPP/ODPP, towards what more recently has become an acceptance of constructive learning and improvement?

10 **DET SUPT MOLLER:** I think, you know, from a policing perspective, we don't shy away from criticism. We are certainly - we will do better if we can in some - in areas that were identified to be deficient. And I'm not saying we were identified to be deficient, because like it has been pointed out, we are still going through that review process. But we won't shy away from criticism, absolutely not.

15 **MR TEDESCHI:** Would it be correct to say that initially there was a feeling of being unfairly criticised by external partners, principally the DPP and the ODPP?

DET SUPT MOLLER: There was a feeling of being unfairly criticised because the data that was being used was not accurate.

20 **MR TEDESCHI:** Now, I would like to go back, please, to one line that I asked you about earlier, and I omitted to put a document to you. I was asking you questions about your motive in giving authority for Ms Heidi Yates to be questioned by the police. You recall those questions? Could we bring up a document. It has got a very strange number to it. It just has one number, 1157. Does that make any sense? I've got another number. DPP.005.008.4963. If we start perhaps at the end. On the last page, please. Is that the last page? If we could go to 25 4964, please. 4964 is an email from you to Brittany Higgins dated 16 August 2021. Do you see that?

DET SUPT MOLLER: I'm just reading it, Mr Tedeschi.

30 **MR TEDESCHI:** Could I direct your attention to the last paragraph on that page. The second sentence reads:

"I have wanted to contact you a number of times since our phone conference.
However, as discussed, the current contact system is difficult."

35 Now, that's a reference, is it not, to the fact that at that time contact had to be through Ms Yates?

40 **DET SUPT MOLLER:** It's a reference to the fact that, yes, it was - it was difficult to contact her directly, yes, because of Ms Yates working as the conduit, I suppose, if you will.

MR TEDESCHI: Yes. And then you say:

45 "I would appreciate being able to contact you directly. If this is acceptable, please forward via email a contact number."

DET SUPT MOLLER: Yes.

50 **MR TEDESCHI:** I think that's the end of the email. Perhaps you might just go down to make sure. Yes. "Kind regards, Scott." So this was an attempt by you as at that date, which is

16 August 2021, to try and convince Ms Higgins to contact - have contact directly with you rather than through the intermediary of Ms Yates; correct?

5 **DET SUPT MOLLER:** Well, it was - it was a request by me to try and have the ability to contact Ms Higgins directly, yes.

MR TEDESCHI: And is this the case: that you received no reply to that request from Brittany Higgins?

10 **DET SUPT MOLLER:** Yes, that's why I forwarded it to Ms Yates.

MR TEDESCHI: Yes. If you go up to the next one, please. It's an email from you on 23 August, so seven days after your email to Ms Higgins:

15 "Hi Heidi, see below email which I sent to Brittany recently, 6 August '21. I'm still yet to receive a response. Not sure if this is the right email address or not. But appreciate if you could confirm that it has been received."

And then the next one is a response from Ms Yates to you, if we just go up the page, please.

20 **DET SUPT MOLLER:** That's not to me.

MR TEDESCHI: Sorry.

25 **DET SUPT MOLLER:** It's from Heidi to Shane Drumgold.

MR TEDESCHI: Yes. Can we have that on the screen, please? Thank you. That's an email from Ms Yates to Mr Drumgold informing him about your email to her; correct?

30 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Indicating that you wanted to contact her directly. And she asks Mr Drumgold:

35 "Are you happy to advise or for me to advise Superintendant Moller that contrary to his email your office will provide Ms Higgins with any further information, accordingly won't be a need for Ms Higgins to have any ongoing contact with police."

And then -

40 **THE CHAIRPERSON:** Let's sort that out first what's happening. Some legal representatives on remote have dropped out, and they are trying to get them back in. But you continue.

45 **MR TEDESCHI:** Okay. And then we could go up a page, please. That's the top of it. All right. So here you were in - on 23 August - sorry, I withdraw that. On 16 August, you have tried to convince Ms Higgins to deal directly with you, and you got no response?

DET SUPT MOLLER: Well, I was trying to contact her directly, yes, and I got no response. That's correct.

50

MR TEDESCHI: And then subsequently you were informed by the DPP that all contact should be with them and not directly with Ms Higgins; is that right?

DET SUPT MOLLER: I think I did receive something from the DPP after that.

MR TEDESCHI: And it was on 22 September, so about a month and a bit later, that you - that the interview with Ms Yates was held?

DET SUPT MOLLER: Potentially, yes.

MR TEDESCHI: And it was about two or three weeks after you had sent that email to Ms Higgins that Senior Constable Frizzell sent the request to you for permission to interview Ms Yates?

DET SUPT MOLLER: I guess, if that's the dates, yes.

MR TEDESCHI: Now, moving to another topic. Was Ms Higgins warned on a number of occasions by different police officers, including you, of the risks to either the investigation or the trial of any contact between her and the media?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Did that include, on 6 February 2021, Detective Sergeant Saunders warned her of the potential impact and risk to the investigation of going public?

DET SUPT MOLLER: I don't have that in front of me, but she was warned a number of times. She was advised, I think, is probably a better choice of words.

MR TEDESCHI: Did you advise her on 26 May 2021 of potential risks to the investigation of continual media commentary?

DET SUPT MOLLER: She was warned a number of times. I haven't got - what date was that?

MR TEDESCHI: 26 May '21. It's not in your statement.

DET SUPT MOLLER: Yes.

MR TEDESCHI: On 17 June, did you have a conversation with her legal representative, Mr Zwier, to notify him that the continual media attention was not helpful and asking if he would advise Ms Higgins to remain silent moving forward?

DET SUPT MOLLER: I don't have that in my notes, but potentially.

MR TEDESCHI: On 7 August, did you have another conversation with her legal representative, Mr Zwier, as a result of Ms Higgins' partner contacting you, passing a message from Ms Higgins, threatening to go to the media about the fact that the AFP was dragging the matter out?

DET SUPT MOLLER: I don't remember that specific conversation.

MR TEDESCHI: Would it be fair -

5 **DET SUPT MOLLER:** Absolutely I was concerned about Ms Higgins' continual appearance in the media.

MR TEDESCHI: Would it be fair to say that despite all the warnings from police that she was reluctant to follow the warnings that had been given?

10 **DET SUPT MOLLER:** Well, she didn't follow them. She wasn't reluctant; she didn't do it.

MR TEDESCHI: And in particular, after the jury was discharged, she contacted the media?

DET SUPT MOLLER: Yes, she contacted the media quite often.

15

MR TEDESCHI: I would like to go back to some evidence that you gave earlier today about some questions that I asked you concerning the pressure that the police were under. You were asked a number of questions yesterday by Mr Jones about the events surrounding the service of the summons and the service of the brief on 6 August 2021. Do you agree that the disclosure of the counselling notes to the defence as part of the brief - had anything like that happened in any matter that you were associated with at any time prior to that?

20

THE CHAIRPERSON: When you say "anything like that" -

25 **MR TEDESCHI:** I will be more specific. Had you ever had any other matter in which you were involved as a police officer in which there had been a disclosure of a complainant's counselling notes to the defence?

30 **DET SUPT MOLLER:** So I think we determined yesterday - or it might have been today - that we didn't disclose the notes. They were - they were served.

MR TEDESCHI: Sent.

DET SUPT MOLLER: So -

35

MR TEDESCHI: Has there been any other case?

DET SUPT MOLLER: Not that I can recall.

40 **MR TEDESCHI:** Has there been any other case that you've been involved in as a police officer with the AFP where a complainant's EICI audio or video has been served on the defence contrary to the legal requirements?

45 **DET SUPT MOLLER:** I think we said earlier, Mr Tedeschi, that this was the only matter I have ever signed a summons for in the AFP. So you are potentially asking the wrong person that question.

50 **MR TEDESCHI:** Is there any case that you've ever been involved in as a police officer prior to this case - a case that you were involved in as an officer - as a police officer where the complainant's EICI audio or video had been served on the defence?

DET SUPT MOLLER: I think that's unfair as a question because certainly if you are asking me as a police officer - you know, my experience in New South Wales, we served the audio and video recordings of interviews all the time. So I'm not sure where your question is - I haven't done it in the AFP, Mr Tedeschi, if that's your question. I have not done that before, and I haven't seen it. But I've only been - I've only ever served one summons in the AFP, and this is the one. So it's a bit hard for me to comment on that question, unfortunately, I'm sorry.

MR TEDESCHI: Is this the only case that you've heard of in the AFP where a superintendent signed off on a summons?

THE CHAIRPERSON: He's already answered that.

MR TEDESCHI: I don't know that he answered that question. I think it's the only one that he's done.

THE CHAIRPERSON: All right. Do you know of any other superintendent who has signed a summons?

DET SUPT MOLLER: Yes.

MR TEDESCHI: What sort of case?

DET SUPT MOLLER: Well, I think they have done - you know, the people - the - the superintendents in the AFP have done other cases. So -

MR TEDESCHI: Where they have signed the summons?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Okay. Do you know of any other -

DET SUPT MOLLER: But it's unusual, Mr Tedeschi. Like, I'm - I'm not disputing it's unusual.

MR TEDESCHI: Yes. Do you know of any other case in the AFP - or the ACT Police where the service of the brief was at the same time the service of the summons?

DET SUPT MOLLER: No.

MR TEDESCHI: Would you agree that's very rare?

DET SUPT MOLLER: Unusual.

MR TEDESCHI: Do you know of any other case in the ACT Police where the service of the brief was directly to the defence as opposed to through the DPP and then to the defence?

DET SUPT MOLLER: Well, in my experience with the one matter that I've been involved in, it happened.

MR TEDESCHI: But do you know of any other case -

DET SUPT MOLLER: I -

5 **MR TEDESCHI:** - in the ACT Police?

DET SUPT MOLLER: I don't.

10 **MR TEDESCHI:** And correct me if I am wrong, but your account is that all of these unusual events occurred because of pressure?

DET SUPT MOLLER: Well, I think certainly the - the way the brief was served - I mean, the evidence is fairly clear, really. You know, a direction was given to - to - to work that way. I didn't necessarily agree with it, but that's what happened.

15 **MR TEDESCHI:** But didn't you say yesterday that these events occurred because everyone was under pressure in this case?

20 **DET SUPT MOLLER:** Well, no, no. I said that there was a significant amount of a pressure affecting everybody.

MR TEDESCHI: Yes.

25 **DET SUPT MOLLER:** But what I'm saying to you is that -

MR TEDESCHI: Do you say that that's why these unusual events occurred?

DET SUPT MOLLER: Well, I'm saying it was - it was a contributing factor, absolutely.

30 **MR TEDESCHI:** And do you agree that part of professionalism for a police officer is being able to withstand pressure and perform your duties properly and fully whilst under pressure?

DET SUPT MOLLER: We are human, Mr Tedeschi.

35 **MR TEDESCHI:** Do you agree with that or not?

DET SUPT MOLLER: Well, what I'm saying to you is police are human. So they are affected by pressure.

40 **MR TEDESCHI:** Do you agree that whilst there might have been some urgency about serving the summons to get the matter underway and to get a court date in the Magistrates Court, there was no particular reason to serve the brief at the same time as the summons?

45 **DET SUPT MOLLER:** So I wouldn't agree with you that there was some pressure. There was extreme pressure, Mr Tedeschi. It was extreme pressure. There was significant pressure on all of us. So, no, I wouldn't agree with your proposition.

MR TEDESCHI: That was pressure to serve the summons and get the matter underway, wasn't it?

50

DET SUPT MOLLER: There was - everybody in this matter was subjected to the pressure.

MR TEDESCHI: The pressure was to get the matter underway because there was a threat that Brittany Higgins would go public if it didn't get started?

DET SUPT MOLLER: No, I wouldn't agree, Mr Tedeschi.

MR TEDESCHI: Or was there some pressure from the DPP that if the matter didn't get started that -

DET SUPT MOLLER: There was significant pressure from the Director -

MR TEDESCHI: Yes.

DET SUPT MOLLER: - to have this matter -

MR TEDESCHI: The pressure was to start the matter by issuing a summons, wasn't it?

DET SUPT MOLLER: Well, the pressure was to have the matter progressed to prosecution.

MR TEDESCHI: See, I suggest to you that there was no particular pressure to serve the brief as opposed to serving the summons.

DET SUPT MOLLER: Well, I disagree with that.

MR TEDESCHI: I suggest to you that there was absolutely no pressure to avoid the usual practice of serving the brief through the DPP.

DET SUPT MOLLER: Well, I disagree with that as well.

MR TEDESCHI: Now, when the DPP found out about the accidental or - I withdraw that. When the DPP found out about the inclusion of these items in the brief that shouldn't have been included, he immediately requested an explanation from you?

DET SUPT MOLLER: Yes, he did.

MR TEDESCHI: And you made an inquiry of Sergeant Rose who had been the one who was tasked by you to check the brief before it went out?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And Sergeant Rose notified you that he just hadn't checked; is that right?

DET SUPT MOLLER: Yes.

MR TEDESCHI: And you asked him - you asked him words to this effect, "What do you mean you didn't check?" And he said, "I just didn't check." There was no explanation. He just didn't check.

DET SUPT MOLLER: Well, no, I think he said -

MR TEDESCHI: Is that right?

DET SUPT MOLLER: No, that's not right.

MR TEDESCHI: Well, you made a file note about it, didn't you?

DET SUPT MOLLER: Yes, I've got it - I've got it in my diary.

MR TEDESCHI: If you want to go to your file note, that's fine.

DET SUPT MOLLER: I'm just not sure what the date is.

MR TEDESCHI: 21 September is the date. "Discussion with Detective Sergeant Rose." It's AFP.0023.0001.0157.

DET SUPT MOLLER: So, yes, your proposition was incorrect. And I'm happy to correct it.

MR TEDESCHI: Let's - why don't we read out what's there. "Discussion with" -

THE CHAIRPERSON: Why don't we see it if we can read it - well, go ahead. Read it, Mr Tedeschi.

MR TEDESCHI: Why don't you read it, Superintendent?

DET SUPT MOLLER: Sorry:

"Discussion with Detective Sergeant Rose re service of brief on John Korn." I said, 'Why did it (the brief) go out like that?' He said, 'I'm sorry, I didn't check it.' I said, 'What do you mean you didn't check it?' He said, 'I didn't check it. With everything I was doing, I didn't check it'."

MR TEDESCHI: So essentially he had no explanation other than the fact that he had omitted to do -

THE CHAIRPERSON: Are you going to tender that diary note?

MR TEDESCHI: Yes.

MR JONES: I think it's in the - it's already in there.

THE CHAIRPERSON: Is it?

MR JONES: It's part of the tender.

THE CHAIRPERSON: Is it? All right. Thank you, Mr Jones.

MR TEDESCHI: He had no explanation to give other than that he hadn't done what you had asked him to do; is that right?

DET SUPT MOLLER: Well - well, no, his explanation was, "With everything I was doing, I didn't check it." So I took that to mean that because he was so busy, he didn't check it. So he did have an explanation.

5 **THE CHAIRPERSON:** What's the date of that diary note, Mr Moller?

DET SUPT MOLLER: 21 September - Tuesday, 21 September.

THE CHAIRPERSON: Thank you.

10

MR TEDESCHI: And did you notify the DPP that that was the reason why those items had been included in the brief?

DET SUPT MOLLER: No, I didn't.

15

MR TEDESCHI: Why not?

DET SUPT MOLLER: At that time, I didn't see a need to notify him that Mr Rose had - had not checked it.

20

MR TEDESCHI: He had been asking you a number of times for an explanation for how it had happened?

DET SUPT MOLLER: Yes, and I provided an explanation.

25

MR TEDESCHI: All right. When did you provide him with that?

DET SUPT MOLLER: On email -

30

MR TEDESCHI: Yes.

DET SUPT MOLLER: - I answered his - I answered all the questions that Mr Drumgold had posed to me.

35

MR TEDESCHI: You didn't give him the explanation that Sergeant Rose had omitted to check it at all; is that right?

DET SUPT MOLLER: I didn't provide that explanation to him, no.

40

MR TEDESCHI: You - did you, in any of your conversations with barrister Mr John Korn, tell him in relation to the brief that had been served that there were some important text messages in the brief but that the Cellebrite report was huge?

DET SUPT MOLLER: No.

45

MR TEDESCHI: Did you say anything like that to him?

DET SUPT MOLLER: No.

MR TEDESCHI: Moving to a different topic. There is a policy, is there not, in ACT Policing that the most senior officer in an investigative team is the one who signs the disclosure certificate that goes to the DPP?

5 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: And what's the reason for that?

DET SUPT MOLLER: I don't know, to be honest.

10

MR TEDESCHI: Is it that that - somebody has to take responsibility for the very important task of ensuring that all relevant documents have been disclosed to -

DET SUPT MOLLER: It verifies that -

15

MR TEDESCHI: - the prosecutor and the defence?

DET SUPT MOLLER: Yes.

20

MR TEDESCHI: And there's nobody better in that position than the officer in charge of the case?

DET SUPT MOLLER: Well, that's a - that's a difficult question to answer, because you've said there's nobody better. So what you are pointing to is a seniority in rank structure, but there are people within the investigation that have a more detailed knowledge of the investigation than the most senior person.

25

MR TEDESCHI: Yes.

30

DET SUPT MOLLER: So I don't know that I can agree with what you just said.

MR TEDESCHI: All right. Are you aware that in this case there were, in fact, two disclosure certificates?

35

DET SUPT MOLLER: Yes.

MR TEDESCHI: Yes. Are you aware of the reason why there were two disclosure certificates?

40

DET SUPT MOLLER: So one for defence and one for prosecution. Is that what you're talking about?

MR TEDESCHI: No. No, there were two versions of the disclosure certificate, I suggest to you.

45

DET SUPT MOLLER: No.

MR TEDESCHI: You are not aware of that?

50

DET SUPT MOLLER: I don't know, no.

MR TEDESCHI: Could we bring up, please, DPP.005.008.5342. And if we could show the first and the second page, please. Now, what I'm showing you is the first disclosure certificate. On that second page, is that your signature?

5

DET SUPT MOLLER: Yes, it is.

MR TEDESCHI: And your name appears under it as detective superintendent -

10 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: - and the officer responsible for the investigation of the case?

DET SUPT MOLLER: Yes.

15

MR TEDESCHI: It's also signed by Detective Inspector Callum Hughes?

DET SUPT MOLLER: Yes, that's right.

20 **MR TEDESCHI:** What was his involvement in the case?

DET SUPT MOLLER: So Detective Hughes took over a role from Mr Boorman when he came - when he came.

25 **MR TEDESCHI:** Is that because Inspector Boorman went on leave?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Now, the date of your signature, it just says 04/2022.

30

DET SUPT MOLLER: Yes.

MR TEDESCHI: It looks like Mr Hughes' signature could be the 28th or the 29th. It's hard to say.

35

DET SUPT MOLLER: Yes, I - I don't know what that says.

MR TEDESCHI: Now, do you recall signing this tournament?

40 **DET SUPT MOLLER:** I remember signing a document - or this document that was drafted for me, yes.

MR TEDESCHI: Now, could I take you to the third page, which is 5344. That's schedule 1 of the certificate in relation to this matter, the Lehrmann prosecution. Schedule 1 contains material that is the subject of a claim for privilege or immunity, right?

45

DET SUPT MOLLER: Yes.

MR TEDESCHI: I mean, you must have been involved in filling out lots of these?

50

DET SUPT MOLLER: So - no, I haven't.

MR TEDESCHI: No?

5 **DET SUPT MOLLER:** No, I haven't, Mr Tedeschi. And this one -

MR TEDESCHI: You are familiar with them?

10 **DET SUPT MOLLER:** And this one was drafted for me, so - drafted for my signature because I had signed the summons.

MR TEDESCHI: Yes. But you take responsibility for it, don't you?

15 **DET SUPT MOLLER:** Well, obviously, I signed it and -

MR TEDESCHI: Yes.

20 **DET SUPT MOLLER:** Yes, I'm - yes. But like I said, I think you need to realise that - that given this matter, I signed the summons for the reasons that we've already articulated, and this document was drafted for me by the investigation team to sign because I was the informant.

MR TEDESCHI: Yes. And in schedule 1, the second bottom entry on that page is:

25 "Review of brief materials and subsequent advice/recommendations made by the DPP to ACT Policing."

And there's a claim for legal professional privilege, LPP?

30 **DET SUPT MOLLER:** Yes.

35 **MR TEDESCHI:** If we then go to the next page, which is schedule 2. If we then go to the page after that, 5346, which is schedule 3, which is relevant unprotected material that is not subject to a claim of privilege for immunity or statutory publication restrictions, right?

DET SUPT MOLLER: Yes.

40 **MR TEDESCHI:** Now, could I take you to the third page of schedule 3, which is page 5348. Do you see there's a heading on the left-hand side of the page, Investigative Review Documents?

DET SUPT MOLLER: Yes.

45 **MR TEDESCHI:** And on the right-hand column, next to that, is:

"This document outlines versions of events as supplied by Ms Higgins during the course of her engagements with police since 2019 against the available evidence and subsequent discrepancies available upon request and in consultation with the DPP."

50 Do you see that?

DET SUPT MOLLER: Yes.

5 **MR TEDESCHI:** Now, is that - was that inserted into schedule 3 in reference to the Moller report and the Boorman minute?

DET SUPT MOLLER: I can't tell you, Mr Tedeschi.

10 **MR TEDESCHI:** Well, you signed it.

DET SUPT MOLLER: Yes. It was drafted for me.

MR TEDESCHI: And -

15 **DET SUPT MOLLER:** It was drafted for my signature. I believe it's about a 17-page document.

MR TEDESCHI: Yes. You didn't look at it before you signed it?

20 **DET SUPT MOLLER:** I reviewed it, but not that in depth.

MR TEDESCHI: Looking at it now, do you think that that's what that refers to? The Investigative Review Documents and the description in the right-hand column, do you think it applies to your executive briefing, the Moller report, and Inspector Boorman's minute?
25

DET SUPT MOLLER: I'm not sure what it - what it actually articulates.

MR TEDESCHI: Might it refer to those two documents?

30 **DET SUPT MOLLER:** It might. But I don't know what it -

MR TEDESCHI: Well, those two documents did outline versions of events against the available evidence and discrepancies, didn't they?

35 **DET SUPT MOLLER:** Like the evidence matrix that I spoke about earlier had done. Yes.

MR TEDESCHI: Yes.

40 **DET SUPT MOLLER:** So there were a number of documents that actually did that.

MR TEDESCHI: Can you think now of any reason why it would require consultation with the DPP to make that document available?

45 **DET SUPT MOLLER:** The evidence matrix?

MR TEDESCHI: Either of those two documents, either the Moller report or the Boorman minute.

50 **DET SUPT MOLLER:** I can't explain that.

MR TEDESCHI: All right.

THE CHAIRPERSON: Mr Moller, who would likely - which police officer would likely have actually drafted this document for your signature?

DET SUPT MOLLER: Emma Frizzell. Emma Frizzell and - and - or Trent Madders. So I think it was Emma.

MR TEDESCHI: Can I take you now to the second disclosure certificate, which is DPP.005.008.5362. Again, if we could see the first and second pages. Is that your signature on the second page?

DET SUPT MOLLER: Yes, it is.

MR TEDESCHI: And, again, the signature of Callum Hughes?

DET SUPT MOLLER: Yes, it is.

MR TEDESCHI: Once again, it's got the same dates for both, yourself - your signature and Inspector Hughes' signature, does it not?

DET SUPT MOLLER: Well, I'm sorry, Mr Tedeschi, but I don't actually date it.

MR TEDESCHI: Yes. It does have a date in April 2022?

DET SUPT MOLLER: It hasn't been filled out.

MR TEDESCHI: Yes. Do you accept that this was a second disclosure certificate provided to the DPP?

DET SUPT MOLLER: Again, I - I have - I don't have any knowledge of that, so I can't answer that question.

MR TEDESCHI: If it was provided to the DPP in August of 2022, do you have any explanation for why it would be dated April 2022?

DET SUPT MOLLER: Well, no, I don't have any explanation.

MR TEDESCHI: Could I take you to the third page of schedule 1. Do you see, once again, it has the same entry, second-last row:

"Review of brief materials and subsequent advice/recommendations made by the DPP to ACT Policing."

DET SUPT MOLLER: Yes.

MR TEDESCHI: And once again, legal professional privilege is claimed in relation to that?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Could I take you to the same position where, in the previous version, there had been the entry for the investigative review documents, which is on page 5368. Above the entry "unused material", do you see that there's no entry for the investigative review documents in this version of the disclosure certificate?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Can we have, please, the two pages put up next to each other, 5348 and 5368.

MS RICHARDSON: Could I just raise one matter in terms of timing just so that the questions that come don't proceed on an incorrect premise. The affidavit that Mr Drumgold attaches to his witness statement, which is the affidavit of the instructing criminal solicitor, she set out when she received each disclosure statement. And so the first disclosure statement was received by her on 2 June, and the second one that my learned friend was taking Superintendant Moller to was received by her on 7 June from the DPP. So it's claimed that the office of the DPP had it in their possession by 7 June, and the August date is not correct.

THE CHAIRPERSON: Thank you.

MS RICHARDSON: It's at paragraph 4 of the affidavit of Ms Fisher, who was an instructing solicitor.

THE CHAIRPERSON: Thank you.

MR TEDESCHI: I believe that the first one came via Mr Korn. That's why it's dated 2 June. But, in fact, it was produced in April.

THE CHAIRPERSON: What do you mean "came via Mr Korn"? He's a barrister for Mr Lehrmann. That is to say, the first disclosure document was given by - prepared by police. Whether it went to the DPP first or not, I don't know, but was then given to, presumably, the legal representatives of Mr Lehrmann at the time, the solicitors, I think, being Legal Aid, I understood.

MR TEDESCHI: Yes. That's right.

THE CHAIRPERSON: And was Mr Korn briefed by them?

MR TEDESCHI: Yes.

THE CHAIRPERSON: Right. And then representation changed.

MR TEDESCHI: They sent their version on 2 June.

THE CHAIRPERSON: That's right. They sent their version to the new solicitors. And then, as it happened, a new disclosure certificate was prepared, a fresh one you have shown -

MR TEDESCHI: Yes.

THE CHAIRPERSON: - and that was delivered to Mr Lehrmann's second set of solicitors -

MR TEDESCHI: Yes.

THE CHAIRPERSON: - who ultimately acted for him throughout.

MR TEDESCHI: Yes.

THE CHAIRPERSON: All right. So what's the - earlier you put, "Why is it signed April - dated April when it was delivered in August?" And Ms Richardson has pointed out that it was delivered in June. So it seems that maybe it was signed in April and delivered in June.

MR TEDESCHI: I'm not familiar with the dates. I don't have enough command on those dates to be able to -

THE CHAIRPERSON: No, that's all right. Anyway, we have got the dates provisionally set.

MS RICHARDSON: If I can assist -

THE CHAIRPERSON: Ms Richardson is going to tell us more.

MS RICHARDSON: With the document that's on the screen -

THE CHAIRPERSON: The second one, yes. The second disclosure certificate in time.

MS RICHARDSON: Both these pages are from the same affidavit of Ms Fisher. If we go to page 5324, which is the first page of that affidavit, Ms Fisher sets out that on 2 June - this was when there was a change in representation - that they received instructions to act and we received the brief of material and the materials that had been held by Legal Aid, and the first disclosure certificate was among those materials. She sets out at paragraph 2, which is on the screen and then over the page - the next page - paragraph 4, she then sets out on 7 June, her office requested the most up-to-date disclosure statement from the DPP's office. And Ms Priestly of Mr Drumgold's office then attached what's being described as the second attachment.

THE CHAIRPERSON: All right. Thank you.

MR TEDESCHI: I accept that.

THE CHAIRPERSON: Anyway, carry on.

MR TEDESCHI: Can we go back to having those two documents on the screen. Can you see that in the one on the left, the investigative review documents are included in schedule 3, which is documents over which there's no claim for privilege. In the second version, it's just been deleted. There's no entry.

DET SUPT MOLLER: I can see that.

MR TEDESCHI: And would you accept from me that in schedule 3 of the second disclosure certificate, there is no entry for the investigative review documents?

DET SUPT MOLLER: I can see that.

MR TEDESCHI: Do you have any explanation for that?

DET SUPT MOLLER: No.

MR TEDESCHI: Was that difference between the two documents brought to your attention?

DET SUPT MOLLER: No. Not that I recall.

MR TEDESCHI: Were you given any explanation by Senior Constable Frizzell, Detective Madders or anybody else as to why there was a need for a second disclosure document?

DET SUPT MOLLER: No. I vaguely recall some legal advice they were getting. But, yes, I - I can't offer any explanation.

THE CHAIRPERSON: Is it the case that - just so I understand general procedure, that a disclosure - in a large case, a disclosure document - certificate may be delivered to defence solicitors at a point in time and then later there might be more disclosure material that's -

DET SUPT MOLLER: And it's amended.

THE CHAIRPERSON: And so you give them a new certificate -

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: - with the new stuff in it.

DET SUPT MOLLER: That's correct.

THE CHAIRPERSON: And I guess, as we see here, sometimes something is removed for some reason -

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: - and there will be a reason for that. But it's not uncommon for there to be more than one disclosure certificate in one criminal proceeding; is that right?

DET SUPT MOLLER: Correct. Yes.

THE CHAIRPERSON: And further, I understand that the practice in AFP is that a document - a disclosure certificate is prepared by an officer who is aware of the case and knows what is available for disclosure, and then it's signed off by relevant officer - in this case, it happened to be you -

DET SUPT MOLLER: Me, yes.

THE CHAIRPERSON: - upon an understanding or an assurance - implicit assurance that it's all correct.

DET SUPT MOLLER: That's correct.

THE CHAIRPERSON: So you didn't read it or - read it word for word; you just took it that this is what, for example, Ms Frizzell -

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: - genuinely considered correct?

DET SUPT MOLLER: That's right.

THE CHAIRPERSON: And you signed it on that basis; is that right?

DET SUPT MOLLER: That's right, Commissioner, yes.

THE CHAIRPERSON: Okay. Thanks.

MR TEDESCHI: And the fact that the first document had the investigative review documents in schedule 3, documents over which there's no claim, but it was omitted from the second disclosure certificate in schedule 3, do you agree that that's consistent with someone in your team being of the view that the investigative review documents were, in fact, the subject of legal professional privilege?

DET SUPT MOLLER: No, I wouldn't agree with that.

MR TEDESCHI: Is that one reason why it might have been removed from schedule 3 in the second disclosure certificate?

DET SUPT MOLLER: No, I think you would have to ask Detective Frizzell about that.

MR TEDESCHI: I will, indeed. But do you agree that that's one reason why an entry in the third schedule might be removed when the disclosure certificate is corrected?

DET SUPT MOLLER: What was the reason, sorry?

MR TEDESCHI: The reason is that it's - there's a realisation that it's been included in schedule 3 in error and that, in fact, there is a claim for legal professional privilege.

DET SUPT MOLLER: If there was something - if there was something in the disclosure certificate that was noted in error and they had the opportunity to amend it, they would amend it.

MR TEDESCHI: Yes. And so if it was included in error because there was a claim for legal professional privilege, one way of correcting that would be to remove an entry from schedule 3?

DET SUPT MOLLER: It's possible.

MR TEDESCHI: Can I take you, please, to DPP.005.008.5130.

5 **THE CHAIRPERSON:** Superintendant Moller, do you remember if you signed the second certificate?

DET SUPT MOLLER: No, I can't remember, Commissioner. I - I remember signing one of the certificates, but I - yes, I can't remember.

10 **THE CHAIRPERSON:** A little later we will get the two signatures up on the screen. You can have a look and see if it prompts your memory. But we can do that later. You carry on, Mr Tedeschi.

15 **MR TEDESCHI:** Could I ask to go back to the two documents together. And could I have the first page, please, of each document. This is in response to your question. The first page of each, please. Do you see that on the left-hand document, the downstroke of your signature goes straight through the middle of the O of Scott?

20 **DET SUPT MOLLER:** Yes, I can see that. Yes.

MR TEDESCHI: And do you see that on the second document -

DET SUPT MOLLER: Yes.

25 **MR TEDESCHI:** - the downstroke goes straight through the T of Scott?

DET SUPT MOLLER: Yes. I can see that, yes.

30 **MR TEDESCHI:** And do you see on the first one that where the word "sergeant" is crossed out, the end of the crossing out is at the very top of the T?

DET SUPT MOLLER: Yes. I can see that.

35 **MR TEDESCHI:** And on the second document, it's actually right through the middle of the T, going all the way to the asterisk?

DET SUPT MOLLER: Yes. I can see that.

40 **MR TEDESCHI:** So it would appear, would it not, that they are two separate documents that are signed at different times?

DET SUPT MOLLER: They are my signatures, yes.

45 **MR TEDESCHI:** Signed at different times?

DET SUPT MOLLER: Well, they are different signatures, yes.

MR TEDESCHI: Yes, different signatures.

50 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Yes. Thank you. Can we go now, please, to DPP.005.008.5130. This is an email from David Fleming to Shane Drumgold, copied to you and Callum Hughes. Can you tell us who David Fleming is?

DET SUPT MOLLER: He was a detective sergeant in the sexual assault team working on Op COVINA.

MR TEDESCHI: He was part of the investigative team?

DET SUPT MOLLER: For a short time, yes, he was.

MR TEDESCHI: Was he also somebody who was responsible for the disclosure certificates?

DET SUPT MOLLER: Well, he was working there as a supervising detective sergeant, so yes.

MR TEDESCHI: All right. And in this email dated 12 April, he writes this:

"Please see attached documents and amended disclosure statement sent over three emails..."

Do you see that?

DET SUPT MOLLER: Yes.

MR TEDESCHI: All right. Do you remember receiving a copy of this email from Sergeant Fleming?

DET SUPT MOLLER: I don't remember it, no.

MR TEDESCHI: All right. He then says:

"...which relate to the request for a direction from the DPP in relation to Operation COVINA. The material has been added after obtaining legal advice from AFP Legal who have indicated the documents would fall under schedule 3 of the disclosure certificate and that there does not appear to be an obvious claim of public interest immunity or legal professional privilege which would protect the documents from disclosure. Can you review the disclosure certificate with the material recorded as..."

And then there is a chart, right? And the chart does not refer to the investigative review documents, does it?

THE CHAIRPERSON: Well, I'm not sure that's right, Mr Tedeschi.

MR TEDESCHI: Well -

THE CHAIRPERSON: And how - I mean, you look at the right-hand box, and that's apt to describe the documents we are talking about.

MR TEDESCHI: Is it the case that it doesn't explicitly refer to the investigative review documents?

5 **DET SUPT MOLLER:** Well, no, I -

THE CHAIRPERSON: I'm not sure that that's the case. All we've got is a document that Mr Fleming - Detective Sergeant Fleming signed. Maybe we should ask him, if we haven't already, what he meant. How - you are asking Superintendant Moller to construe what is
10 meant by a shorthand description, and how is he going to help us since he didn't write it and probably hasn't seen it until now?

MS RICHARDSON: If I could assist, Mr Drumgold gives specific evidence about what was attached to this email.
15

THE CHAIRPERSON: That's right. It was all attached, wasn't it?

MS RICHARDSON: It's at paragraph 318 of Mr Drumgold's statement. He makes clear that what Mr Fleming attached to this email - we see in the attachments Scan_AFP is the first
20 PDF, identify discrepancies and a review document. And he sets out at 319 that the document described as scanned document, which is attached, included the 7 June executive briefing from Superintendant Moller, a media pack and the 4 June Boorman minute. And then separately, the identified discrepancies document, which is the document apparently drafted by - rank excused - Madders, and another review document.

25 **THE CHAIRPERSON:** Yes.

MS RICHARDSON: So Mr Drumgold gives evidence that there are at least five investigative review documents attached to this email which he reviewed.
30

THE CHAIRPERSON: Thank you. Well, we've got that cleared up.

MR TEDESCHI: Yes. Can I take you next, please, to another email, WIT.0030.005.003_0185. 0030.005.003_0185. See at the top of that page - sorry, not at the
35 top. If you go - yes. The - could we go to 0184, please. Down the bottom of the page. Do you see there's an email from Emma Frizzell dated 24 August '22 - over the page - to Sarah Pitney. Sarah Pitney, of course, was an officer in the ODPP?

DET SUPT MOLLER: I can see that, yes.
40

MR TEDESCHI: And Erin Priestly also, and various police officers and AFP Legal personnel?

DET SUPT MOLLER: I can see that, yes.
45

MR TEDESCHI: And Acting Sergeant Emma Frizzell has written to Sarah Pitney and said:

"I confirm that the AFP has provided all documentation that was deemed to be relevant by the investigation team."
50

Can you see that?

DET SUPT MOLLER: I can see that, yes.

5 **MR TEDESCHI:** All right. And then if we go back to 184, there's an email from Sarah Pitney on 24 August, the same day, but a few minutes later, to Shane Drumgold and various other people in the DPP, including Mitchell Greig. And it just says:

"Further response."

10

Do you see that?

DET SUPT MOLLER: I can see that.

15 **MR TEDESCHI:** And then further up that same page, there's an email from Shane Drumgold to various people in the DPP, including Mitchell Greig:

"Thanks. That will allow me to formulate a response, and I will do so early next week."

20

DET SUPT MOLLER: I can see that.

MR TEDESCHI: If we then go, please, to WIT.0045.002.0021_0001. At the top of the page, there's an email from Mitchell Greig of the DPP to Rachel Fisher, who was the solicitor acting for Mr Lehrmann. The email says:

25

"Dear Rachel, I have attached a letter in response to your request from the Director and the most up-to-date witness list."

30 **DET SUPT MOLLER:** Yes, I can see that.

MR TEDESCHI: Now, I have a copy of that letter, but I don't have a reference to the number associated with it.

35 **THE CHAIRPERSON:** Well, it might be 0002 of the document on the screen, with a bit of luck.

MR TEDESCHI: No, it's not.

40 **THE CHAIRPERSON:** No?

MR TEDESCHI: No. It's attached as an exhibit to Mr Greig's statement. I will have to come back with a reference.

45 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: In this letter from Mr Greig of the DPP to Kamy Saeedi, the then solicitors acting for Mr Lehrmann, Mr Greig relevantly says this:

"Thank you for your email of 23 August '22 in relation to disclosure in the R v Lehrmann matter seeking the following: (1) unredacted Cellebrite report; (2) images shared or movies on the phone that are not thumbnails; (3) all case notes, email and SMS correspondence between Higgins and AFP; (4) PROMIS file; (5) iCloud and Google data."

I've been given a reference, DPP.005.005.8751. No, that's a file note, I think. That's a different document. Sorry. And then it sets out in the letter what the prosecution's duty of disclosure is as outlined in the ODPP Prosecution Policy. And at the bottom of page 2, it says:

"This disclosure policy is consistent with the authority on disclosure."

THE CHAIRPERSON: Where are we going with this, Mr Tedeschi? Is there a shorter way of doing it?

MR TEDESCHI: Perhaps I should tender the document if it isn't already in evidence.

THE CHAIRPERSON: Yes.

MR TEDESCHI: I might do that.

THE CHAIRPERSON: Yes, but I'm not sure what it is that I'm following.

MR TEDESCHI: I'm suggesting to you, Superintendent, that those who worked under you in the police force in relation to disclosure communicated with the DPP office in August of '22 suggesting that all documents that should have been served had been served.

DET SUPT MOLLER: You would have to ask them, Mr Tedeschi. I don't know.

MR TEDESCHI: I will. Now, you received a phone call from Mr Whybrow on 13 September '22?

DET SUPT MOLLER: I will just check the date. Yes, I did.

MR TEDESCHI: All right. And it was a very unusual phone call and request from Mr Whybrow?

DET SUPT MOLLER: Well, I had never heard from Mr Whybrow before, so I guess in that case it was unusual. But, you know, it's not unusual -

MR TEDESCHI: Well, once again, you wrote out a very full account of the conversation with Mr Whybrow; is that right?

DET SUPT MOLLER: I - that - I did write out a - I did record the conversation. Yes, I did.

MR TEDESCHI: When you say you recorded it, you mean otherwise than in your diary?

DET SUPT MOLLER: I mean I wrote out, sorry, yes, not - I recorded in writing in my diary.

MR TEDESCHI: And when did do you that?

DET SUPT MOLLER: At the time.

5

MR TEDESCHI: Whilst you were having the conversation?

DET SUPT MOLLER: Basically I put the phone down and wrote out.

10

MR TEDESCHI: So straight afterwards?

DET SUPT MOLLER: Pretty well straight after, yes.

15

MR TEDESCHI: Can we have, please, AFP.0023.001.0158. On that day, you have recorded - I think it was 12 midday - a phone call from Steve Whybrow?

DET SUPT MOLLER: Yes.

20

MR TEDESCHI: Could you perhaps read out the next two paragraphs?

DET SUPT MOLLER:

25

"'Scott, it's Steve Whybrow here.' I said, 'Hi Steve, what can I do for you?' Steve said, 'This is a bit unusual given we are on different sides of the fence, so to speak. So you don't have to acknowledge yes or no, but I'm interested in a document that hasn't been disclosed which I'm of the view is disclosable given it's a decision-making document and not a request for legal advice.' I said, 'I think I'm aware of the document you have requested or you're interested in'."

30

MR TEDESCHI: All right. Now, do you know how Mr Whybrow was aware that it was a document that was for decision-making and not a request for legal advice?

DET SUPT MOLLER: No.

35

MR TEDESCHI: Did you tell him that?

DET SUPT MOLLER: No.

40

MR TEDESCHI: Could you go on, please?

DET SUPT MOLLER:

45

"He said, 'So how can I get this document?' 'I could send a request to AFP Legal given it's a decision-making document or not - and not a legal document. If your advice - if your agency..."

THE CHAIRPERSON: Is that "if you agree"?

50

DET SUPT MOLLER: Sorry, let me just:

"...given it's a decision-making document and not a legal document. If you agree, you could allow the release.' I said, 'I won't confirm now'."

MR TEDESCHI: Then you go over the page to 12 September.

DET SUPT MOLLER: Yes. Yes:

"Send - I can't - I can't confirm now. Send through your request, and I will consider it as we do with all matters."

MR TEDESCHI: So he -

DET SUPT MOLLER: And then I - and then - sorry - and then I -

MR TEDESCHI: I will come back to it.

DET SUPT MOLLER: At 1.50, I briefed my commander.

MR TEDESCHI: Yes, I will come back to that. He told you twice that it was a decision-making document, not a legal document. He told you. Is that right?

DET SUPT MOLLER: Well, that's what he - that's what he said.

MR TEDESCHI: Did you tell him that?

DET SUPT MOLLER: No. But that's - that's what's recorded in my notes.

MR TEDESCHI: Now, at 1.50, did you speak to Commander Jo Cameron.

DET SUPT MOLLER: Yes.

MR TEDESCHI: Could you tell us about that entry at 1.50?

DET SUPT MOLLER: At 1.50, I speak to Commander, Investigations, Jo Cameron:

"Discuss phone call received from Steve Whybrow and application by him for disclosure of a document listed in the disclosure schedule. Showed Jo the document subject of request. Advised same that it is an internal decision-making report and should be released. Jo agreed."

MR TEDESCHI: Were you at work that day?

DET SUPT MOLLER: Yes.

MR TEDESCHI: So did you go and see Commander Cameron and show her the documents?

DET SUPT MOLLER: Show Jo, yes. Yes, I must have. Yes.

MR TEDESCHI: So you must have been at work and went to see her?

DET SUPT MOLLER: I guess, yes.

MR TEDESCHI: All right. Now, can we bring up, please, WIT.0031.0001.0003_0068.
Now, this is a file note made by Mr Whybrow about the same conversation?

DET SUPT MOLLER: Yes.

MR TEDESCHI: Have you seen this before?

DET SUPT MOLLER: No.

MR TEDESCHI: No. Can I take you - well, firstly, it's addressed to his solicitor, Rachel Fisher, and he describes:

"At about 11.50 this date, I cold-called the AFP inquiry line and asked to be put through to Detective Superintendent Scott Moller, SM. Gave my name and number. It was in relation to Brittany. SM came onto the line. I said I was calling to inquire about the investigative review document that appeared in the disclosure schedule in a part where privilege was said not to attach and that it then disappeared all together. I said the DPP were saying it was prepared to get legal advice and wanted to know if this was accurate."

Do you remember that part of the conversation?

DET SUPT MOLLER: No, I don't.

MR TEDESCHI: Do you deny that it occurred?

DET SUPT MOLLER: Look, I - I recorded what I remember from the conversation at the time. I don't remember that.

MR TEDESCHI: Then it says this:

"SM..."

Scott Moller:

"...said words to the effect, 'Steve, I know the document you are talking about. It was created by me. It was not created to get legal advice'."

Now, as opposed to your diary entry, which has Mr Whybrow telling you what the purpose of the document was, this account - Mr Whybrow's account - has you telling him what the purpose of the document was. Which is correct?

DET SUPT MOLLER: Well, my notes are correct.

MR TEDESCHI: Can I take you to the second-last paragraph on that page. If that could be enlarged, please, "He agreed and confirmed":

"He agreed and confirmed that in..."

This is Mr Whybrow writing about you:

5 "He agreed and confirmed that in his view..."

That's your view:

10 "...the review document was one the defence should have, and it wasn't prepared by him to get legal advice on. It was a summary of the various issues he had identified with the versions given by Brittany Higgins. He did not say this explicitly, but it was clear to me that he held my own concerns about the veracity of her allegations."

15 Now, once again, this paragraph refers to you saying that the review document was one that the defence should have, and it wasn't prepared in order to get legal advice. Once again, do you see there's a discrepancy with the version that you've got in your diary?

DET SUPT MOLLER: There is a discrepancy.

20 **MR TEDESCHI:** And -

DET SUPT MOLLER: I recorded -

MR TEDESCHI: - which do you say is right?

25

DET SUPT MOLLER: Well, I recorded the notes at the time when I - when I hung up the phone, and - and that's the - that's the record of my conversation.

30 **THE CHAIRPERSON:** Superintendent Moller, after you had spoken to Ms Cameron - Commander Cameron and she had agreed with your view about the status of the document, what did you do then about the document?

35 **DET SUPT MOLLER:** It had nothing to do with me. The - the discussion and decisions in relation to the disclosure of that document were run by Ms Cameron and Callum Hughes and Legal. I had nothing more to do with it.

THE CHAIRPERSON: So you didn't speak to Mr Whybrow about it again?

40 **DET SUPT MOLLER:** No.

THE CHAIRPERSON: Thank you.

45 **DET SUPT MOLLER:** And I had nothing more to do with it at all internally. Sorry, I did have one more conversation with - with Legal. They asked me my view in relation to the document.

MR TEDESCHI: After the conversation on the phone with Mr Whybrow, wasn't it?

DET SUPT MOLLER: I - it was - I had a conversation with Legal. I can't remember exactly what date it was. But I had nothing more to do with it. So it was run internally, externally to me. The AFP made a decision about the document.

5 **THE CHAIRPERSON:** Yes. Thank you.

MR TEDESCHI: The - wasn't this - during this conversation, was that the first time since you had signed the disclosure certificates that you had had a discussion with anybody about these documents having been prepared as internal discussion documents rather than documents used to get legal advice?
10

DET SUPT MOLLER: Can you ask that question again? Sorry, I'm not sure what you mean.

15 **MR TEDESCHI:** What I want to suggest to you is that this conversation with Mr Whybrow on 13 September '22 was the very first time that you had told anybody since signing the disclosure certificates that these documents were internal discussion documents rather than documents used to get legal advice.

20 **MS RICHARDSON:** I object to that question being put on a propositional basis. The question can be asked in an open way.

MR TEDESCHI: I'm quite happy to do that.

25 **THE CHAIRPERSON:** I think Mr Tedeschi meant it that way, really.

MR TEDESCHI: I did.

THE CHAIRPERSON: But you put it in an open way, would you?
30

MR TEDESCHI: I did, yes. Was this the first time that you had discussed with anybody since you had signed the disclosure certificates that these documents had been prepared for internal discussion purposes rather than for the purpose of getting independent legal advice?

35 **DET SUPT MOLLER:** I don't remember if I had had any other conversations.

MR TEDESCHI: Is it possible that that's the case?

DET SUPT MOLLER: Well, I don't remember.
40

MR TEDESCHI: Have you come across any document at all in which you have discussed what the use of these documents were between when you signed the disclosure certificates and when you had this conversation on 13 September with Mr Whybrow?

45 **DET SUPT MOLLER:** Mr Tedeschi, I made that document. It was a decision-making document for Mr Chew.

MR TEDESCHI: No, no. That's not what I asked you.

50 **DET SUPT MOLLER:** And I don't have any other -

MR TEDESCHI: Please answer my question.

5 **DET SUPT MOLLER:** Well, I don't have any other - I don't know of any other documents, and I don't know of any other conversation. I can't remember.

MR TEDESCHI: Is it the case that there are no other documents that you're aware of between signing the disclosure certificates and 13 September setting out anything about the use of these documents?

10 **DET SUPT MOLLER:** I don't know if there are or there are not.

MR TEDESCHI: Okay. The executive briefing itself on the very last page, just above your signature, said this:

15 "Should you believe the attached brief of evidence meets the threshold as set out in section 26 of the Magistrates Courts Act 1930, please forward to ACT DPP for their review."

20 **DET SUPT MOLLER:** Can we bring that document up so I can -

MR TEDESCHI: Yes. Certainly.

DET SUPT MOLLER: Sorry.

25 **MR TEDESCHI:** It's DPP.005.001.5663. We will start with the first page, 5661.

DET SUPT MOLLER: Yes. That's the document.

30 **MR TEDESCHI:** 5661, it's the first page of your executive briefing.

DET SUPT MOLLER: Yes.

MR TEDESCHI: At the very beginning, you say:

35 "Please find attached at annexure B and C..."

And then you describe them.

40 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Annexure B and C was the executive briefing and the Boorman minute; correct?

45 **DET SUPT MOLLER:** No, my executive briefing is not an annexure. That's - that's my executive briefing. Annexure B would have been Boorman's minutes - minute.

MR TEDESCHI: Yes.

50 **DET SUPT MOLLER:** And annexure C would be the evidentiary summary.

MR TEDESCHI: And on the very last page, which is 5663, you say this:

5 "Should you believe the attached brief of evidence meets the threshold as set out in
section 26 of the Magistrates Courts Act, please forward to ACT DPP for their
review."

10 Now, what you were suggesting to DCPO-R, Commander Chew, was that if he thought the
evidence met the threshold that this document, the executive briefing, and the Moller report
and the analysis of the evidence should all go to the DPP.

MS RICHARDSON: I object to that.

15 **MR TEDESCHI:** Is that right?

MS RICHARDSON: No, I object to that question. It's a mischaracterisation -

THE CHAIRPERSON: Well, I want to hear the objection first, Mr Tedeschi. Go on.

20 **MS RICHARDSON:** It's a mischaracterisation of point 3. I'm happy to do this in the
absence -

THE CHAIRPERSON: Yes. Would you excuse us, Mr -

25 **MR TEDESCHI:** I will rephrase the question as an open question, then.

THE CHAIRPERSON: No, no. It's not that. I think there's more to it than that.

30 **MS RICHARDSON:** There's a couple of other matters I would like to raise in the absence -

THE CHAIRPERSON: Yes. Yes. Thank you, Mr Moller.

<THE WITNESS STOOD DOWN

35 **MS RICHARDSON:** The objection to the current question is that recommendation 3 by
Superintendent Moller was:

 "Should you believe the attached brief of evidence..."

40 **THE CHAIRPERSON:** You are saying it's not referring to the review documents?

45 **MS RICHARDSON:** It's not referring to the Moller document - the Moller briefing or
even - the natural inference - the Boorman minute. It's the attached underlying brief of
evidence. "If you believe the underlying brief of evidence meets a threshold, please forward
that brief of evidence to the DPP for advice." So in my submission, my learned friend is
mischaracterising that recommendation.

THE CHAIRPERSON: Yes. Sorry. So I understand it, the -

50 **MR TEDESCHI:** I accept that.

THE CHAIRPERSON: All right. Thank you.

MS RICHARDSON: Just while the witness is out, the line - where I apprehend the questions are going - and I do it in the absence of the witness for convenience - is that the inference seems to be that there is some late suggestion from Superintendent Moller that the documents were created for internal purposes. The email of 12 April -

THE CHAIRPERSON: I'm sorry, could you put your proposition again. What did you just say?

MS RICHARDSON: The - I apprehend that what is going to be put to Superintendent Moller - and it's - the building blocks are being put already - some suggestion that he hadn't expressed the view that these documents were created for internal briefing purposes and that that was something that was put late in the piece.

THE CHAIRPERSON: Yes.

MS RICHARDSON: In my submission, this cross-examination has the potential to be unfair. The 12 April email that my learned friend first took Superintendent Moller to - and when I pointed out the implications of what it said, he quickly moved on from it.

THE CHAIRPERSON: Yes.

MS RICHARDSON: But the 12 April email - perhaps if that could be brought up, which is DPP.005.008.5130 - is an email from Detective Sergeant Fleming to Mr Drumgold, importantly copied to Superintendent Moller, where he's attaching three documents -

THE CHAIRPERSON: Yes.

MS RICHARDSON: - where Mr Drumgold gives evidence at 318 and 319 that those three documents, the first attachment which is entitled Scan_AFP - that that, in fact, was the Moller report - or the Moller executive briefing, the Boorman minute and a media pack, plus two other documents. So on and from 12 April, Detective Sergeant with, one would infer, the imprimatur or knowledge of Superintendent Moller, has emailed Mr Drumgold saying, "Here are five documents that meet the description of investigative review documents, and our view is" - it says in the second line:

"The material has been added after obtaining legal advice from AFP Legal who have indicated the documents would fall under schedule 3."

So that means in terms of disclosure regime that the position of the police is that, in effect, they are disclosable; and, secondly, that there does not appear to be an obvious claim of public interest immunity or legal professional privilege that would protect the documents from disclosure. So that the opening position of the police, if you like, when this issue first crystallised was for the DPP - sorry, police to say to Mr Drumgold, "Here are five documents that meet this description. Our view is they are disclosable. And our position is that there is no obvious claim for LPP." And it's put to Mr Drumgold. So Mr Drumgold is on notice from as early as 12 April that the position of the AFP, to the extent there is one on privilege, is that they are not privileged. And Superintendent Moller was cc'd on that. Now, after I pointed this

out, my learned friend quickly moved on from this document which, in my submission, is not fair to Superintendant Moller.

THE CHAIRPERSON: Your proposition is this: that the documents show at least this, that on 12 April 2022, the issue of the legal status of the review documents was raised by AFP with the DPP, and the proposition was put that they do not appear to be the subject of any claim for legal professional privilege. That communication was copied to Mr Moller, and it's likely - although we don't know yet - that as the author of one of the documents, he must have been asked about why it was prepared.

MS RICHARDSON: Yes. Or at the very least, he's being cc'd -

THE CHAIRPERSON: Yes, yes, yes.

MS RICHARDSON: - that this is an uncontroversial proposition.

THE CHAIRPERSON: Yes. So then if we get to the conversation with Mr Whybrow where -

MS RICHARDSON: Sorry, could I just intervene.

THE CHAIRPERSON: Go on.

MS RICHARDSON: There's just one other important - I mean, there's a whole sequence over months of toing and froing about this.

THE CHAIRPERSON: Yes, I know that. Yes.

MS RICHARDSON: But an important email of 20 June is where Mr Drumgold is expressly told - and this is the email from the internal lawyer at AFP, Stephanie, of 20 June. This is DPP -

THE CHAIRPERSON: Yes. But dealing with Mr Moller rather than the DPP at the moment, I know why you raise Mr Drumgold.

MS RICHARDSON: But only in the sense that the formula of language that is put to the DPP -

THE CHAIRPERSON: I understand.

MS RICHARDSON: - is that these documents were prepared for the purpose of internal AFP briefing and guidance.

THE CHAIRPERSON: Yes.

MS RICHARDSON: So the suggestion from my learned friend seems to be the premise of the questioning put to Superintendant Moller, that this is some late proposition that has been fallen upon in August.

THE CHAIRPERSON: But as I understand it, your objection is that the question is unfair because he has - he, Superintendent Moller, has had his attention directed to the fact that in September he considered the legal status of the review documents and concluded that they were not privileged, and it's put to him that he had never before -

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MR TEDESCHI: No, that's not right.

THE CHAIRPERSON: - considered - I might be wrong in this. You are going to tell me I'm wrong, but don't tell me yet. Let me finish, otherwise we will get nowhere. It is put to him that there's not a single document that suggests that he ever had to talk to anybody about it or consider it before Whybrow spoke to him. The unfairness is that he might - and he agreed that he couldn't point to any document. The unfairness is that he hasn't got ready access to the fact that there are such documents, at least documents capable of constituting the kinds of documents that Mr Tedeschi put to him did not exist.

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MS RICHARDSON: Yes. He can't remember whether he has seen a document, but we know from the records that there are multiple documents where the DPP was put on notice that the AFP -

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THE CHAIRPERSON: Yes. So if we go to the next step, then if the purpose of the cross-examination is to show that one could hardly blame Mr Drumgold for a conclusion, preliminary or final, that the document was privileged because of some rubric on a disclosure certificate or some other documents, well, it doesn't assist that to support that thesis by getting the answer from Superintendent Moller because the answer was based upon an unfair question.

25

MS RICHARDSON: Yes. And also that if the suggestion is going to be put that the first time it was revealed that these documents were created for the purpose of internal briefing was during a conversation with Mr Whybrow, that's contrary to months of communication between the AFP -

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THE CHAIRPERSON: Yes, that's what I started with. Yes, that's right. I understand. What do you say, Mr Tedeschi?

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MR TEDESCHI: Chairman, what I asked this witness was whether between the two disclosure certificates and the conversation with Whybrow there's no record of him having told anybody that these documents were only used for internal discussion purposes and not for an LPP purpose. So I didn't suggest to him that prior to the disclosure certificates there hadn't been anything that affected this witness, and I certainly didn't suggest to him that it was the first time ever. And I haven't asked him about any other communications from other people. All that I asked him was between the two disclosure certificates on the one hand and the Whybrow conversation on the other, he hadn't expressed a view about these documents being for internal purposes.

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THE CHAIRPERSON: But he might need - for him to have a fair go at answering your question and assisting me, he might have to have his attention directed to some of the correspondence because it - there were a number of authors of these documents, but he was one of them. And, evidently, he was part of the process by which Mr Fleming reached a conclusion that there was no valid claim for privilege on 12 April 2022, which is, you know, two or three weeks before the disclosure certificate. Am I right? Yes?

50

MR TEDESCHI: Yes.

5 **THE CHAIRPERSON:** So the disclosure certificate as the starting point really doesn't have
much significance if, two weeks before that, he might have raised the status of the
documents. Because it goes to why the disclosure certificate - it may go to why the disclosure
certificate disclosed that particular document, because he had said this is what it was for. So
we really have to look at that, I think, comprehensively with this witness if his evidence is
10 going to be of any use. And his evidence, I accept, is very important because he is a party to
signing the disclosure certificate, and he wrote one of the documents and maybe contributed
to parts of the others.

MR TEDESCHI: I will be corrected if I'm wrong, I'm sure, but I don't believe that
Mr Moller was included in any of the other documentation that flowed to or from the DPP in
15 the intervening period between the two disclosure certificates and the Whybrow conversation.

THE CHAIRPERSON: Well, you might be right, but that's not the point. The point is that
we can see very starkly that when Mr Whybrow called him, on one version he immediately
said the status is not - it's not a privileged document. On the other version, his own version,
20 he didn't say that, but he confirmed it immediately with Commander Cameron.

MR TEDESCHI: Yes.

THE CHAIRPERSON: So on any view, at that point he directed his attention to the status
25 of the document.

MR TEDESCHI: Yes.

THE CHAIRPERSON: I understood the import of your questioning to be that, "Until you
30 were driven to do that with Whybrow, you didn't pay any attention and didn't communicate to
anybody your view about its status."

MR TEDESCHI: That's right.

35 **THE CHAIRPERSON:** And that doesn't seem to be correct, at least having regard to the 12
April email. And it's a little unfair to put that to him, it's said, and I'm tending to think that's
right, because he doesn't have access in his memory to all of these documents that we do.
And also if he's asked that question without documentary context, his answer is of no use to
me.

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MR TEDESCHI: But it's in the context -

THE CHAIRPERSON: And it's all about me, remember. It's all about me.

45 **MR TEDESCHI:** It's in the context, Chairman, of the fact that there was a lot of toing and
froing about whether it was a document for internal briefing or for obtaining legal
professionally privileged advice from the Director. And very shortly after Moller had spoken
to Whybrow on the phone, the AFP Legal took over and just announced they were going to
make the documents available. And, of course, he was the maker of the documents. So he - in
50 terms of the - at least his own executive briefing and probably the Boorman minute as well,

he was the one who was in a position to say what the dominant purpose was. The difficulty is that there are multiple versions of some of these documents, and one version went to the DPP for the purpose of getting legal advice.

5 **THE CHAIRPERSON:** But it's elementary, isn't it, that we don't care about documents; we care about communications. Because documents aren't privileged; communications are privileged. It's easy to say the document is privileged because the document contains a communication.

10 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: So the document I'm concerned with is the document in the hands of the AFP created by Mr Moller when he created it. And the question is whether that document is privileged. The brief, as a comprehensive document containing many pages, is a
15 communication from the AFP to the DPP, a communication to get advice. The content of that communication is privileged.

MR TEDESCHI: Yes.

20 **THE CHAIRPERSON:** So we can't open it.

MR TEDESCHI: And -

THE CHAIRPERSON: But the document in Mr Moller's hands contains a communication
25 from him to Mr Chew, and that's a different communication. And he - and it's put that that communication between those two police officers is not privileged. So that's the landscape. Who is right about it is another matter.

MR TEDESCHI: If -

30 **THE CHAIRPERSON:** So what is the point you want to make?

MR TEDESCHI: If Mr Drumgold had in mind only two documents, being the executive briefing and Moller minute - and those were two documents which he had received as part of
35 his brief to advice, and the impression that he got was that those documents were provided - were produced for the purposes of him providing advice.

THE CHAIRPERSON: Yes.

40 **MR TEDESCHI:** And it was not until after the Whybrow conversation that for the first time - well, sorry, I will go back a step. He then sees the second disclosure certificate that has the executive - the investigative review document taken out of section 3.

THE CHAIRPERSON: Yes.

45 **MR TEDESCHI:** The next significant piece of information from his point of view is when he's told, after the Whybrow conversation, this is what the maker of the document says.

THE CHAIRPERSON: Yes.

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5 **MR TEDESCHI:** Then it is relevant that (a) Superintendant Moller hasn't expressed his view about the dominant purpose of the document between the disclosure certificates and the Whybrow conversation; and, secondly, that it would be relevant that Mr Drumgold didn't receive any advice as to what the maker of the statement, namely, Mr Moller, has said about that.

THE CHAIRPERSON: Well, I'm not sure that's sustainable because -

10 **MR TEDESCHI:** Until after the Whybrow -

THE CHAIRPERSON: Because an email goes - a police officer writes to the DPP to say, "These documents are, in our view, not privileged." Mr Moller is copied in to that email, and he doesn't raise any objection to that characterisation of the documents. He can be taken to have acceded to the correctness of that communication, certainly if he read the email.

15 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: So to say that the Whybrow conversation was the first time he asserted his understanding of the status of the document isn't right, because on any view at least this document on the screen now may be such an assertion.

20 **MR TEDESCHI:** But this was before the disclosure certificate.

THE CHAIRPERSON: Yes, I know. And that's important because the disclosure certificate, consistently with this email, disclosed the document.

MR TEDESCHI: The disclosure certificate took the investigative review document out of schedule 3.

30 **THE CHAIRPERSON:** No, no. The first disclosure certificate, consistently with this email, disclosed the document.

MR TEDESCHI: Yes.

35 **THE CHAIRPERSON:** So you have this email going to the DPP -

MR TEDESCHI: Yes.

40 **THE CHAIRPERSON:** - you have the disclosure certificate going to the DPP and then later it disappears from the disclosure certificate and is not referred to, expressly at least, and Mr Whybrow calls and says, "I don't" - words - Moller says words to the effect, on one version or the other, "Well, it's not privileged." So what's the point you want to make? Maybe you should - having regard to the existence of this document and the correspondence that later ensued, with which I'm familiar, perhaps you have to approach that aspect of
45 Mr Drumgold's first learning of the asserted status of the document in another way. I don't know.

MR TEDESCHI: What I understand from his statement and his evidence that he gave - he says in his statement that he was, I think, informed -

THE CHAIRPERSON: Mr Drumgold do you mean?

MR TEDESCHI: Mr Drumgold, that he was informed that the first disclosure certificate was incorrect and the second one was a correction.

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THE CHAIRPERSON: Yes.

MR TEDESCHI: So -

10 **THE CHAIRPERSON:** Well, shall we adjourn so you can rethink it? Because I don't think you can put that question to Mr - I would uphold the objection because the question is not fair because it's put to him in circumstances where he doesn't have before him the archive of documents to refresh his memory. So you would have to put the documentary context to him fairly before then pursuing that line, whatever it was, that you were pursuing.

15

MR TEDESCHI: I - I have already asked him whether he's aware of any communication by him in the interim, and he said he's not aware. That suits my purposes.

20 **THE CHAIRPERSON:** All right. Well, that's all right, then. If you don't want to ask any more, that's fine. Shall we continue, then, or - it's up to you. I mean, we normally would go to 4.30, but it's up to you.

MR TEDESCHI: It would be a suitable time.

25 **THE CHAIRPERSON:** All right. Well, we will do that. While the witness isn't here, how long do you think you will go, just for planning purposes?

MR TEDESCHI: I think I've got another half an hour to an hour.

30 **THE CHAIRPERSON:** All right. And who will ask questions of - you will, Ms Dwyer, I think?

DR DWYER: Yes, your Honour.

35 **THE CHAIRPERSON:** Yes.

DR DWYER: Sorry. Yes, Commissioner.

40 **THE CHAIRPERSON:** And anyone else at the moment? That might change, I suppose, but - all right. Well then, we will adjourn till 9.45 tomorrow.

<THE HEARING ADJOURNED AT 4.04 PM TO WEDNESDAY, 24 MAY 2023 AT 9.45 AM