

CORRECTED PROOF

REPORT OF PROCEEDINGS BEFORE

**SELECT COMMITTEE ON THE CONDUCT AND PROGRESS
OF THE OMBUDSMAN'S INQUIRY "OPERATION
PROSPECT"**

**INQUIRY INTO THE CONDUCT AND PROGRESS OF THE
OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"**

CORRECTED PROOF

At Sydney on Friday 30 January 2015

The Committee met at 9.00 a.m.

PRESENT

The Hon. R. Borsak (Chair)

The Hon. N. Blair

The Hon. T. Khan

The Hon. N. Maclaren-Jones

The Hon. A. Searle

Mr D. Shoebridge (Deputy Chair)

The Hon. L. Voltz

CHAIR: Welcome to the second hearing of the Select Committee inquiring into the conduct and progress of the Ombudsman's inquiry Operation Prospect. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website within the next day or two. In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing, so I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat. Media representatives who are not accredited to the parliamentary press gallery should approach the secretariat to sign a copy of the broadcasting guidelines.

There may be some questions that a witness could only answer if he or she had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within five calendar days following the receipt of the transcript. Given the subject matter of this inquiry, it is important that some of the information witnesses may be asked to provide will be covered by statutory secrecy provisions. The position of the Legislative Council, the same as the Australian Senate and other houses, is that the statutory secrecy provisions have no application to Parliament except by express enactment, and that secrecy provisions do not affect the powers of the select committee to require answers to lawful questions. The Legislative Council has stated this position in establishing the inquiry and received advice from Mr Bret Walker, SC, dated 14 January 2015 that supports the Council's position regarding this matter. This advice can be accessed on the Committee's website.

Following the recent advice from Mr Bret Walker, SC, the Select Committee has adopted the unusual step of resolving to summons all witnesses to appear before it for this inquiry only. Mr Walker stated that, although not necessary to protect witnesses, he strongly favoured the service of a summons to make it clear that the witnesses are being compelled to answer questions or provide information. In the submissions received to date inquiry participants have made a number of serious allegations against certain persons. I remind all witnesses who may reflect adversely on other people not to misuse parliamentary privilege and ensure that their comments are relevant to the inquiry terms of reference. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. Finally, I ask everyone to turn their mobile phones to silent for the duration of the hearing.

NAGUIB KALDAS, Deputy Commissioner, Field Operations, NSW Police Force, sworn and examined:

CHAIR: Would you like to make an opening statement?

Mr KALDAS: If I may. I will try to be brief.

CHAIR: Yes please.

Mr KALDAS: Chairman, Deputy Chairman, ladies and gentlemen, thank you for the opportunity to address the Committee. I can assure you I have looked forward to speaking in this forum and for the truth to come out for some time. My appearance here is the culmination of over a decade of angst, of me complaining about misconduct and suffering reprisals and discrimination. I recognise now, as I did all along, that by speaking out there may be recrimination against me. Arguably, I have suffered much and gained little, but I do this because it is the right thing to do. This is not about me and it is not about personalities; there are principles at stake. I do this because the men and women of the NSW Police Force expect me to speak out when there is injustice, as I feel there clearly has been here.

I have previously been the chairman of the commissioned officers branch of the Police Association and I have represented all of the commissioned officers in the organisation on the executive of the union. Wearing that hat, I have spoken out often and loud about procedural fairness and natural justice. I want to stress that this is not something I started talking about today or yesterday; there are decades of effort. When documents revealing the truth came out in this matter I made a formal public interest disclosure, along with yet another complaint. I then received written notification of my status as a whistleblower, with all the protection that status carries. What the documents revealed was that our justice system and our oversight framework have issues which allow illegal activity or misconduct to flourish, and for that activity to be covered up. We need to have change, not only for those who have been unfairly targeted but to restore confidence in our system. You cannot have one system for the public and one for authorities.

I would like to briefly address the Committee on what happened to me during Operation Mascot Florida by way of background but then I wish to focus on more recent events. Much of the facts I rely on are agreed and common ground and proven, so I will try to summarise and focus on more recent events. In the late 1990s and early 2000s I had a well-documented and well-known conflict with some senior officers of the then Special Crime and Internal Affairs [SCIA] command, in particular Mal Brammer, John Dolan and their team, which included Catherine Burn. This conflict was so deep that it should have precluded those individuals and that unit from targeting me. It was simply too big a conflict of interest.

Eventually Andrew Scipione took over from Mal Brammer and Catherine Burn moved up to take up Dolan's position as superintendent. Her co-team leader was Mark Standen. Nonetheless I now know I was intensely targeted by that unit in the now notorious Operation Mascot Florida using the full resources of Special Crime and Internal Affairs and its partners, the NSW Crime Commission and the Police Integrity Commission, using a corrupt rollover police officer codenamed M5 as their tool. He visited me a number of times for no valid reason and attempted to engage me in conversations about his misdeeds. I eventually told him to go away. I had had considerable experience in covert operations and what he was doing simply did not make sense. It is important to note that M5, to my knowledge, did not actually nominate me as being corrupt at any stage, nor that he had any actual knowledge or evidence of me being corrupt. Further, subsequently he claimed to have been used improperly, that he knew he was being used to even up personal scores on behalf of SCIA personnel. Material documenting his allegations has now come to light.

As you know, a listening device warrant came to light in an unrelated matter, warrant No. 266 of 2000. It authorised the bugging of some 114 names, including me—an astounding and unprecedented number of people against whom evidence must have been presented to a judge to justify invading their privacy. I complained, as many others did, about what we said was improper conduct by Operation Mascot Florida. Task Force Emblems was established but could not get access to any of the affidavits or other material. Thus, they failed to reach a definitive conclusion. Very effective use of secrecy provisions was made by PIC, SCIA and the Crime Commission. The bodies that should have been scrutinising this sort of behaviour, with their extraordinary powers and resources, did nothing.

My complaining cost me dearly. Having rejected the advances of M5, I was then accused by Mascot Florida of being tipped off or leaked to about his true intent to entrap me. The allegation was put to me that the

source of the leak was Andrew Scipione who had, by then, taken over as the boss of Special Crime and Internal Affairs. No such leak ever occurred. What happened next was that I was dragged through a series of harrowing hearings and interviews by the Crime Commission and the Police Integrity Commission and my career was derailed for some four years, where I was denied promotion, ignoring merit, and a dark cloud hung over me. On the other hand, Andrew Scipione, who was accused of the actual leak—arguably a far more serious allegation—was immediately promoted to deputy commissioner and did not look back.

Apart from this leak allegation, whatever was used as an excuse to target me, if it was so serious, has never actually been put to me. I have never had the chance to answer those allegations. I can expand on that for the Committee later if that helps. In 2012 many documents came to light, including the affidavits which were suppressed, which proved beyond any doubt that the activities of Mascot Florida were at best improper and probably illegal. The evidence is overwhelming and damning in my view, yet for over more than a decade neither PIC, the Crime Commission nor the Ombudsman, who was also well aware of the allegations, dealt with the matters complained of. Our oversight bodies failed. What those documents confirmed for me is the following. First, like many others, I am not even mentioned in the affidavit of warrant 266. No information is recorded about me or against me—none—let alone enough information to satisfy a judge that I should be bugged and have my privacy invaded.

Second, my mobile phone was bugged for some time. Third, my office as the commander of homicide squad was bugged. Fourth, and perhaps most disturbingly, my former wife and my children had their home phone bugged, with false information in a sworn affidavit stating that I still lived there. I had stopped living there quite some time prior to that. Any officer swearing that affidavit must have been able to check my real address very easily. Fifth, I had been the victim of illegal integrity tests on some five or six occasions. Sixth, grave concerns were felt by some honest staff at SCIA but were brushed aside, and that other concerns were generally ignored by senior officers of SCIA. Seventh, Mascot Florida did not exercise ethical practices befitting a task force drawn from integrity bodies, such as the Police Integrity Commission, the Crime Commission and Special Crime and Internal Affairs. One illustrative example of that is the list of code names for us, the targets, where I am referred to as "Guido"—a derogatory term for my ethnic background, and that on at least two occasions I had won positions on promotion but because of this unspecified, unsubstantiated allegation that I have never had a chance to answer I was held back while others zoomed ahead. I can expand on that as well if the Committee wishes me to later.

Once this material came to light, after a convoluted process, the government of the day announced that Mascot Florida would be investigated by the Ombudsman and that he would be given extraordinary powers, secrecy provisions, royal commission powers, significant additional funding to recruit new staff, as he stated he did not have anyone with criminal investigative skill sets or the framework to tackle this type of criminal investigation. I draw the Committee's attention to *Hansard* where the legislation was debated and agreed to. I draw the Committee's attention to Mr Paul Lynch's comments in particular. I draw the Committee's attention to the press release of our then Premier O'Farrell. I draw the Committee's attention to material posted online by the Ombudsman and to the call for information by the Ombudsman, which he published.

Nowhere in any of that material, nor in my discussion with various members of the Government, was there any mention of the focus of the inquiry being to identify and hunt down the whistleblowers and complainants who revealed the incriminating documents and actions. None. Yet that is what, in my view, has been the main focus of the Ombudsman's inquiry. I have hardly been asked one meaningful question by the Ombudsman about what happened to me during Mascot Florida. It is my submission and my view today that it is entirely incomprehensible for the Ombudsman to be tasked on the one hand to investigate serious, possibly criminal, misconduct and on the other hand, and simultaneously, to hunt down and punish those who dared to complain about that misconduct and aired the incriminating documents that prove that misconduct. This cannot stand. The significant resources given to the Ombudsman were for a purpose stated by the Government. I submit that purpose was undermined and thwarted by the discrete change to the charter of Operation Prospect.

My experience with the Ombudsman was that after making a complaint in late 2012 and then providing material and a written submission in 2013 I was called down for a hearing on 5 September 2014. My legal representatives understood from counsel assisting Julie Lonergan that it was a friendly hearing and that I would not be there very long. In fact, I would be able to attend a lunch later that day. I attended to face an onslaught, a concerted attack on my integrity and credibility and I did not leave the hearing until around 6.30 p.m. An enormous amount of material was put to me and yet again my emails, phone records, diary, notebooks, et cetera, were invaded and quoted to me. I felt that the horrors of Mascot Florida were happening all over again. It felt to me like this was a well-planned attack to silence me as one of the main complainants. The focus was entirely on

who handled the incriminating documents, who I discussed them with, what journalists, lawyers and others I have complained to, and I felt that the questioning was inconsistent with the public interest disclosure legislation and the protection it affords. The Ombudsman has now summonsed me again to appear before him, despite being excused from my summons on the last occasion, and I hold fears of his intention towards me.

I would like to point out a bit about my background, if I may. I have spent most of my career in organised and major crime. I have spent some time in Iraq as a senior police adviser with coalition forces and in 2009 I was headhunted by the UN Special Tribunal for Lebanon. I led the international investigation into the assassination of the Lebanese Prime Minister Hariri. I received many threats from Hezbollah and other proxy groups. I fear no man and I have operated in trusted circles with a top-secret level of clearance from our national government and our allies, entrusted with much classified and internationally sensitive information. No-one has ever questioned my integrity, nor have I ever been doubted nationally or internationally. In Sydney, with decades in major investigations, I have been cross-examined by more QCs than I can remember in hotly contested trials, yet I have never been denigrated, humiliated and had my every action and thought so unreasonably maligned as I experienced during Operation Prospect—that took a toll.

There is no doubt in my mind that I was singled out during and after Operation Mascot Florida a decade ago and I felt every aspect of my life was invaded: my phone calls, my work, my private life despite no real accusation being levelled at me. I have not done anything that would justify this level of intense intrusive targeting. Yet again my privacy has been utterly invaded with Operation Prospect where my diaries, my notebooks, my emails, my phone records have all been seized by the Ombudsman and yet again the justification for this invasion of privacy is completely out of proportion to what is alleged. We the police could not treat criminals this way, and neither should we. So ladies and gentlemen in my view what we have is evidence of improper and probably illegal behaviour by Mascot Florida, judges being misled, a comprehensive cover-up or at least a blind eye being provided by those who are supposed to keep us honest, followed by, at best, a protracted and misdirected investigation.

I and other legitimate complainants had no right to silence in Operation Prospect, could not even discuss with doctors or psychologists what was being done to us by the Ombudsman. He simply took the side of those complained against and the onslaught continued. I recently watched a movie called *The Front* starring Woody Allen, which portrayed the horrors of the McCarthy era in the United States. The methodology used by the McCarthy era is very similar to that of the Ombudsman: no criticism will be tolerated. It will not be sufficient to admit your own sins; you must denounce friends and colleagues. The result is always preordained. Ladies and gentlemen, what happened to me and my family 10 years ago was unfair and wrong, dead wrong. It is happening again now in my view. When Mascot Florida was occurring there was at least one suicide of a distinguished officer and a number of attempted suicides of good police officers who simply could not cope with the unfairness of what was happening to them. When the Wood royal commission sat we had more than a dozen suicides, mainly police officers. More recently, as a direct result of the Ombudsman's efforts, at least one senior officer I know has suffered a nervous breakdown and retired early from the force.

My own experience and the unfairness of what I am going through have been among the worst days of my life. The impact on my family and loved ones makes it even worse and has been horrendous. I call on this Committee, this Parliament and this Government to finally air the truth and right the wrongs; nothing less will restore confidence in our system. If I may finish with a biblical saying that evil prospers when good men choose to do nothing. This Committee in this room is full of good people. We are in your hands. Thank you.

Mr DAVID SHOEBRIDGE: Thank you Mr Kaldas for coming. I have got to say that I admire your courage in coming forward and speaking out. If there has been one consistent theme it has been that anybody who has put their head above the trenches from the time of the commencement of task force Emblems has found it very career limiting to say the least, and I understand the stress that must be upon you in coming forward and making these statements. I want to ask you about your initial submission to the Ombudsman. The Ombudsman's inquiry Prospect is announced. What did you do in engaging with that at the outset in your initial submission?

Mr KALDAS: I contacted the Ombudsman's office in late 2012. They asked me to come in but they said, quite rightly at that stage, that they had not read anything, they had not obtained any documents, they would not make any comments; they simply wanted to put on the record my complaint. I went down and I was part of an electronically recorded interview that probably went for a good couple of hours. But there was no comment or really any questions from the staff because they had not got their head around anything yet.

Mr DAVID SHOEBRIDGE: That was effectively you giving a verbal complaint and detailing your concerns?

Mr KALDAS: Yes, and it mirrored everything I had said on paper previously. Then in mid-2013 I received a notice from the Ombudsman saying: Can you tell us what you know and give us what you have got. I made a written submission and I supplied them with some documents. Nothing was heard from the Ombudsman again by me until just before 5 September, I think from memory.

Mr DAVID SHOEBRIDGE: Of 2013?

Mr KALDAS: Of 2014.

Mr DAVID SHOEBRIDGE: Of 2014?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: What happened on 5 September 2014?

Mr KALDAS: I was summonsed to appear. There was a little bit of, if I can use the term, argy-bargy. I had a commitment on that day—it was the anniversary of a murder I had led the investigation on some years before and I was due to meet the victim's family and the investigators. It was the twentieth anniversary. Obviously my preference would have been to attend that lunch with that family who we had formed a close bond with. Ultimately, obviously I never got there. I attended a hearing—I think we started around 9.30 a.m. and we finished around 6.00 p.m. or 6.30 p.m.

Mr DAVID SHOEBRIDGE: Who was asking the questions and who was presiding at the hearing?

Mr KALDAS: Julie Lonergan senior counsel was counsel assisting and she did most of the talking. She was assisted by Yenda Clifton, who was the legal officer with the Ombudsman's office. The Ombudsman sat on the bench as a magistrate or a judge.

Mr DAVID SHOEBRIDGE: Was that what is called a section 19 hearing? Do you know?

Mr KALDAS: I guess so, yes. Look, I cannot be certain of what section it was held under.

Mr DAVID SHOEBRIDGE: At the conclusion of the hearing was any direction given to you by the Ombudsman?

Mr KALDAS: I think he gave a series of directions at the beginning and at the end. I have to confess, the impact that hearing had on me was so devastating that I do not recall most of what happened in the second half of the day.

Mr DAVID SHOEBRIDGE: Were your legal advisers present during your questioning?

Mr KALDAS: It was a different team of legal advisers but, yes, they were.

Mr DAVID SHOEBRIDGE: Do you understand that you were given basically a suppression order, a direction that you could not discuss your evidence by the Ombudsman?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Did the questioning go into the details of your complaints? Did it go into the substantive concerns that you had about the targeting by Mascot?

Mr KALDAS: No.

Mr DAVID SHOEBRIDGE: Could you tell me what that day involved?

Mr KALDAS: Probably the vast bulk of the day was delving into how the documents came to be released, who discussed them, who saw them, who I discussed them with, who had complained to me and who

I had complained to. At one stage it was put to me that there was a lunch that a number of complainants attended, which was true—we had attended and we contemplated a class action, if you like, legal action. They delved into who was there and who said what. They also went into what legal advice I had sought, when I had sought it and who the lawyers were that I had spoken to. I do not recall any real meaningful questions being asked at all—I might stand corrected, there might have been one or two but certainly I do not recall any questions about what my complaint was actually about. I was excused from my summons at the end of the day. As far as that day was concerned, that was the end of it for me.

Mr DAVID SHOEBRIDGE: What did you think at the end of that day? You have been complaining of these substantive complaints for more than a decade, they have been stymied by secrecy provisions, you finally have got the Ombudsman with all the powers to look at everything and you have an entire day directed to effectively trying to find the whistleblowers. How did you feel at the end of that day?

Mr KALDAS: I was shattered, absolutely shattered. Probably more than anything I was bitterly disappointed in that yet again it became clear to me that the whole process had run off the rails. That is my view and I still adhere to that view.

The Hon. LYNDA VOLTZ: In your statement you say the actual affidavits sworn in support of certain listening device warrants came to light.

Mr KALDAS: Yes.

The Hon. LYNDA VOLTZ: Which affidavits were they?

Mr KALDAS: I think there are two that I have seen: one is in relation to warrant 266, the famous one.

The Hon. LYNDA VOLTZ: Which is the September one?

Mr KALDAS: Yes. And I think there is another one in relation to telephone intercepts in which I am named and my former wife and children, their home.

The Hon. LYNDA VOLTZ: That is 2001?

Mr KALDAS: I think so, yes.

The Hon. LYNDA VOLTZ: So you have never seen the April 2000 affidavit?

Mr KALDAS: Not that I can recall, no.

The Hon. LYNDA VOLTZ: Have you seen the briefing note from Cath Burns?

Mr KALDAS: Which one?

The Hon. LYNDA VOLTZ: The one of 13 April that outlines—

The Hon. ADAM SEARLE: Attachment 3F to your statement.

Mr KALDAS: I do not have it with me but I have seen that, yes.

The Hon. LYNDA VOLTZ: In that statement Ms Burns outlines a number of people with a number of reasons as to why they were on warrants. She makes specific reference to whether people were on the September affidavit and whether they were on the April affidavit.

Mr KALDAS: Could you take me to where that is please just so I do not mislead you. I want to make sure that I have got the right spot.

The Hon. LYNDA VOLTZ: If you look at page 4, point three, and the reference to you.

Mr KALDAS: Yes.

The Hon. ADAM SEARLE: It is on page 10.

The Hon. LYNDA VOLTZ: Sorry, page 10.

The Hon. ADAM SEARLE: It is page 10 of the attachment; your name is third from the bottom.

Mr KALDAS: Sorry, just bear with me. Yes, I see it.

The Hon. LYNDA VOLTZ: There is a reference there to people being either on an April affidavit or a September affidavit. Some were mentioned, according to that note, in an April affidavit and some were mentioned in a September affidavit. Have you seen both the warrants for September and April?

Mr KALDAS: I do not recall seeing the April one.

The Hon. LYNDA VOLTZ: You have not seen the April one?

Mr KALDAS: No.

The Hon. LYNDA VOLTZ: I will not ask you about a warrant that you have not seen.

Mr KALDAS: No, but if I may just make a comment? What this says there, the "King send-off". I do not recall going to the King send-off and I do not think I was ever invited. It says I was mentioned in affidavits covering 19 April. I am not sure what "mentioned" means. I have taken enough warrants out myself to know "mentioned" could mean that they asked to bug me; it does not mean that there is any information in the affidavit which is incriminating and satisfies a judge that I should be bugged.

The Hon. LYNDA VOLTZ: But you have seen the September affidavit?

Mr KALDAS: Yes.

The Hon. LYNDA VOLTZ: So you know the type of mentions that are in the September affidavit?

Mr KALDAS: I do and I also know that I am not mentioned.

The Hon. LYNDA VOLTZ: I totally agree that you are not mentioned in the September affidavit. It is a real difficulty not having the April affidavit to know what exactly that actually—

Mr KALDAS: I understand, and if I could just make a comment? I have done enough of these to know that you cannot possibly be asking a judge to authorise the bugging of people based on a document that he or she neither acknowledges, mentions nor outlines it in the warrant that he or she is actually signing. The fact that someone may have been "mentioned", whatever that means, in a previous affidavit cannot justify inclusion in a warrant which is being signed today unless the judge mentions it and says what it is.

Mr DAVID SHOEBRIDGE: The April warrant is attached. Of course the April warrant was attached by a different judge.

The Hon. LYNDA VOLTZ: I understand that, David. Thank you for your assistance. I am trying to ascertain how it is done because we are not experts and we do not make listening devices applications. I have asked a number of people and I have got conflicting views about how to do it. I have had views that previous warrants can be mentioned in affidavits. There is one explanation that sometimes verbal advice is given to the judge who is issuing them. For example, if a judge had been provided both affidavits at the time of this warrant being taken out, must the judge mention that he or she has received both affidavits in the warrants?

Mr KALDAS: If he or she has relied on it, I cannot see how it would not be attached and probably some reference to it is made in what he decides. I do not recall this being mentioned as an attachment—the previous affidavit to which you are referring.

The Hon. LYNDA VOLTZ: No, to the affidavit. Are there cases where people go to a judge and give verbal evidence or give other information at that point?

Mr KALDAS: It is very rare and the only reason that would happen would be at the judge's discretion. He would have to ask for you to come in. I can only think of one occasion in many years when the judge asked to see me as the deponent because he had some concerns and asked three or four questions.

The Hon. LYNDA VOLTZ: How would we know exactly what the judge received on that day?

Mr KALDAS: It should be on paper. It is black and white. It is either there—he has got it and it is attached to what he has signed—or it did not happen.

Mr DAVID SHOEBRIDGE: We of course sought the transcript of the hearings from the Government and the Government refused to produce it.

The Hon. LYNDA VOLTZ: Yes. Again, thank you, David.

The Hon. ADAM SEARLE: Sir, this document that is attached to your statement is a briefing note from now Assistant Commissioner Cath Burn who was then the Acting Commander of the Special Crime Unit.

Mr KALDAS: Sorry, she is Deputy Commissioner.

The Hon. ADAM SEARLE: Sorry, Deputy Commissioner. She has attached this list of persons who are to be subject to the listening devices warrant, which seems to be an extract from what we have been told is called a statement of debrief. That entry in respect of you on page 10 states that you are suspected to have been involved in or have knowledge of corrupt or criminal conduct by police. In any of the documents you have received anonymously, the warrants or the affidavit that you have, is there any such allegation against you in that material?

Mr KALDAS: I cannot recall a specific allegation against me that would have been specific incidents, but when I was finally interviewed by the Police Integrity Commission and the Crime Commission, I was told at that point that there were two allegations against me. If I may just mention them very quickly as I am conscious of the Committee's time.

The Hon. ADAM SEARLE: Sure, please.

Mr KALDAS: One related to the arrest of a fellow 25 years ago, and there are some issues with that. I was the most junior police officer in a team of nine or 10 and the matter had been through the court. The person who allegedly made the complaint has not actually made a complaint ever, to my knowledge. He was convicted and sentenced for an armed robbery. Then the second one is in relation to an armed robbery that I was part of a team that investigated that. Again, it is 25 or 26 years old now; it was about 15 years old then. Again, I was probably the most junior person in that team. I am not aware of any of the other people who actually made the decisions in that investigation being targeted, bugged or anything else. There is a very simple explanation. There was an allegation that somebody had stolen money at a search warrant. There were two people—I am not sure I should mention the names—

The Hon. ADAM SEARLE: Please do not.

The Hon. LYNDA VOLTZ: No, do not.

Mr KALDAS: —who are police officers who were not involved in our investigation. I do not know them and, to this day, I have never met them. They were from a different region. They were arrested and charged in relation to stealing that money and they ultimately beat it at court. For those two topics to be used as an excuse to bug me 15 years later, without any of the more senior police who ran those operations and made all those decisions and carried out what needed to be done, I just think—I do not believe there is any defensible transparent rationale for the extent of the invasion of my privacy that I suffered, probably for the best part of two years.

The Hon. ADAM SEARLE: Apart from those matters you have just touched on, you are not aware of any other allegations against you that might possibly have sustained this surveillance on you?

Mr KALDAS: The only other one, and I think you are already aware, is that allegation in relation to someone having leaked to me, and I am not sure that I would have committed an offence even if I had received a call, but that is the only other matter.

The Hon. ADAM SEARLE: That is right. You describe being targeted by a group of officers with whom you were in a conflict. What would be the consequences for police officers who conducted an operation of that kind against citizens with whom they were in that sort of conflict? Would there have been professional consequences for officers doing that?

Mr KALDAS: Almost certainly. Firstly, I think we would have been sued. I am not sure that the secrecy that has been allowed to fester in this matter would have survived the intense scrutiny of media and public attention if a citizen was involved.

Mr DAVID SHOEBRIDGE: Mr Kaldas, the key witness that drove the Florida and Mascot investigations was codenamed M5.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Sometimes Sea, sometimes M5, but it is the same witness.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: The material we have seen shows that the disclosures by that admittedly corrupt police officer forms the body of the affidavits—at least the affidavit we have that has gone before the court to obtain the warrants.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Did you have any involvement with M5 prior to the instigation of Mascot and Florida?

Mr KALDAS: I knew him, as most detectives do know each other. I had never worked with him. We had never been on the same investigation, we had never been in the same office and we had never been on the same squad. I do not recall having anything to do with him. We are certainly not friends. There is also a disparity in who we were and what we were. I was a detective superintendent. I was the commander of the homicide squad, probably the most prominent crime squad at the time. He was, I think, a uniformed sergeant at Manly. We did not know each other well. He effectively turned up on my doorstep and began to confess all his sins to me. I have some experience, at the risk of sounding conceited, in covert operations. None of what he said or did made any sense. Police do not walk in and start confessing their sins to other police.

Mr DAVID SHOEBRIDGE: Just out of the blue a bloke with whom you had minimal contact came in and started giving you a confession?

Mr KALDAS: He had a couple of excuses when I pressed him, from memory. One was that he had been threatened and he wanted some advice about what to do. The second thing he said was that two individuals, two serving superintendents at the time, had told him to come and see me. I went to those two individuals—I will not name them—they both said the same thing and they are both available to give that evidence that they had not seen him for ages and they had never said any such thing. That obviously caused me some alarm.

Mr DAVID SHOEBRIDGE: M5 was not in any way connected or related to those matters? I will give them the credence of calling them the substantive complaints against you or the substantive issues against you.

Mr KALDAS: Not that I am aware. He was not involved in our cases at all.

Mr DAVID SHOEBRIDGE: How on earth is it that M5 ends up being targeted against you and these allegations find their way into Florida and Mascot? If the key witness does not have anything to do with it, do you know how it is that these allegations end up becoming investigated by Mascot? Is anyone prompting M5 in this?

Mr KALDAS: The answer is no. There is no logical reason for him to have been used as somebody who is going to strike up a conversation about briefs he was not involved in. My view is that John Dolan, who was his supervisor at the time, and others who interviewed him at length obviously used him as a tool to even up personal scores.

The Hon. ADAM SEARLE: In fact that observation is made in some of the documents, is it not?

Mr KALDAS: I am aware.

The Hon. ADAM SEARLE: Sir, there is a manual setting out the protocols for the issuing of search warrants and listening devices warrants, is there not?

Mr KALDAS: There is and I understand it has recently undergone a massive rewrite. It is a regular process of improvement.

The Hon. ADAM SEARLE: You are familiar with the process of obtaining listening devices warrants?

Mr KALDAS: Yes.

The Hon. ADAM SEARLE: From your reading of the materials that you have received anonymously, in particular, the warrant and the supporting affidavit that you have got, does it seem to be compliant with your understanding of how this task should be undertaken by law enforcement agencies?

Mr KALDAS: No, I would say not. Further to that, once the affidavit came to light, it became clear—I really cannot explain how a judge—maybe he or she was told something verbally that was not written down or recorded anywhere, which I find very, very unusual.

Mr DAVID SHOEBRIDGE: About the 48 individuals who were not covered in the affidavit?

Mr KALDAS: That is the crux of it.

Mr DAVID SHOEBRIDGE: It is impossible, is it not?

Mr KALDAS: That is the crux of it. I am trying to answer your question; I am sorry if I am going around the world. The reality is, even if an excuse is accepted by a judge or otherwise and it is given to him or her verbally and he or she does not record it anywhere that we are going to add some names in simply because those people may be at a function or somewhere where they may be recorded inadvertently, that does not then give you the right to plan, orchestrate and arrange meetings with those people who you have said may be taped accidentally. You cannot get them on a warrant simply saying they may be recorded accidentally and then plan a meeting, which I would argue is what is happened with me. He made appointments; he came to see me. It was a very planned and structured operation. He was wired, obviously, for sound. Yet, even if I was on the warrant as somebody who was going to a function, it cannot be used as an excuse for what actually happened to me.

The Hon. ADAM SEARLE: Placing somebody on a warrant really means that that person is a target, not just somebody who might incidentally be there. Is that your understanding of police practice?

Mr KALDAS: That is my understanding. I do not recall ever adding someone to a warrant on the basis they may be run into. There is one other matter, if I may?

The Hon. ADAM SEARLE: Sure.

Mr KALDAS: I am aware, and I am sorry I cannot recall the source, but it was staff at the Crime Commission who have mentioned that M5 did in fact run into dozens and dozens of staff at the Crime Commission who were recorded inadvertently and had to be declared to the Attorney General's department at the end of each warrant. You roll warrants over every three weeks. One of the requirements that the Committee may take notice of, when you roll warrants over every three weeks, you are obliged to tell the judge—if you are going back to renew the warrant—what you have achieved in that last three weeks and that, therefore, you need to continue to invade that person's privacy because there is a realistic chance you will gather more evidence.

CHAIR: Have you ever been involved in seeking a warrant for 100-odd people?

Mr KALDAS: I have not seen anything close to that number.

Mr DAVID SHOEBRIDGE: In your experience—you are probably one of the most experienced police in the State—listening devices warrants would now be bread and butter for you.

Mr KALDAS: It is usually three or four people. It is either at premises, in which case you name everyone that is living there, and you actually spell out that you will only invade their privacy to the extent that they need to, or if it is a meeting of somebody moving about, or whatever, then it would be two people.

Mr DAVID SHOEBRIDGE: In your experience, what would be the most number of names you would have seen? Apart from this extraordinary example in Mascot, what would be the most names you would have seen on a warrant?

Mr KALDAS: Probably six or seven.

Mr DAVID SHOEBRIDGE: What sort of supporting material do you need to establish each of those individuals on the warrant?

Mr KALDAS: It is usually a lever arch folder.

The Hon. ADAM SEARLE: Sir, you have given evidence this morning about a public interest disclosure you made to Commissioner Scipione. That is at tab 4 of your statement. That was in late 2012.

Mr KALDAS: Yes.

The Hon. ADAM SEARLE: It is more than two years later. What knowledge do you have of any action taken by Commissioner Scipione to address your very serious concerns?

Mr KALDAS: My understanding is he simply referred it on to what is now Internal Affairs or Professional Standards. My understanding is that ultimately they were directed to refer everything to the Ombudsman, who was then tasked with carrying out the investigation. But to answer your question and in line with the legislation that you specifically mentioned, I have not been given any real information about what progress the investigation has made. I mean, quoting that we have interviewed X number of people is not really information that you have achieved anything. My complaint, in my view, has not been dealt with properly and it has been two years and perhaps three months.

CHAIR: Mr Kaldas, I will just take you back to your evidence in your statement. This may be difficult for you, but you say that—and it is well documented, and I am sorry if I have missed something—you had conflicts with Brammer, Dolan and others. Do you want to tell us a bit about that?

Mr KALDAS: Sure.

CHAIR: From what you are saying it seems to perhaps be the genesis of some of what is going on.

Mr KALDAS: There is a series of events and things that happened. I had won a scholarship and travelled overseas to North America, in particular, to have a look at covert policing. I came back and wrote a scholarship paper. I made recommendations. I restructured things, rewrote the training programs and so on. A lot of what I brought back with me and what I wrote was plagiarised by John Dolan, in particular, but also by Mal Brammer to a great extent. I made a complaint about that. They were upset that I made a complaint. They were presenting it as their own work and their ideas in forums, including national forums, when they really had no right to.

Then there was another incident when they deployed someone in a covert operation in a particular part of Sydney. I had a colleague in the Australian Federal Police who contacted me, who is available to give evidence if required. He rang me and said, "You don't need to answer me, but if you have someone fitting this description and he is deploying in [this part of Sydney], you need to get him out of there. It is a very amateur effort and they will kill him." I put two and two together and worked out that it was not any of the normal covert area, that in fact it was Internal Affairs, and I simply conveyed that information to Internal Affairs. My

workmate at the time, Ian Bown, and I—he was my superior who had reported on my behalf—with the information that we had were both effectively arrested, separated and interviewed for quite some hours about how we came by that information. I had simply passed it on because I wanted to protect who I thought was a police officer, and I think my information was right. They were very upset that they were shown up and that it was me who had shown them in that sphere again.

Then we had a forum about the forward direction for this sphere of operation at Holsworthy Army Barracks. It nearly came to blows between John Dolan and me because it became clear that he was undermining the branch, criticising and maligning them in the eyes of the executive, and saying that he was the only one who was ethically pure and could be trusted—they could not be trusted. He had again plagiarised a whole bunch of work that was not his. That almost came to blows in the car park. Not long after that [name suppressed] began to visit me. There are other conflicts, but I understand that all of these things were raised by staff who worked at Special Crime and Internal Affairs [SCIA]. I am aware of at least two officers—I think it is in my submission—who say they were staffed at SCIA and when they were interviewed by Strike Force Emblems and were asked if anyone had been targeted inappropriately, they immediately raised me as someone who should not have been targeted.

Mr DAVID SHOEBRIDGE: I ask the Chair to make a non-disclosure order. You mentioned a name in the course of that answer. I ask that the Chair immediately make a non-publication order that covers everybody in attendance and who heard that name.

CHAIR: I order the media not to report on the named person, for members of the public gallery not repeat it and that Hansard expunge the information from the transcript.

The Hon. ADAM SEARLE: Your submission, and I think your evidence here this morning, outlines the reprisals that you have suffered as a result of the incidents you are talking about—the targeting of you by other officers—and also, you think, for speaking out about what you see as a cover-up. I refer you to page 126 of your submission. Since you have made this protected disclosure do you feel you have suffered any other reprisals in your working career?

Mr KALDAS: My personal view, and it is only my view, is that the Ombudsman's actions towards me have been premeditated and in my view—and it is only my view—they form reprisal.

Mr DAVID SHOEBRIDGE: When we are talking about reprisals and the consequences, you said in your opening submission that there had been instances where your career had been negatively impacted by the allegations made against you in Operation Mascot. Can you give any specific instances and specific evidence in relation to that?

Mr KALDAS: Certainly. Three instances come to mind. The first one was in 2004. I applied for a position as the second in charge of the Counter Terrorism and Special Tactics Command. I was in Iraq at the time and I was interviewed by telephone. I was informed by the chairman of the selection panel in that process that I had won the position as second in charge of the command. I was later rung and congratulated by the second member of that selection panel. Two weeks later I got a call from personnel or HR saying there had been a mistake and I did not get the position; it went to someone else. Obviously I was upset and for the best part of two or three years after that none of the executive would answer my emails or calls, nor would they meet with me. In fact, the then commissioner crossed Elizabeth Street on one occasion to avoid me. I have never had an explanation for what happened there.

The second occasion that comes to mind is when I applied for—and I am reasonably certain I won—a position as the head of covert operations, which is effectively the third, second or fourth in charge of the National Crime Authority [NCA]. Again, I am now aware that there was conversation between staff at the Crime Commission and the convenor of that selection panel at the NCA who said, "Kaldas has firmed up." They outlined to him that there may be consequences if I was given that job and that it would embarrass the NCA. I did not get that job.

Mr DAVID SHOEBRIDGE: When was that?

Mr KALDAS: I have a feeling it was 2003, but towards the end of the year.

Mr DAVID SHOEBRIDGE: There was a third instance.

Mr KALDAS: I applied for the position of Assistant Commissioner Special Service Group, which is the area that handles most of the covert policing within the NSW Police Force. I do not have any definitive evidence that I had won that position, but the person they ultimately gave it to was way junior to me and had not had anywhere near as much experience as I had had in covert policing, major investigations or anything else for that matter. Again, I was never given an explanation for that.

Mr DAVID SHOEBRIDGE: So that Operation Mascot smear has hung over your career for the better part of a decade and a half?

Mr KALDAS: It certainly has. I am aware of elected officials being told by a number of people over the past decade that I am not someone who is clean and that I have stain on my name or a cloud over my head. I cannot believe this happens sometimes. Nobody rings you and says, "I understand you are under a cloud. Can you tell us what it is?" They just act on it. That is what has happened to me and to others. I have gone through instances where people ended up committing suicide or attempting suicide and we have saved them. Some of them have been people I care about.

Mr DAVID SHOEBRIDGE: There is the frustration that you must feel a decade and a half on still not having that substantive smear removed from your record and a substantive investigation not being done when you then appear in front of the Ombudsman.

Mr KALDAS: It is not resolved and I am not satisfied at all that Operation Prospect is heading in the right direction, that it will resolve it or that it will bring out the truth.

The Hon. ADAM SEARLE: I draw your attention to the Cath Burn memo and the reference to you in the extract of the debrief. It states that you are mentioned in affidavits covering the period from 19 April 2000 to 16 July 2000. That is much more than 21 days. Does that kind of reference suggest that there are multiple documents covering that period?

Mr KALDAS: Yes, I would say that is the case. I am uncertain of the source, but it has been suggested in some forums that something like 200 warrants have been taken out. If that is the case, the problem is obviously far greater than I thought, especially if they have all been obtained in the same manner as the ones that have become visible.

The Hon. ADAM SEARLE: In your submission you request an independent judicial inquiry into all aspects of this matter as the way to get to the truth once and for all. Why do you feel that is the appropriate mechanism?

Mr KALDAS: I am uncertain and you ladies and gentlemen would probably think of far better things than I can. I am not sure that another royal commission taking two or three years, with many lawyers being paid a lot of money and costing the taxpayers more money is the answer. I am not sure what the answer is. I think members, the public, the complainants and I already know what has happened here. It is pretty clear. I have said to many Ministers for Police that I am looking for an admission that it was wrong and an apology. I think you will find that is what most people want: an admission that they were maligned unfairly and an apology.

The Hon. LYNDA VOLTZ: I would like to ask some timeline questions. You have received the April and the September warrants—I think they are attached to your submission. I do not want to know where you got them from, but do you recall when they came into your possession?

Mr KALDAS: Do you mean the warrants or the affidavits?

The Hon. LYNDA VOLTZ: The warrants themselves as opposed to the affidavits—unless you got them all at the same time.

Mr KALDAS: Warrant No. 266 of 2000 was very early in the piece. It was probably around 2001.

The Hon. LYNDA VOLTZ: Before Strike Force Emblems?

Mr KALDAS: Definitely. It is one of the things that caused me to complain to Strike Force Emblems. I think the second one came much later, probably the end of 2012.

The Hon. LYNDA VOLTZ: I have them here. It is a two-page document. Would that have been all you received at that time?

Mr KALDAS: That is my memory.

The Hon. LYNDA VOLTZ: And you received an affidavit much later?

Mr KALDAS: Sorry, the first one—No. 266—was probably in 2001.

The Hon. LYNDA VOLTZ: Yes.

Mr KALDAS: The second one was among the documents that came in 2012.

The Hon. LYNDA VOLTZ: And that included the warrant and the affidavit. Did you receive anything else?

Mr KALDAS: There were other documents. Sorry, I have not categorised them.

The Hon. LYNDA VOLTZ: That is okay.

Mr DAVID SHOEBRIDGE: You no doubt remember when then Commissioner Ryan gave an explanation on *60 Minutes* about how people's names appeared on the September 2000 warrant—No. 266. Do you remember that?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Can you recall the substance of Commissioner Ryan's statement?

Mr KALDAS: I think he said that there was a function that everyone was going to and that if he was going to the function they would have to include him on the warrant.

Mr DAVID SHOEBRIDGE: Prior to hearing the commissioner give that explanation, had you ever heard anything about—

Mr KALDAS: Not that I can recall.

Mr DAVID SHOEBRIDGE: —the King farewell being the cause?

Mr KALDAS: I do not think he mentioned King; I think he simply talked about a function. Certainly, after that the talk of the town was that it happened at the King send-off.

Mr DAVID SHOEBRIDGE: Of course, we now have pretty conclusive evidence that the King send-off was at the end of June of that year, and the 266 warrant was in September.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: So that explanation looks, to say the least, grossly untenable, does it not?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: I refer to page 119 of your submission. This is the schedule attached to the memorandum signed by then Acting Commander Cath Burn on 13 April 2002. Do you see that?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: I refer you to the bottom half of page 119 onwards. There is name after name after name, including your own. I ask you not to repeat any of the names in this document. Commencing from the third name down on page 119, the purported reason these people are found on the warrant starts with "King send-off list". Do you see that?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Do you know when you first saw this memorandum?

Mr KALDAS: I think it was late 2012.

Mr DAVID SHOEBRIDGE: The substantive memorandum is found at pages 110 and 111. Do you see the explanation given by Cath Burn on page 111—the first substantive paragraph. Do you see that?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Commencing "With regard to listening device warrants".

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Please read it.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: This is Ms Burn putting the proposition that basically if anyone had been at a function and they had been bumped into by the source of the listening device they could find themselves on the warrant; is that correct?

Mr KALDAS: That is what it says, yes.

Mr DAVID SHOEBRIDGE: That memorandum is dated 13 April 2002.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: I ask that you accept that the *60 Minutes* episode that included the commissioner's explanation went to air on the following day—14 April 2002.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: The Committee has evidence that in fact the record of interview with Commissioner Ryan happened the previous day—on 13 April—the same day as that memorandum.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Do you have any knowledge about who briefed the commissioner?

Mr KALDAS: No, I do not.

Mr DAVID SHOEBRIDGE: In your experience, given that the commissioner was going on the show and that he was going to make a public statement on national television, would it be more likely than not that he would have received a briefing before he did so?

Mr KALDAS: It would be difficult to see how he would not have. If he did not then clearly something went wrong. What normally happens with senior officers going to media events or attending public functions is that the person who has the most knowledge about that topic is brought into the room with their supervisor and they are asked questions and brief the senior officer about what they are going to discuss. It would have been perfectly normal for two or three people from the Special Crime and Internal Affairs unit to meet with the commissioner prior to his interview, at which time he could have asked all the questions he wanted to ask. I cannot say whether that happened.

Mr DAVID SHOEBRIDGE: Have you have seen the record of interview between Ms Burn and Strike Force Emblems investigators? There were two records of interview.

Mr KALDAS: I am not sure if I have seen all of it but I have certainly seen portions.

Mr DAVID SHOEBRIDGE: Can I read you this section of the interview, which starts with a question put to Ms Burn by the investigator:

Q6 O.K. All right, O.K. In relation to the listening device warrants, were you aware of the comments made by former Commissioner of Police Ryan on *60 Minutes*, can you recall that?

A 60 Minutes?

Q7 Yes, can you recall those?

A No.

Q8 He states that the warrant related to a function - - -

A O.K.

Q177 - - - that all persons would be attending.

A Ah hmm.

Q9 Have you any comment to make about that statement that he has made?

A I have no idea why he said it, I'd say he wasn't briefed.

Q10 Well is that statement true?

A No.

Q11 Why would he make a statement such as that?

A I don't know, you'd have to ask him.

Q12 Do you know who briefed him in relation to - - -

A I have no idea.

What do you make of that answer from Ms Burn, given that she drafted that memorandum on the same day that the commissioner was interviewed by *60 Minutes* on the day before it went to air?

Mr KALDAS: It is quite extraordinary but, I mean, if I had prepared a comprehensive briefing as had occurred here on such a critical issue and my CEO or commissioner went public with a diametrically opposed explanation I would have thought I had an obligation to do something about it: put up the briefing again, seek a meeting, raise it with my superior, something. If I had not been part of the briefing team and he really had not—I do not know the reality of the situation but if he has not been briefed I would have kicked up a stink and said, "He's completely misled the public. We can't let this stand on the record. We need to correct it."

Mr DAVID SHOEBRIDGE: Or, on another view, what the commissioner said was broadly consistent with the briefing note that all these people were at the King send-off.

Mr KALDAS: That could certainly be what he was told. If I could just make one other point, there were many layers of command between Ms Burn and the commissioner. I would have thought all of them had a responsibility similar to her to say, "Hang on, what happened here was not right."

Mr DAVID SHOEBRIDGE: I will ask you again to go back to the memorandum. This will be the last question I ask on this. On the second page the memorandum has a note at the bottom. It is signed by Ms Burn on 13 April and then you will see there is, "1. Commander Special Crime and Internal Affairs". Is that who the memorandum was directed to?

Mr KALDAS: Yes, and when it did get to him he would have written, "2. Deputy Commissioner Specialist Operations, 3. Commissioner." That is how it goes. She is the acting commander of a special crime unit. At that stage she would have been the second in charge of internal affairs. The commander would have been the assistant commissioner.

Mr DAVID SHOEBRIDGE: Who was that at the time?

Mr KALDAS: I think it was Andrew Scipione or it could have been Mal Brammer.

The Hon. ADAM SEARLE: You were one of the officers targeted by Operation Mascot. That is correct?

Mr KALDAS: Yes.

The Hon. ADAM SEARLE: Cath Burn was a senior member of that operation?

Mr KALDAS: Yes.

The Hon. ADAM SEARLE: This controversy now may also involve Commissioner Andrew Scipione. We have got a situation where the top three police officers in this State are now caught up in a very significant, long-running and unresolved controversy. What impact is this having on the day-to-day management of the NSW Police Force?

Mr KALDAS: It has definitely been negative but we have all been professional and we are doing what needs to be done, the job is getting done, but it has not been pleasant to be a part of it most of the time I have to say. I guess what I have craved and longed for is for leadership to be shown on this topic, to have the hard conversations, to deal with the issue. We should have done it 10 years ago. We would not be here today otherwise. I guess all I am really seeking is to actually deal with the issue properly, put it behind us so we can all get on with our lives.

The Hon. ADAM SEARLE: Given the importance of the police force, is it in the public interest to let this issue just continue to drift unresolved?

Mr KALDAS: Certainly not. I think it is probably unfair to everyone. There are people who have got allegations against them and there are people who are angry and complaining and may or may not have handled documents. All of that, when you add it all up, it is really not in the public interest for this to drag on any longer.

The Hon. LYNDA VOLTZ: Can I go back to the memorandum that Cath Burn wrote, which is on the public record now. I keep getting confused; we have so many documents. It says that it was the procedure to include on the warrant names of people who were likely to be spoken to by the informer, whether they were targets, suspects or persons of interest. That is the second paragraph on the second page.

Mr KALDAS: Yes.

The Hon. LYNDA VOLTZ: It says, "This did not extend to every person the informer would come into contact with, just those where it was likely the conversation would be recorded (example, at a function)".

Mr KALDAS: I just cannot see how you can get that into a warrant and convince a judge that he should authorise—

The Hon. LYNDA VOLTZ: No, I will go to another question. I am going back to what was said in the *60 Minutes* interview because this is the document in which people are saying she is at contradiction with the then commissioner in regard to what he said.

Mr KALDAS: Yes.

The Hon. LYNDA VOLTZ: Do you think if the commissioner had read this briefing note he would have thought that the names on the warrants, given those two sentences, were simply about the function?

Mr KALDAS: There is an attachment, as you are aware.

The Hon. LYNDA VOLTZ: Yes, I know there is an attachment.

Mr KALDAS: If he got the report and he got the attachment and he read the attachment I cannot see how he would have said what he said on TV.

The Hon. LYNDA VOLTZ: That is right. So if you thought he read those two lines and the attachments—

Mr KALDAS: If he sort of skimmed it he may have drawn that conclusion but clearly anyone who is going on national television and he knows this is going to be asked—he was forewarned. I would have thought he would not just skim it. He would have read this thoroughly and he should have got a verbal briefing. This is what normally happens. The person who knows the most about a topic is usually brought in to answer questions.

The Hon. LYNDA VOLTZ: Having worked in politics, we would make sure everyone was briefed.

Mr KALDAS: I am sure.

Mr DAVID SHOEBRIDGE: Or he may have been given an inaccurate summary.

The Hon. LYNDA VOLTZ: Can I finish my question, Mr Shoebridge? In her interview with Galletta, Cath Burn said she did not know he was going on TV and in fact it came as a complete surprise to her. Does that imply that the information had not been passed down to the unit?

Mr KALDAS: She could be telling the truth, yes, but she could also not be telling the truth.

The Hon. LYNDA VOLTZ: She could but we will ask her, do not worry.

Mr KALDAS: I am sure. All I am getting at is I really have no way of knowing.

The Hon. LYNDA VOLTZ: That is right.

Mr DAVID SHOEBRIDGE: Fundamentally, if you had written that briefing yourself and then a day later—it is impossible to know how you could not have known about your commissioner going on national television talking about a task force or an investigation that you were a key player in. You would have had to have followed it up, surely, as a professional police officer?

Mr KALDAS: You certainly would have felt you had an obligation to say something, "Hang on, this isn't right." This is compounded by an article that was placed in the *Police Service Weekly*, the police magazine, which also says something along the lines of that if you have been named on the warrant do not take it as the fact that you are a suspect and it does not necessarily follow and so on, which obviously is contradicted by the massive list at the back of this report.

Mr DAVID SHOEBRIDGE: Because every single name on it has an adverse statement against it, they either know of or are involved in corrupt conduct.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: It is directly contrary to those "don't you worry about it" statements that are found in the police circular and from the commissioner.

Mr KALDAS: Yes.

CHAIR: I go to page 4 of your statement, section 6 dealing with complaints. We have talked at length about how this process started. I take you to 6.1.3 where you say you were a complainant in Strike Force Emblems. That was in 2003-04, or something like that?

Mr KALDAS: I think it was 2002-03.

CHAIR: Then we jump in 6.1.4 to 13 September 2012. You made a protected disclosure. What triggered that sudden action of the protected disclosure at that time?

Mr KALDAS: I became aware or received some documents that made me realise obviously that there was evidence that had not previously been available.

CHAIR: It was the documents you received, which were?

Mr KALDAS: There are the affidavits.

CHAIR: Was it the two warrants and the affidavit that were attached to your—

Mr KALDAS: No, I think one warrant, as I said, 266—I think I received that in 2001. But most of the other documents that are here—in fact, all the documents that are here—came to me at the end of 2012.

CHAIR: They came to you how?

Mr KALDAS: There were two packets that I received anonymously and then there were other documents that people either asked me to look at or were discussed generally and I became aware of them if I did not physically have them. All of that led me to believe that there was now definitive evidence about what had happened the 10 years before. That is why I made this complaint.

CHAIR: You have no knowledge of where those documents came from?

Mr KALDAS: No.

CHAIR: You wrote a letter to Mr Gallacher on 21 September 2012. Did you get a response?

Mr KALDAS: I believe I did. I am not sure that I have a copy but in my letter, running on memory, I was told by his chief of staff and others that if you just make a personal appeal to him he will listen and he may take on board what you have said. I am sure he did, but perhaps unintentionally one of the things I said in my letter to him was—I was critical of Mr Levine and the Office of the Inspector of PIC in that I did not feel they were the appropriate body to investigate it. He was working part-time, he wore many hats; I did not feel he had the resources or the commitment to see this massive job through. Mr Gallacher unintentionally forwarded my letter to Mr Levine and think it is fair to say his attitude towards me changed a little bit after that.

The Hon. ADAM SEARLE: Not so favourable?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: Did he invite you in as a key complainant to give an explanation to assist him?

Mr KALDAS: He declined to meet me. In writing he said he refused to meet me, it was not appropriate and he did not want to meet with me at any time.

Mr DAVID SHOEBRIDGE: Do you know if he met with anybody else?

Mr KALDAS: There are rumours around that he has.

Mr DAVID SHOEBRIDGE: But you do not know?

Mr KALDAS: I cannot say for certain, no.

The Hon. NIALL BLAIR: When you say "he", are you talking about Mr Gallacher?

Mr KALDAS: Mr Levine.

Mr DAVID SHOEBRIDGE: You said that you wrote a letter on 21 September 2012, is that right?

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: We have some correspondence from the Ombudsman, who details a time frame leading up to Prospect. He says in paragraph 83:

On 21 September 2012 the NSWPF established Strike Force Jooriland within the Professional Standards Command to investigate the following allegations or complaints ...

Strike Force Jooriland in many ways is the inheritor of SCIA in part, is it not?

Mr KALDAS: It is. It is directly descended.

Mr DAVID SHOEBRIDGE: The first two points of Strike Force Jooriland are:

That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others an affidavit or affidavits related to Mascot contrary to s 29(2) of the NSWCC Act.

That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others documents related to NSWPF investigation Emblems contrary to cl 75 of the Police Regulation 2008.

Then there are a number of others. Had you been aware that Strike Force Jooriland, yet another "hunt the whistleblowers" investigation, had been commenced by Professional Standards Command on 21 September 2012?

Mr KALDAS: I do not recall being notified of that name. I have seen it but I do not recall being told. I was a complainant so it probably would have made sense and perhaps they simply had not got around to letting all the complainants know.

The Hon. ADAM SEARLE: More than two years later?

Mr KALDAS: I am not sure that they continued for two years. I think they were shut down and everything was handed over to the Ombudsman. That is my understanding.

Mr DAVID SHOEBRIDGE: The Ombudsman now says that he took over that whistleblower investigation himself and it has become part of the ever-growing Operation Prospect.

Mr KALDAS: I have to say the thing that is surprising and that I do not think I was aware of is that someone who handled or leaked or spoke about the documents has become part of the charter, if you like. The question that has to be asked is who made that complaint that caused it to be looked at by our internal affairs?

Mr DAVID SHOEBRIDGE: Who would establish the terms of reference of a task force such as this being run in Professional Standards Command? How does that happen?

Mr KALDAS: The Commander of Professional Standards, but it would have to be signed off on by the commissioner of the day.

The Hon. ADAM SEARLE: The police commissioner?

Mr KALDAS: Normally, yes.

The Hon. LYNDA VOLTZ: Could I ask a question because it has been raised about how you police the police? How you would oversight? When these issues arise in the future what kind of structure would you see as being appropriate to review these?

Mr KALDAS: That is a good question and it is one that exercised my mind for quite some years. I hope we never face this sort of circumstance ever again in my lifetime, but if we ever did, I believe, and I have argued in the past wearing my union hat, it should be single oversight. The police at the moment answer to the Ombudsman on many issues, they answer to the Police Integrity Commission on many issues; the Crime Commission sometimes also looks into corruption issues.

We had a very tragic incident a little while ago, and it probably answers your question—I apologise if I am dribbling—in relation to a police officer who was killed accidentally in very tragic circumstances. The Coroner said that she had jurisdiction, and she ought to be—and quite rightly she was—the one that was looking at it. The Ombudsman himself initiated an inquiry very publicly and said, "I am entitled to look at it" under various sections of his legislation. There was a war of words—I think that was very public—between the two agencies, and in the background the WorkCover investigators came in and said, "We trump everybody else; our legislation says so." So we had three agencies fighting over the carcass of the police force, and then in the background the Police Integrity Commission said, "When you have finished with them we are next".

The Hon. LYNDA VOLTZ: I have a concern because I have a military background and it is similar in the military where you are covered by a particular Act—the Defence Force Discipline Act or a certain Police Act. Where do the people within those institutions go to review decisions within their own institutions?

Mr KALDAS: I believe in external oversight; I think it is essential. But it needs to be in a rational, structured way. Please understand I am not being critical of anyone or any government. The framework that we have has sprung up in an ad hoc fashion out of various scandals; it is not a structured, thought-through process, it is simply we have reacted to something and we have said we will need another body to do that and so on. What we have now is a patchwork, some thinking processes about how it should look, and single oversight is probably the biggest problem for the police. We get torn apart.

You may recall very publicly the Crime Commission and the Police Integrity Commission went to the Supreme Court in what has been described as a turf war. It was very unseemly. We just want to get the job done. The Ombudsman has gone on at length about the number of leaks of a large number of documents. The reason that is happening is because people are fed up, they have had enough; they just want to see the end of this.

The Hon. ADAM SEARLE: Would an independent police complaints commission on the British model be part of a solution do you think?

Mr KALDAS: This is not the corporate position or the view; it is the world according to Nick Kaldas, if I may.

The Hon. ADAM SEARLE: I am asking you, sir, I am not asking anybody else.

Mr KALDAS: I have to say the Police Integrity Commission has not had enough work to keep them going in the last decade; it simply is not there. I think we have cleaned our act up; I think complaints are down and I am heartened by the fact that most of the complaints we deal with come from within. Police are no longer tolerating corrupt colleagues; they are dealing with the hard issues as they pop up. I would suggest an overarching corruption body with a segment or section that is focused on police issues would be appropriate.

The Hon. LYNDA VOLTZ: If this issue had been dealt with appropriately in the beginning people would have been satisfied, whether or not they were happy with the outcome.

Mr KALDAS: You are absolutely right. I guess the problem is in this case—and I am not blaming anyone—that those who should have been oversighting us, namely perhaps PIC and the Crime Commission, were involved in the investigation. They could not delve into it or look at it because they are part of the problem, I guess.

Mr DAVID SHOEBRIDGE: Perhaps there is a lesson there, is there not? Before they enter into this memorandum of understanding with the various agencies, oversight bodies like the PIC should think extremely carefully because they will conflict themselves if ever a problem arises.

Mr KALDAS: I agree, and perhaps that was highlighted even further at the end of all of Mascot and Florida. They had a thing called Operation Volta and it was supposed to have been investigating 400 allegations, of which the two that I have mentioned in relation to me were probably two, and they wrote them off within 12 months. What that tells me is that nobody seriously looked. Maybe there are some nuggets in there that we have missed, I do not know. But the reality is that they did not have the time, the resources, the charter or the inclination to seriously look at those allegations.

Certainly in my case I do not know that any of my other suspects who were involved in those two cases were ever even spoken to. I do not think the criminals who are alleged to have been the complainants have ever been spoken to. So I cannot see how they could have possibly investigated what they said they had. But, again, it was the falling through the gaps between Special Crime and Internal Affairs and the Police Integrity Commission and who was going to do it. SCIA said they were going to do it, PIC said they were going to oversight it; within a year they said, "There is nothing in it; just write it off."

Mr DAVID SHOEBRIDGE: When you make a complaint it goes around the same merry-go-round where everybody says it is really not their job.

Mr KALDAS: Sometimes that is the case, you are absolutely right. But there are also times when, shall I say, it is meaty and there is a turf war. There has been the death of a civilian that was investigated by the Coroner at length in the CBD, which you may be aware of. Following that we had an Ombudsman's investigation, which was quite harrowing for the police involved. Following that there were hearings at the Crime Commission, which again the police had to go through the same thing the third time around and, in fact, some charges were recommended out of that.

Mr DAVID SHOEBRIDGE: At the beginning of it there was a critical incident review by the police, so you ended up having four.

Mr KALDAS: That is true.

Mr DAVID SHOEBRIDGE: I am trying to work out what the mischief was that led to this extraordinary list of names included on these listening device warrants and, if you like, almost a free-range investigation. I think going to the terms of reference of Operation Mascot is important. We now find out from the Ombudsman that the original terms of reference for Mascot which were established in February 1999 had them investigate a number of serious criminal offences including drug offences, money laundering and conspiracy to pervert the course of justice and the reference named a total of 19 suspect persons who were associates of M5 or who were named by him as involved in or having known of corruption. That is the original terms of reference: a set of offences and 19 named suspects.

But then we find out that in November 2000 a new Crime Commission reference was approved called Mascot 2 and the list of suspected persons was broadened significantly to, and this is a quote from the terms of reference, "not be limited to the persons named in the original reference but extend to all police (former and serving) suspected of engaging in the offences the subject of the reference". What do you make of those expanded terms of reference?

Mr KALDAS: It is very, very, very broad. We would never allow a squad or internal affairs to investigate something that broad. That is pretty much every member of the police force that is to be investigated.

Mr DAVID SHOEBRIDGE: Every current and former. It is, with no disrespect to the Chair, open season on the police, is it not—whoever they want?

Mr KALDAS: I think they already have that, but certainly that formalised something that is incredibly broad. You would have to ask what justification was placed before the board of management to get that reference. I do not know.

Mr DAVID SHOEBRIDGE: But, of course, what it crucially did allow was it allowed anybody involved in Mascot to target whoever they liked.

Mr KALDAS: I think that is a very accurate statement.

Mr DAVID SHOEBRIDGE: We then suddenly find 114 people on a single listening device warrant and we see people being brought in and their careers being attacked seemingly with no valid basis at least arising out of the disclosures of M5.

Mr KALDAS: I think that is the case.

Mr DAVID SHOEBRIDGE: On another front, you have said in answer to a question from Mr Searle that this ongoing failure to get resolution has made it difficult, not impossible but difficult, to work in a collegiate way. Would that be a fair summary?

Mr KALDAS: It has been difficult, yes. There are tensions there; there is no denying there have been tensions there.

Mr DAVID SHOEBRIDGE: Have you seen the Strike Force Emblems report?

Mr KALDAS: I do not think I have seen all of it. I think I have seen some segments of it, but I am guessing to a great extent that the actual full report may be not a roomful but quite sizeable and I certainly have not seen anything near that size. I have seen certain segments of it.

Mr DAVID SHOEBRIDGE: But reading the report surely would be essential before you knew what steps you would have to take to resolve the issue.

Mr KALDAS: Yes.

Mr DAVID SHOEBRIDGE: In a record of interview—I think it was recorded by Channel 7—the current commissioner has said that he has never read the report. Do you have any observations to make about how that could come to be, if indeed it is true?

Mr KALDAS: I really cannot comment on that. It is a matter for himself.

Mr DAVID SHOEBRIDGE: It is a matter we might raise with Mr Scipione directly.

Mr KALDAS: Mr Chair, I have just been asked by my legal advisers if it was possible to take a couple of minutes' break because they feel that they have something they need to raise with me before I get out of your way. If that is not possible I understand.

CHAIR: It is certainly possible. Please do.

(Short adjournment)

CHAIR: Do you want to say something, Mr Kaldas?

Mr KALDAS: Yes, if I may. There is more information I wish to give to the Committee about receipt of documents and it includes confidential matters. I would like to provide it confidentially initially to the Committee so that the Committee can determine how it should receive it. We undertake to get that to you as soon as possible, if that is okay.

CHAIR: That is appropriate, yes. Thank you very much for attending. I do not think there are any issues or questions on notice.

Mr DAVID SHOEBRIDGE: But if there are any further questions from the Committee they will be provided.

Mr KALDAS: I am happy to assist the Committee in any way I can.

(The witness withdrew)

(Short adjournment)

NEIL GORDON MERCER, Freelance Journalist, affirmed and examined:

CHAIR: Thank you, Mr Mercer, for coming to see us.

Mr MERCER: Thank you.

CHAIR: Would you like to make a short opening statement?

Mr MERCER: Yes, please. Thank you. I thank the Committee for accepting my earlier submission and for giving me the opportunity to give evidence today. The bugging of more than 100 police and civilians between 1999 and 2001 has had a detrimental and sometimes devastating effect on the careers and reputations of many serving and former New South Wales police and some civilians. In some cases the bugging and the fallout from it has also seriously affected their health and wellbeing and that of their families. I believe a significant number of serving and former officers have been wrongly and falsely accused of serious criminal offences and corruption. In my view, evidence has been fabricated and put in affidavits presented to judges of the New South Wales Supreme Court. I believe numerous judges have been lied to in affidavits put before them by the Special Crime and Internal Affairs Unit [SCIA] and the New South Wales Crime Commission in order for those bodies to obtain listening devices and telephone intercepts.

There is evidence that officers within SCIA and the Crime Commission knew that M5, their star informant, told lies to get a search warrant. He admitted as much. There is evidence that another informant used by SCIA—I will call him Mr X—lied under oath in the witness box at the urging of some SCIA officers. Mr X has told me that at the time he committed his perjury in the District Court in the witness box he was wearing a listening device—a fact that is presumably unknown to the presiding judge. Some of these matters have been known to authorities for more than a decade. They are not isolated incidents, but as far as we know nothing has been done. This does not inspire confidence in the courts or our system of justice.

In addition, this long-running saga has led to a breakdown in relations between New South Wales police and the New South Wales Crime Commission, with some police officers no longer willing to confide in the commission. This can only hinder the fight against organised crime. It also appears to me there is a double standard when it comes to allegations of corruption against police. Respected front-line detectives involved in high-profile cases are accused of corruption and criminal offences in a listening device warrant, but are never questioned let alone charged; yet the stain against their reputation remains. On the other hand, those working within secretive bodies, such as SCIA, the Crime Commission and the Police Integrity Commission appear to be largely unaccountable when allegations are raised against them, as evidenced by the article in yesterday's *Sydney Morning Herald*. It seems allegations against some of these white knights can be dismissed within an afternoon while accusations against those working at what I call the pointy end of the ship can linger for years.

Finally, the Ombudsman's inquiry was misconceived. More secrecy was not and is not the answer. In October 2012 I wrote in the *Herald*, "This matter has been going on for 10 years and it will not go away." Here we are today. It has not gone away and it will not go away. Rather than a secret inquiry by the Ombudsman, there should have been, in my view, a judicial inquiry in public to finally answer the allegations that have been festering in this city for years. Thank you.

CHAIR: Thanks very much.

Mr DAVID SHOEBRIDGE: Thank you for your submission and thank you for your opening statement. Could I ask you to put some flesh on the bones of the events involving the person you called witness X, or Mr X? Can you start by telling us what dates we are talking about that this Mr X was operating?

Mr MERCER: Mr X was a career criminal—an armed robber—and has confessed to murder, although never charged.

Mr DAVID SHOEBRIDGE: When were those offences—the armed robbery and the murder?

Mr MERCER: The armed robbery was in about 1994. He became an informant for SCIA in about 1999.

Mr DAVID SHOEBRIDGE: Was this an armed robbery somewhere on the mid North Coast?

Mr MERCER: North Coast, correct.

Mr DAVID SHOEBRIDGE: Yes.

Mr MERCER: It was a home invasion and an attempted armed robbery of, I think, an RSL club.

Mr DAVID SHOEBRIDGE: A husband and a wife were held.

Mr MERCER: Mr X and his two colleagues broke into the home of the club manager, woke them up, pointed guns at their heads and demanded the key to the safe or a combination to get into the RSL club. That did not happen for various reasons. Some years later, Mr X who by his own admission is a career criminal, became an informant for SCIA. He was sent in to gather evidence against one of the detectives involved in his arrest. This was around 1999-2000. By that stage the detective in question had left the police force and was working in a pawnshop. Mr X was sent in by SCIA wearing a wire to gather evidence on this detective. The detective complained that Mr X was in breach of his bail and Mr X subsequently appeared in the District Court on the breach of bail.

Mr DAVID SHOEBRIDGE: What was he on bail for? Was it the armed robbery offence?

Mr MERCER: The armed robbery, correct. That is right. He was the getaway driver in that matter. He appeared in the District Court. On oath in the witness box he said he had gone to the pawnshop to pawn—I think it was a VCR or video recorder. He said on oath that he was completely surprised to see the former police officer there and that that former police officer was as surprised to see him as he was to see the former officer. The problem with that is that he was sent in there by SCIA. He was wearing a listening device. Mr X has told me that SCIA officers were present at court when he gave that evidence. They must have known it was perjured.

He has also told me he was wearing a listening device in the witness box and in the body of the court that day and that, after he gave that perjured evidence, SCIA officers played the tape to him. It seems inconceivable to me that some officers within SCIA did not know that he had just committed perjury and it seems to me they condoned it and indeed encouraged that act.

Mr DAVID SHOEBRIDGE: Mr Mercer, could I ask you, either now or on notice, to provide us with as much as you can about dates and times so we can confirm that and put that to other officers involved in the inquiry?

Mr MERCER: Sure.

Mr DAVID SHOEBRIDGE: You said there was another incident.

Mr MERCER: Where M5 had lied?

Mr DAVID SHOEBRIDGE: Indeed.

Mr MERCER: Among the documents that I saw in 2012—and I forget whether it was a memo; I forget what form it took—but it involved M5 having a meeting with Mark Standen and John Dolan. In that meeting, M5 admitted that he had lied before a magistrate to get a search warrant. I think he said something like the magistrate almost made him do it because he was inexperienced, or something like that. I do not know whether that perjury was ever reported to anybody. What I do know is that roughly 10 days to 12 days later Cath Burn wrote an information report detailing that matter, including the self-confessed perjury, but it appears that neither the magistrate nor anybody in the justice system was ever made aware that M5 had been telling lies. I am not sure whether the search warrants were granted or what happened as a result of those search warrants.

Mr DAVID SHOEBRIDGE: Do you have a copy of the briefing note?

Mr MERCER: I do not have a copy of any documents and I have not had copies of any documents for a long time.

Mr DAVID SHOEBRIDGE: Why is that?

Mr MERCER: I divested myself of the documents. I handed them back to the source or made sure that I did not have them because I was of the view that there probably would be an inquiry and I did not wish to be in possession of them.

The Hon. ADAM SEARLE: Sir, do you know whether post that incident, M5 continued to be used as a human source?

Mr MERCER: Yes, he was.

The Hon. ADAM SEARLE: And continued to be the foundation for continued investigations, including on other police?

Mr MERCER: Correct. That is right.

Mr DAVID SHOEBRIDGE: What about Mr X? Was he used again after he had perjured himself with a listening device warrant in the sight of the SCIA officers?

Mr MERCER: He certainly continued on for some time. Exactly the dates—I am sorry, I cannot off the top of my head tell you the exact dates, but he certainly continued after that time to be an informant for SCIA.

The Hon. ADAM SEARLE: When was the incident involving M5, roughly—the incident you have just outlined?

Mr MERCER: I would say around 2000-2001.

The Hon. ADAM SEARLE: So at the time of the Operation Mascot.

Mr MERCER: Yes. It was at the time he was being used by them, yes, as a key informant.

The Hon. ADAM SEARLE: In Operation Mascot.

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: You have raised these concerns not in a private capacity, but you put them in the pages of the *Sydney Morning Herald*. Do you know if anything has happened to them?

Mr MERCER: No, I do not. I am not sure what has happened to any of it, really, because the problem as I see it is that it has been handed to the Ombudsman and that is all in secret. We do not know what the Ombudsman is doing. We do not know how rigorous that inquiry is. We do not know whether any of these allegations have been raised. Indeed, reading some of these submissions from other people, it appears that matters that in my view should have been raised have not been raised by the Ombudsman.

Mr DAVID SHOEBRIDGE: But having members of SCIA sitting in a court, watching one of their informants perjure themselves with one of their own listening devices on him and doing nothing, surely that should be a matter that is not just considered by the Ombudsman but is either considered by the Police Integrity Commission or the police for criminal conduct?

Mr MERCER: I do not know whether anybody has taken it up. I am told the SCIA officers were either in the court or outside the court; but what Mr X says, nonetheless, is that they were present at the court that day. It is inconceivable they did not know what evidence he was giving and, in particular, when he says to me that he heard the tape after his appearance that day.

Mr DAVID SHOEBRIDGE: You have been called by the Ombudsman to give evidence?

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: Was that under compulsion?

Mr MERCER: Yes.

The Hon. ADAM SEARLE: When?

Mr MERCER: In August last year, I think.

The Hon. ADAM SEARLE: Do you have the notification that was sent to you?

Mr MERCER: I have a couple of pages. I am afraid I do not have all the documents. On 30 July 2014 I received a summons and I was required to attend on 14 August 2014 and I did attend that day.

The Hon. ADAM SEARLE: What occurred on that day when you did attend?

Mr MERCER: I was called in. I was questioned. Mr Barbour, the Ombudsman, was presiding. I was questioned by council assisting. The vast bulk of the questions were about where I got the documents from. I told the Ombudsman where I had obtained the bulk of the documents and that was by agreement with the source. They had come from that source. Also, a number of documents had turned up in the mail at Fairfax, some addressed to me, some addressed to another journalist. I made that quite plain. I said I had probably hundreds of pages of documents. I was then questioned by council assisting as to a number of police officers. Did I know officer X? These are police officers who are detective superintendents and above. It is not quite clear to me why I was questioned about those particular police. I had met many of them socially. I had met them in their capacity, say, with the police union, without going into names.

The Hon. ADAM SEARLE: So you had met them through your own professional engagement as a journalist?

Mr MERCER: Correct. That is right.

The Hon. ADAM SEARLE: Were these police who you were questioned about police who appeared in the documentation involving Strike Force Emblems and Operation Mascot?

Mr MERCER: Some of them certainly were not. There were about eight to 10 names I was asked about and I cannot remember every single one of them. Some of them I did not know.

The Hon. ADAM SEARLE: So you do not know why you were asked about those persons?

Mr MERCER: It seemed to me to be a fishing expedition. After I had named the source and said where I had obtained the documents, I am not quite sure why they wanted to know: Did I know detective so and so? Did I know this detective? Did I know this assistant commissioner? How did I know them? In what capacity? Where did I meet them?

Mr DAVID SHOEBRIDGE: Did you put a submission in to Operation Prospect?

Mr MERCER: Very early on I was contacted by the Office of the Ombudsman and asked to provide any documents I had. It was a request; it was not a summons or subpoena. At that stage I did not have any documents but I had records via the stories, the articles, I had written and also handwritten notes of some of the documents I had. I typed up I think a two- or three-page document listing most of the documents that I had and I sent that to the Ombudsman. I also raised a number—

The Hon. TREVOR KHAN: Did you keep a copy of that document?

Mr MERCER: I would have it in my computer, yes. I do not have it with me, I am sorry.

The Hon. TREVOR KHAN: Would you be prepared to provide it?

Mr MERCER: Yes, sure. I did that in a bid to assist the Ombudsman as much as I could as to what documents I had seen or I had. It probably was not comprehensive. There were many, many documents. I also raised in that document to him a number of issues and one of them was an attempted suicide, and I was questioned briefly about that when I did attend the in-camera hearing with the Ombudsman.

Mr DAVID SHOEBRIDGE: Did you raise the perjured evidence of M5 and Mr X?

Mr MERCER: You are testing my memory. I wrote it more than 2½ years ago and I have not looked back at it. There are a number of issues. I am happy to provide you with the document.

Mr DAVID SHOEBRIDGE: Had the story in relation to Mr X been published prior to you being interrogated by the Ombudsman?

Mr MERCER: Yes. It was published not long before. I think it was shortly before I was called before the Ombudsman. I can actually tell you if you wish.

Mr DAVID SHOEBRIDGE: If you can do that quickly or you can provide it on notice.

Mr MERCER: I can do it pretty quickly. The matters about Mr X were raised in articles in the *Sun-Herald* on 8 June 2014, two lengthy articles, and I was called before the Ombudsman in August that year.

Mr DAVID SHOEBRIDGE: For how long were you interrogated by the Ombudsman?

Mr MERCER: Probably about 90 minutes, maybe a little longer. There was a gap and that occurred when they said to me, "We wish to ask you whether you know a number of police officers" and I objected at that stage. There was a break, I sought some legal advice and then we came back in.

Mr DAVID SHOEBRIDGE: Did they then press the questions?

Mr MERCER: They did but with my agreement. I did not see much point in saying I did not know somebody when I had been seen with them at the commissioner's Christmas party.

Mr DAVID SHOEBRIDGE: How many of those 90 minutes dealt with those substantive concerns about perjury and corruption and the others?

Mr MERCER: I do not think there were any. None of that was raised with me. It was a fairly intense period but the vast bulk of the questions I was asked were about the documents. Had I seen this document? How many pages was it? How did I get that document? There was one document which listed the judges who had approved the listening devices and some of the telephone intercepts.

Mr DAVID SHOEBRIDGE: You had just published in a daily newspaper in Sydney extraordinary allegations about an informant within SCIA perjuring himself in the witness box with a listening device warrant, either in the presence of or known to SCIA. I assume it related to Mascot. Is that correct?

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: And the Ombudsman did not ask you a question about it. That is your best recollection?

Mr MERCER: That is my best recollection.

Mr DAVID SHOEBRIDGE: Or if they did ask you it was of such a minimal nature that you cannot remember.

Mr MERCER: Yes. I think that is right.

Mr DAVID SHOEBRIDGE: What did you make of that when you eventually got out of there?

Mr MERCER: What I made of it was that he was very interested in the leakage of the documents, descriptions of the documents, which documents I had, which police officers I knew. What disturbed me was that when I was in the witness box I was handed a lever arch file to try to identify a particular document, whether I had seen that, how many pages it was. During a lull in proceedings I was flicking through it and I saw the phone records of Mr Kaldas at the back of that. It subsequently came to my attention that my phone records have been searched, and just a moment ago I heard that the NSW police had set up some task force I had never heard of—

Mr DAVID SHOEBRIDGE: We might get to that later.

Mr MERCER: —to investigate it.

The Hon. TREVOR KHAN: In terms of these questions that were put to you with regard to particular documents, I think you have clarified it for me but do I take it that particular documents were shown to you?

Mr MERCER: Yes.

The Hon. TREVOR KHAN: It was not a description of a document, it was a document placed in your hand in some sense.

Mr DAVID SHOEBRIDGE: He said he was given a lever arch folder.

The Hon. TREVOR KHAN: I know.

Mr MERCER: I had identified a number of documents that I had, such as the 57-page affidavit, and I think there were about—I identified in the original—

The Hon. TREVOR KHAN: Was that 57-page affidavit put to you, shown to you?

Mr MERCER: No. It was another document that was shown to me and I think it was to do with the—it might have been to do with a document headed "Schedule of Debrief". I was asked whether I had seen that and how many pages it had. The document I had seen was I think two or three pages. I think the question was "not 20 pages", and I said no. They were seeking identification of documents, if you like, at that stage.

The Hon. TREVOR KHAN: Were there any other documents that you can remember being put to you as you having seen or not seen?

Mr MERCER: I am sorry; I do not have a transcript of the proceedings.

The Hon. TREVOR KHAN: I understand.

Mr MERCER: I wish I could help you. I am not being obstructive.

The Hon. TREVOR KHAN: I am not suggesting that. This is, to use a description, a bit of a fishing expedition.

Mr MERCER: I wish I could remember.

The Hon. ADAM SEARLE: The Chair should show the witness this document.

Mr DAVID SHOEBRIDGE: That is the redacted version.

The Hon. ADAM SEARLE: This is a redacted version of a document that we have published. I want to ask the witness whether this was one of the documents that the Ombudsman asked him to identify, in particular whether this looks like the document he identified as an extract from the statement of debrief.

Mr DAVID SHOEBRIDGE: There were names in bold running down the page. Those names have been removed.

Mr MERCER: Yes. That was one of the documents I received in 2012 and which I wrote about for Fairfax. I do not think they showed me this document, but I had said to them I had this document. Indeed, I had written about it.

The Hon. ADAM SEARLE: When you say "this document" you mean the briefing note by Cath Burn?

Mr MERCER: Yes. I had it.

Mr DAVID SHOEBRIDGE: Is that the briefing note and the schedule attached to it?

Mr MERCER: Yes, the schedule, all the names and the alleged reasons why they were on the affidavit.

The Hon. TREVOR KHAN: Were you ever shown a document that was either entitled or you would have interpreted as King's send-off list?

Mr MERCER: No. I think from memory this has 30 names.

The Hon. TREVOR KHAN: I know what it says but it refers to King's send-off list.

Mr DAVID SHOEBRIDGE: The list itself.

The Hon. TREVOR KHAN: Yes. I reckon there is a physical list.

Mr MERCER: The only reference that I can remember to the King send-off list is contained in this document. I have never seen a separate document.

The Hon. LYNDA VOLTZ: Can I clarify something? You have identified the 57-page affidavit.

Mr MERCER: Yes.

The Hon. LYNDA VOLTZ: You have identified what is normally an annex to that, which is the 20-page statement of warrants with the judges who issued them.

Mr MERCER: Yes.

The Hon. LYNDA VOLTZ: You have identified the Cath Burn memorandum.

Mr MERCER: Yes.

The Hon. LYNDA VOLTZ: Do you recall any other documents you might have had in your possession, for example, did you have the April affidavit at all?

Mr MERCER: No. I never had the April affidavit. I had three listening device warrants, the September 2000 one, the John Dowd warrant—

The Hon. LYNDA VOLTZ: The two 2000 ones, April and September. September 2000 and April 2000.

Mr MERCER: I think so, and there is one from 1999 approved by Justice Graham Barr which contains 119 names.

The Hon. LYNDA VOLTZ: And that is just a warrant.

Mr MERCER: That is a warrant; that is not the affidavit.

The Hon. LYNDA VOLTZ: That is not the affidavit?

Mr MERCER: No.

The Hon. LYNDA VOLTZ: Did you have the 2001 affidavit that went with the 2001 warrant?

Mr MERCER: Sorry, warrant? Which one?

The Hon. LYNDA VOLTZ: There was the April 2000 warrant and the September 2000 warrant. You then said you had a third listening device warrant which you thought was 2001?

Mr MERCER: No. The third one is Graham Barr, 1999. At the beginning of Operation Mascot, within weeks of M5 being debriefed there was a warrant put before Justice Graham Barr with 119 names on it. That is the first one I had. Sorry, in chronological order that is the earliest one I had.

The Hon. LYNDA VOLTZ: Chronologically is that the first one you received or the first one in terms of—

Mr MERCER: No.

The Hon. LYNDA VOLTZ: You received them all together?

Mr MERCER: No. I think listening device warrant 266 I received in 2002 at the same time it was published in the *Herald*, in April 2002, and the other two warrants I received some time in 2012.

Mr DAVID SHOEBRIDGE: Did you know that on 21 September 2012 the NSW Police Force had established Strike Force Jooriland within the Professional Standards Command, which is the inheritor of SCIA, of which you have been deeply critical in many of your articles, to investigate allegations about material being supplied to you allegedly contrary to the Crime Commission Act and the police regulation?

Mr MERCER: The first I heard of that was in the Committee hearing room a short while ago. I do not recall ever hearing about a NSW police inquiry into the leaking of documents.

Mr DAVID SHOEBRIDGE: How do you feel sitting there now knowing that the NSW police have established a strike force specifically to investigate leaks made to you or information provided to you as a journalist?

Mr MERCER: It seems extraordinary to me, given the fact that the leaks only happened because people believed there had been a cover-up for more than a decade. They only happened because people were angry and frustrated and believed they had exhausted all avenues. For the police then to target the journalist and presumably the whistleblowers by combing through my phone records is—I just think that is disgraceful. I would have thought the substantive offences raised in those articles should have been the focus of any inquiry.

The Hon. TREVOR KHAN: With regard to the phone records, did you look at the phone records they apparently had?

Mr MERCER: I think I said a while ago I was in the witness box and there was a lull and I had a lever arch file and I just had a bit of a leaf through and I saw Mr Kaldas's phone records at the back. I did not see mine. I became aware some time later—well, I believe mine have been searched.

The Hon. TREVOR KHAN: Do you know, from what you are informed of, for what period your phone records were searched?

Mr MERCER: It would have been the period just before and around the time I was publishing the articles.

The Hon. TREVOR KHAN: Which articles?

Mr MERCER: These are the articles in Fairfax around September-October 2012 when I published the Strike Force Emblems reports and other reports, including the Cath Burn document, if I can call it that.

The Hon. TREVOR KHAN: In regard to what you leafed through in Deputy Commissioner Kaldas's records, are you able to identify what period those were?

Mr MERCER: I tried but I did not have enough time I am afraid.

Mr DAVID SHOEBRIDGE: It is an extraordinary proposition to leave a folder of documents in front of an investigative journalist and then step away. One would say that is not the world's most professional inquiry that is being run, is it?

Mr MERCER: Well I was quite happy about it. It did not bother me. I just wish I had had more time to be honest. But it did surprise me and it concerned me and it reinforced the feeling I had I guess that they were making great efforts to find out the leak or who the whistleblower was and I thought by that stage that should have been redundant.

Mr DAVID SHOEBRIDGE: Given that you had told them?

Mr MERCER: Yes, I told them very early on in the time I was in the witness box who my source was and how I had obtained them.

Mr DAVID SHOEBRIDGE: What do you make of the fact that Professional Standards Command, which as I said is really the inheritor of SCIA that you had been so critical of over a number of years or a number of articles in the *Sydney Morning Herald*, was then tasked with investigating you in relation to your work as a journalist?

Mr MERCER: Well having only just sort of heard about it, it seems to me a wasted effort. I mean the articles raised serious allegations about perjury, perverting the course of justice, Supreme Court judges being lied to and informers perjuring themselves in the witness box. To then seek the details of how I got the documents I did not see that there was much purpose to that, given that this matter had been around for a decade. I suppose one slightly humorous thing is that I did phone a police officer to try to speak to him and I got onto that officer—I was not aware of where he was working at that stage. After I had been speaking to him for a short while he said, "Are you aware where I am working now?" I said, "No" and he said, "I am with Professional Standards." So that was the end of that conversation.

Mr DAVID SHOEBRIDGE: There a number of other points in Strike Force Jooriland that do consider some substantive matters, including potential abuse by SCIA, but the first two terms of reference relate to you as a leaker. I would invite you to read the Ombudsman's letter to the Committee that has been published. You will find it detailed on and from paragraph 83.

Mr MERCER: Okay, I have not seen that.

The Hon. LYNDA VOLTZ: You said that M5 admitted that he had perjured himself and that he had been forced into it by a magistrate. Can you elucidate further on that?

Mr MERCER: That was the gist of it I think—he did not use those actual words. I think he might have said—there was some suggestion that I got either out of the document or from a source that he had said that he felt he had to go an extra step further, but that he had lied and he was sorry about it and Mark Standen and John Dolan told him not to do it again.

The Hon. LYNDA VOLTZ: That may not have been in the document and might have been from a source?

Mr MERCER: That is right.

The Hon. LYNDA VOLTZ: So it might have been the source who told you that Dolan and Standen had told him not to do it?

Mr MERCER: No, that was in the document.

The Hon. LYNDA VOLTZ: That was in the document?

Mr MERCER: That is correct.

The Hon. LYNDA VOLTZ: Sorry, did you have a document or was it from a source that you got this information?

Mr MERCER: I had both. The document was dated 23 August 2000: "M5 admitted his perjury to a senior SCIA officer, Detective Superintendent John Dolan, and to then Assistant Director of Investigations Mark Standen. The documents reveal another SCIA officer, then Detective Inspector Cath Burn, compiled an 'information report' about the matter on September 5 that year." I go on to say that I was unable to determine

whether the magistrate had ever been made aware that somebody had committed perjury to obtain the search warrant or whether that search warrant had been granted or whether the person on whom the search warrant was executed was charged, arrested or sent to jail.

The Hon. LYNDA VOLTZ: Would the document you had have been Cath Burn's information report?

Mr MERCER: There were two: there was the document where M5 talks to Standen and Dolan and there was a separate document: Cath Burn's information report which might have been—I am not sure if it was in an email or not; I cannot remember.

The Hon. ADAM SEARLE: So you had these documents but you no longer have them?

Mr MERCER: That is correct.

The Hon. LYNDA VOLTZ: So it originally came through your source but you actually had it in documents?

Mr MERCER: I had a lot of documents and I spoke to sources about them. So there is the information contained in the document itself and sometimes that was supplemented by information from former police and others.

The Hon. LYNDA VOLTZ: Can you elucidate on how he perjured himself before the magistrate?

Mr MERCER: I think he said—I do not think that was in the document, he just said he had perjured himself—it was words to the effect that the magistrate needed some encouragement or something like that. Now whether that is the actual document or that is something somebody has told me subsequent to me having the document I cannot quite remember.

The Hon. LYNDA VOLTZ: The document was in 2002. Was that when the event happened or was it earlier?

Mr MERCER: No, I just said the date was—

The Hon. LYNDA VOLTZ: September was the information—

Mr MERCER: It was 23 August 2000: M5 admitted his perjury to John Dolan and Mark Standen on 5 September, so 12 days or so later Inspector Cath Burn compiled an information report about the matter.

The Hon. ADAM SEARLE: Was that also in 2001?

Mr MERCER: In 2000, both documents. There is one document: Dolan on stand where he confesses his perjury, 23 August 2000; the second document 5 September 2000, and the second document is the Cath Burn information report.

The Hon. ADAM SEARLE: Do you know whether the Ombudsman has those documents?

Mr MERCER: I am assuming he does. I probably should not assume anything. I do not know is the answer.

The Hon. ADAM SEARLE: It was not among the documents in the lever arch folder that the Ombudsman showed you when you were being examined?

Mr MERCER: No, not that I saw.

The Hon. LYNDA VOLTZ: We went through the documents that you had received before. You received one warrant in 2001 and then—

Mr MERCER: In 2002.

The Hon. LYNDA VOLTZ: In 2002, later on. When did you receive these documents?

Mr MERCER: Which documents?

The Hon. LYNDA VOLTZ: The information report and the statement with Dolan and Standen?

Mr MERCER: They would either have come from the main source or through the mail. I think they came from the main source.

The Hon. LYNDA VOLTZ: In?

Mr MERCER: In 2012.

CHAIR: On page 7 of your submission, about halfway down the page, you talk about the incredulity of the way the Emblems report has been dealt with by the police force. The Committee has heard evidence that the Emblems report was reviewed by senior officers and we have seen unread statements that the report was not worth the paper it was written on. You say in your submission the Emblem report "sounded the alarm bells that something was seriously wrong ..." Then you go on to say, "Mr Scipione to this day says he has never read the Emblems reports. Why not?" How did you come to that conclusion?

Mr MERCER: He says he has never read it. He says that publicly and he says I think—I hope I am not misquoting him—that basically he has not been able to read it because of the secrecy provisions of the Crime Commission. I and many others do not simply understand that because it is a report written by New South Wales police for the New South Wales police hierarchy. It was adopted by senior officers of the New South Wales police at the time. They read it, or presumably read it, when they adopted it.

CHAIR: So without putting words in your mouth, you are saying that it begs credibility for the Commissioner of Police to be saying he is not allowed to read a report that has been prepared by his subordinates for the internal use of the police force?

Mr MERCER: Yes. It is a report by New South Wales police for New South Wales police. Unless there is something that none of us know about I do not understand why he cannot read it.

Mr DAVID SHOEBRIDGE: Last time I checked he was in charge of the New South Wales police?

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: You are an investigative journalist. Is that how you describe yourself? You are a freelance journalist?

Mr MERCER: A freelance journalist, yes.

Mr DAVID SHOEBRIDGE: As a freelance journalist being able to talk with sources confidentially, having them know that they can trust you to have a confidential conversation I assume is essential for you to do your work?

Mr MERCER: Yes, it is. And it gets harder and harder every year particularly when police officers find out that your phone records are obtained and searched, they then perhaps go to police officers and say, "Why were you talking to Neil Mercer?" It may not have had anything to do with Emblems; in fact, it probably did not. It makes it extremely difficult not just for me but for any journalist and it has made communication with senior police extremely difficult. Most senior police will simply not talk to you over the phone in Sydney, they believe that their phones are either bugged by the Police Integrity Commission or the Crime Commission or someone or that a record of the phone call will pop up somewhere and they will be questioned as to why they are talking to a journalist—not just me but any journalist.

Mr DAVID SHOEBRIDGE: At the moment there is a particular target on you as it happens because a strike force has been commenced in relation to you, which I understand has now been taken over by the Ombudsman?

Mr MERCER: Yes. I find that extraordinary.

Mr DAVID SHOEBRIDGE: Perhaps we should have done this in camera for you.

Mr MERCER: I suppose I am a little speechless as to why all these years later, after there has been so much secrecy, so much agitation, it has not gone away. I mean people were angry in 2002 when this first started, they were angry, they were upset, careers have been damaged, careers have been derailed and people have attempted suicide. It is an extraordinary state of affairs. That leaves aside all the allegations about criminal activity, and yet let's find out who the leak is. I mean it is ridiculous.

The Hon. LYNDA VOLTZ: I want to ask you a question about 2002. I can understand people being angry about their names being on the warrant but I cannot find any evidence in 2002 that any of the affidavits were out there in the public domain or that anyone had seen them?

Mr MERCER: Not the affidavits but the warrants.

The Hon. LYNDA VOLTZ: That is right.

Mr MERCER: Yes.

The Hon. LYNDA VOLTZ: So they knew their name was on a warrant?

Mr MERCER: Correct.

The Hon. LYNDA VOLTZ: But they did not know what information supporting that warrant had been brought before the courts?

Mr MERCER: That is correct.

The Hon. LYNDA VOLTZ: It was in 2012 that it appears people got access to the September affidavit?

Mr MERCER: Correct.

The Hon. LYNDA VOLTZ: That is where they are marrying up the names in that affidavit with the September warrant that they have had for 10 years?

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: Of course what triggered the enormous concern with the warrants in 2002 was that they were not just a neutral document; they described a series of offences that the warrants were in relation to, including money laundering, corruption, corruptly receiving a benefit, perverting the course of justice, conspiring to pervert the course of justice and tampering with evidence, and then a whole list of undifferentiated names. Surely you could understand people's anxiety?

Mr MERCER: Yes, absolutely.

The Hon. LYNDA VOLTZ: We have all just said that we could understand why people were angry that their names were on the warrant.

Mr MERCER: They were angry. I mean they did not know and a lot of them knew there was no reason for them to be on a warrant because they had not done anything wrong.

CHAIR: What is your view of where—and I think you are certainly coming to that in your statement—the Ombudsman's inquiry will end up?

Mr MERCER: Given this Committee's hearing that is a very good question because I am not sure where that inquiry can now go, particularly given the evidence I heard most of from Mr Kaldas today. It seems to me the whole problem is secrecy and I think, as I say, the Ombudsman's inquiry was misconceived. Legislation was changed to give him the power to investigate the PIC and the Crime Commission. I do not know why the legislation was not changed to give him some ability to have hearings in public. My view at the time was that it was a complete and utter smother, that it was a continuation of a cover-up. The Ombudsman was not

the appropriate person to do it. The Ombudsman's office does not have the investigators to look at so many complex issues, so many allegations of criminal activity. I thought it was completely the wrong thing to do. I stand by that. I think what this Committee has uncovered so far vindicates that in a way.

We are still here. We are talking about something that happened—we are looking at 1999, 2001. In fact, a lot of this was happening before, in the late nineties. There are similar allegations of falsification of listening device warrants, falsification of telephone interception warrants. It goes back to the late nineties. It has been going on and it has been documented within the NSW Police Force in report after report of strike forces, such as Tumen and Sibutu, and so on, which have all become public. Well, in a sense they have become public in that some of the details of those reports have been published. So we are talking about a systematic thing. We should not be here today. This should have been resolved years and years ago by an inquiry that those aggrieved would at least see to be transparent and fair. There is no way of knowing what the Ombudsman is doing. There is no way of knowing, with all respect to him, whether he is being rigorous. There are clearly allegations he has not tested, which I have written about, including a falsification of evidence in that affidavit.

CHAIR: To go to Mr Kaldas's evidence, and I assume you were here when he was giving it—

Mr MERCER: I heard all but the first five or six minutes.

CHAIR: I was a little surprised, because I did not know up to that stage, but were you surprised to hear that he was only called in in July or August 2014?

Mr MERCER: It was late 2014, I think.

CHAIR: Yes.

Mr MERCER: I was very surprised. I was also surprised that—in the middle of last year I wrote a story or I made some inquiries with Phillip Bradley, John Giorgiutti, both from the Crime Commission, Mr Bradley being in charge and John Giorgiutti being, basically, the 2IC, and also Mal Brammer—none of those people had been called before the Ombudsman and I think that was June last year, and they expressed, or Mr Giorgiutti expressed surprise to me that he had not been called, if only for the Ombudsman to say, "What do you know? Can you help us?"

CHAIR: Were you equally surprised by the evidence of Mr Kaldas this morning that he was questioned almost not at all about the events leading up to Emblems but really the concentration on—

Mr MERCER: I am staggered, to be honest. In his submission, he says that the home of his ex-wife and his children—the telephone, I think he says, in that home was bugged. He says he was not living there and had not lived there for a long time. That, to me, is just scandalous. I do not know how—if that went on for any period of time—that seems to indicate a most serious criminal offence in that, first, they should have known he was not living there, and, secondly, anyone listening to the telephone intercept or the listening device product must have been saying, "Where is Nick Kaldas? We have got his ex-wife and his kids; where is he?"

Mr DAVID SHOEBRIDGE: What is all this evidence about going to school about?

Mr MERCER: Yes, what is in the lunchbox. It is truly scandalous. If that is the case, that we are bugging ex-wives and children, it stinks.

The Hon. ADAM SEARLE: It is almost like harassment, is it not?

Mr MERCER: Well, what were they looking for—some dirt?

CHAIR: What he was also saying was, if you recall—and I do not want to put words in your mouth—that he thought that the preoccupation seemed to be in finding the whistleblower. Do you agree with that proposition?

Mr DAVID SHOEBRIDGE: From your own experience in the witness box. We are not asking you to double guess what Mr Kaldas—

CHAIR: He was present when Mr Kaldas was giving evidence.

Mr MERCER: Despite what the Ombudsman says in his document that the search for the leak has only occupied a small amount of time, it seems to be that on Mr Kaldas's evidence, on my evidence, and on the submission of Mr Small that he spent an inordinate amount of time trying to find out something, which I do not believe he should have been tasked with in the first place. The matter has gone on too long. Too many people are angry and are now completely cynical about the way this matter has been handled. It should never have been a term of reference, in my view. There are serious substantive issues about criminal offences being committed over a long period of time and that should have been the focus, not a whistleblower who 10 years after obtaining documents—I am assuming it is 10 years, or whatever—decides, as a last resort, to give them to a journalist.

Mr DAVID SHOEBRIDGE: It is really that last resort; that is the flavour of the evidence.

Mr MERCER: Yes.

Mr DAVID SHOEBRIDGE: They have been stymied in their complaints internally, they have been stymied in their complaints to the Police Integrity Commission [PIC], they have been stymied in their complaints to the Ombudsman, they have been stymied in their complaints to the Government and then, as a matter of desperation, whistleblowers turn to journalists and then that becomes the focus of the Ombudsman's inquiry. It is an extraordinary situation.

Mr MERCER: I agree. I just think it is wrong. I think it is a waste of taxpayers' money. It has been going on since the turn of the century, and it needs to be finalised, as Mr Kaldas said, one way or the other, and I do not think people are looking for much. They just want some fairness and some transparency and maybe an apology.

Mr DAVID SHOEBRIDGE: Talking about transparency, I read the beginning or the end or both of your interrogation by the Ombudsman. Were there any directions given to you about what you could or could not say?

Mr MERCER: Yes, I was certainly told in no uncertain terms that I was not to discuss it with anybody and under threat of jail.

Mr DAVID SHOEBRIDGE: Were you told by the Ombudsman or anybody else that if you felt like you needed some leniency or some ability to speak to anybody that you could come and approach them and they would vary the order?

Mr MERCER: Not that I recall.

Mr DAVID SHOEBRIDGE: Were you given that impression in any way?

Mr MERCER: No, no. I was surprised when I read that in the Ombudsman's letter, I think, to the Committee. I am not sure. When I read that paragraph I was very surprised because I do not recall anything like that being raised with me. I think I said in my submission I did not take that opportunity because I was simply not aware that that opportunity existed and was not advised.

Mr DAVID SHOEBRIDGE: As a freelance journalist, having been given that direction by the Ombudsman, what impact does that have on the work that you can do?

Mr MERCER: It makes it extremely difficult for me to do my job. It makes it more difficult for me to talk to people because naturally people are going to say, "Have you been called?" It puts you in a very difficult position to pursue this matter.

Mr DAVID SHOEBRIDGE: Absent parliamentary privilege, if you get asked those questions you arguably cannot say anything?

Mr MERCER: Well, you cannot say anything, which immediately tells people that you have been called, probably. It puts any journalist in a difficult position and it seems to me, and I do not know how many journalists have been called, I do not know how many journalists' phone records have been examined, and I do not know whether any journalists' phones have been tapped, but it puts all journalists in a very difficult position when you are trying to pursue an investigation. It muzzles you to a large extent.

CHAIR: Looking into the future, really what you are saying is that you are questioning issues around who is going to police the police. What form of institution would you see taking over if we were going to start with a clean slate?

Mr MERCER: It is not something I have examined in detail, but I do agree with Mr Kaldas that the Police Integrity Commission seems starved of serious work. It is pursuing certain matters at this moment, which I have written about, involving Mr Kaldas and Mr Scipione that seem to me, in the scheme of life, to be trivial. I think there needs to be a re-examination of the way it works. I do not know enough about international models or anything like that, but what I would say at the moment, there are no police officers, in my view, who would have any confidence in the PIC. The PIC has been heavily criticised by its own watchdog. When that criticism has occurred, the PIC has simply shrugged it off. It is like a referee blowing the whistle and the PIC just plays on as if nothing has happened. I think there needs to be an examination of the way it works and I also agree with Mr Kaldas. I think times have changed since the 1990s when there was a lot more corruption and when police officers were loath, or less willing, to dob in a colleague.

The Hon. LYNDA VOLTZ: Going back to the affidavits, you have read the September affidavit, obviously; it was in your possession?

Mr MERCER: Correct.

The Hon. LYNDA VOLTZ: How it got in the public domain—once it is out there, it is out there—it is really irrelevant what the Ombudsman thinks. If you were in the police force, would you want that kind of information in the public domain?

Mr MERCER: Well, if I—

The Hon. LYNDA VOLTZ: Taking into consideration what is in that document?

Mr MERCER: Generally people do not want that in the public domain. As I said, the only reason it came into the public domain was that people believed criminal offences had been committed and that nothing was done and that the only way to get anything done was to—

The Hon. LYNDA VOLTZ: Sorry, when you say "criminal offences"—

Mr MERCER: Yes, perjury, perverting the course of justice. In that affidavit there is a paragraph that alludes to a former detective by the name of John Bourke which, on my investigation, is a complete fabrication.

The Hon. LYNDA VOLTZ: I assume we can ask Mr Small those questions when he comes in.

Mr MERCER: I spoke to Mr Bourke and he emailed me, saying it is a complete fabrication. That is just one paragraph. He says the events—Mr Bourke, the retired police officer—described in that paragraph in the affidavit never happened.

The Hon. LYNDA VOLTZ: Let me put it to you this way—no, I will not. Indeed, I am not going to go to the statement. I may have a different view on that point that you raised, but there are 70 pages in that and some of them may be minor issues and some of them may be major issues. Would you want all of those issues raised in that document in the public domain?

Mr MERCER: I think most police officers would normally say no, but I think these are extraordinary circumstances.

The Hon. LYNDA VOLTZ: There are 20 pages of warrants that have been taken out. You could assume that there are affidavits to go with all of those.

Mr MERCER: Well, there should be.

The Hon. LYNDA VOLTZ: There is a huge number of warrants and possibly affidavits that you would ask to be released, if you wanted to get to the bottom of it, that would contain similar information?

Mr MERCER: No, I would have thought that could be done by a judicial inquiry, properly set up. A lot of that material could be examined, as indeed this Committee has examined or seen that affidavit and chosen not to publish it because a lot of people, I believe, still do not know they are in there. I would have thought a judicial inquiry could examine material much as, I suppose, the Independent Commission Against Corruption [ICAC] does, maybe in a private hearing and then make—

The Hon. LYNDA VOLTZ: That is right. I am talking about the public domain; I am not talking about private judicial hearings.

Mr MERCER: Sorry, what is the question?

The Hon. LYNDA VOLTZ: For instance, you have a judicial inquiry. They examine all the affidavits and all the warrants. They come out at the end of the day with a similar finding as Levine.

Mr MERCER: I do not see how they could because he is not—

The Hon. LYNDA VOLTZ: I know you do not see how they could, but if they did, would that satisfy people?

Mr MERCER: It is a hypothetical question. I do not know how I can answer it.

Mr DAVID SHOEBRIDGE: Point of order: That is speculation and inviting the witness to engage in hypotheticals. I do not think that is—

The Hon. ADAM SEARLE: Further to the point of order—

The Hon. TREVOR KHAN: I would probably agree but, David, you raising that point I think is spectacular.

The Hon. NIALL BLAIR: Yes. Hello, kettle.

The Hon. ADAM SEARLE: There is clearly no point of order because the witness has answered the question and he says he cannot answer. The matter is at an end.

The Hon. TREVOR KHAN: Yes.

CHAIR: Order! I think that is right.

Mr DAVID SHOEBRIDGE: You are probably right.

CHAIR: You are right.

The Hon. ADAM SEARLE: I think I am.

CHAIR: Thank you very much for coming, Mr Mercer. I do not think you took any questions on notice.

The Hon. LYNDA VOLTZ: Yes, to provide the documents.

CHAIR: I beg your pardon.

The Hon. ADAM SEARLE: One last thing, Mr Chair. There was the issue of the summons and any documentation Mr Mercer had received from the Ombudsman in connection with his examination. If you still have them, sir, would you provide them to the Committee?

Mr MERCER: I have some. I have a couple of pages of the summons, and I do not know what I have done with it.

The Hon. ADAM SEARLE: That is okay. It is whatever you have got.

The Hon. LYNDIA VOLTZ: You can take it on notice and provide it to us.

CHAIR: The Committee has resolved that answers to questions taken on notice be returned within five calendar days following the receipt of the transcript. The secretariat will contact you in relation to questions you have taken on notice. All requests will, rest assured, prompt your memory.

Mr MERCER: Thank you.

CHAIR: Thank you very much.

(The witness withdrew)

DAVID LEVINE, Inspector of the Police Integrity Commission, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. Do you wish to make a short opening statement?

Mr LEVINE: No.

Mr DAVID SHOEBRIDGE: A series of witnesses have spoken about the listening device warrants that were issued by the Supreme Court in relation to Operation Mascot I and Operation Mascot II. For the benefit of the Committee and from your experience as a Supreme Court judge, can you describe the usual process when issuing a listening device warrant—was it in chambers, was it in open court and who attended?

Mr LEVINE: First, Mr Shoebridge, it would assist me if my name were pronounced correctly. It is "Levine". If you remember the words "ravine" and "latrine", it would help. Secondly, you are asking me to go back 10 years. A listening device warrant was applied for to a duty judge in the Common Law Division. The application was dealt with by the duty judge in his or her chambers. The documentation was, to my recollection, made up of an application, an affidavit in support of the application, and the warrant. The persons present were usually a solicitor, or whichever entity was ultimately making the application, the deponent of the affidavit and myself. In my experience, I have no recollection of an application being declined by me. Upon its approval, the documents would be signed and sealed by me—that is, the court seal would be put on them—and copies would be given to the applicant and retained by the court.

Mr DAVID SHOEBRIDGE: Was any oral evidence given?

Mr LEVINE: No oral sworn evidence was given. However, if I had any questions, I would ask them and receive answers.

Mr DAVID SHOEBRIDGE: Surely at a minimum you would check to see that the names on the listening device warrant were at least mentioned in the affidavit. Would we expect that bare minimum of judges of the Supreme Court?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: You would have heard about, would you not, and you have probably seen a listening device warrant which was issued in September 2000 containing 114 names and which was approved by a justice of the Supreme Court on the basis of an affidavit that mentioned only 66 people?

Mr LEVINE: I have seen both, yes.

Mr DAVID SHOEBRIDGE: How would you describe that action by the Supreme Court in issuing that listening device warrant?

Mr LEVINE: I decline to answer that in any way that would reflect on the propriety and integrity of Justice Bell.

Mr DAVID SHOEBRIDGE: Why? I am asking you to give your professional opinion as a judge. You are here as a witness. Why will you not answer the question?

Mr LEVINE: Because you have not permitted me to finish my answer. If you are inviting me to be critical of the judge who issued the warrant, I decline to do so because I have no basis for doing so.

Mr DAVID SHOEBRIDGE: I am inviting you to provide your professional evidence on the outcome of issuing a listening device warrant.

The Hon. TREVOR KHAN: Point of order: His Honour has been invited to give an answer and he has given it. I suggest that the matter is at an end.

CHAIR: Order! It is not at an end. There is no point of order.

Mr DAVID SHOEBRIDGE: I asked you earlier if we could expect as a bare minimum that a judge of the Supreme Court would at least check that the names on the listening device warrant are as a minimum at least referenced in the affidavit material.

Mr LEVINE: I agree with that. That was, to my recollection, my practice.

Mr DAVID SHOEBRIDGE: Then can you possibly explain how a judge of the Supreme Court—I am not interested in your characterisation of the individual but in the outcome from the Supreme Court—issued a listening device warrant with 114 names on it when the supporting material referenced only 66 of them? I want to know how that came to be. Can you assist?

Mr LEVINE: You have asked me three questions and I will answer the first. The answer is no.

Mr DAVID SHOEBRIDGE: You gave evidence in relation to your methodology when you were a duty judge to a committee dealing with the Police Integrity Commission and the Crime Commission. Do you remember giving that evidence?

Mr LEVINE: Perhaps you could remind me of the occasion. I have done it more than once.

Mr DAVID SHOEBRIDGE: The evidence was given on 22 February 2013. You were asked by the Chair about—

Mr LEVINE: This was about Donald Duck.

Mr DAVID SHOEBRIDGE: —what scrutiny or testing you did. To assist you I will read your answer.

The Hon. ADAM SEARLE: Perhaps the witness can be provided with a copy of the evidence.

Mr DAVID SHOEBRIDGE: The question is at the bottom of page 5 and your answers are on page 6 down to about point 7 on that page.

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: You were asked to explain. You replied:

I, like any other judge, developed an idiosyncratic methodology for reading this material...

We are talking about the material supporting a listening device warrant. You then go on to say:

... which at times would come in inundating waves one after the other. I do not want to diminish the process, but I said, "I am going to look to see if there is someone named in this warrant who is named as 'M. Mouse' or 'D. Duck'"—I did that.

How can this Committee, or anyone, have confidence in that kind of assessment process? You are looking for Mickey Mouse or Donald Duck.

Mr LEVINE: Well, if you are going to focus on that answer, I would ask you to focus also on the context surrounding it. I would advance the proposition for myself that there is no rational foundation for you to raise the issue of confidence at all.

Mr DAVID SHOEBRIDGE: Did you ever find Mickey Mouse or Donald Duck on any of the supporting material?

Mr LEVINE: No.

Mr DAVID SHOEBRIDGE: Did you ever refuse a warrant?

Mr LEVINE: I have already said that I have no recollection of ever refusing a warrant.

Mr DAVID SHOEBRIDGE: What other checks and balances did you apply as a Supreme Court judge to ensure that the listening device warrants that were authorised by your court were rigorous and complied with the law?

Mr LEVINE: I complied with what I recall to have been set out in section 16, I think it was, of the then Listening Devices Act.

Mr DAVID SHOEBRIDGE: You said that these applications came in inundating waves while you were a duty judge. Do you stand by that?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Could we say that it would be highly likely that you would have been at some point the duty judge who was signing off on one of the warrants that came out of Task Force Mascot, Mascot II or Florida?

Mr LEVINE: That is entirely possible.

Mr DAVID SHOEBRIDGE: You were asked in your capacity as the part-time Inspector of the Police Integrity Commission to review the Strike Force Emblems report. Is that correct?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Did you ever disclose at the time that you were very likely one of the judges who had been authorising the very warrants that were under investigation?

Mr LEVINE: Are you asking me whether I disclosed a fact that I in fact was, or the likelihood or possibility that I could have been?

Mr DAVID SHOEBRIDGE: I am asking you either, Mr Levine.

Mr LEVINE: The answer is no, I did not.

Mr DAVID SHOEBRIDGE: Do you not realise that there is a significant at least apprehension of a conflict of interest when you are likely to be one of the judges who has been approving the very warrants whose integrity are under question in the Strike Force Emblems report?

Mr LEVINE: I do not agree with that proposition at all.

The Hon. ADAM SEARLE: Which part do you not agree with?

Mr LEVINE: The likelihood of conflict of interest, because it is founded upon my having either direct knowledge or actual recollection of having signed what would have been the renewal of a warrant, which I did not have and do not have. Further now, my present recollection is that a case went to the Court of Criminal Appeal and objection was taken to a judge sitting on that bench because the judge had either some months or some years before issued a listening device warrant in connection with the appellant's case. To my recollection, the court declined to have the judge disqualify himself. That is my present knowledge. At the time I was considering the Emblems report it never occurred to me to make any disclosure about the fact or the possibility. I simply did not know and had no way of finding out.

Mr DAVID SHOEBRIDGE: You said that these came in inundating waves.

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: You must have known that there was a very real likelihood that during your time as a duty judge you had approved warrants from the very team that was under investigation and you must have known that the integrity of the process for the application of the warrants was at the core of Strike Force Emblems.

The Hon. LYNDA VOLTZ: Point of order: Mr Levine has already stated that he does not recall ever having signed a warrant for this. We have a list of warrants that have been issued. If the member would like to point out that there is some contradiction in his statement, one of the annexures does have the list of judges that have issued warrants. It is unfair to pursue Mr Levine when he has already stated he cannot recall or does not have any recollection of ever signing a warrant in this matter.

The Hon. TREVOR KHAN: To the point of order: If the question is going to be put one question should be put at a time as opposed to a staccato approach of multiple questions being rolled into one.

CHAIR: Order! The member will ask one question at a time.

Mr DAVID SHOEBRIDGE: Mr Levine, you must have known that it was not just the substance of an individual warrant but it was the integrity of the process that was under investigation by Strike Force Emblems, which I put to you makes the apprehension of bias in you having been involved in that process a very real matter.

Mr LEVINE: I do not understand what you are talking about when you talk about the integrity of the process involved in the operation. My task was not concerned with any operation; it was concerned with the examination of an internal police report about an operation. I was not involved in any operation.

The Hon. ADAM SEARLE: I want to ask you about your review of the Strike Force Emblems report and the evidence you gave to the parliamentary oversight committee on 22 February. I think you have a copy of the transcript there.

Mr LEVINE: Yes.

The Hon. ADAM SEARLE: At the bottom of page 4 and the top of page 5 you and I have an exchange where we discuss that very issue. When you agreed to the request from Minister Gallacher to review the Strike Force Emblems report can you tell us did you have regard only to the report itself? That is, was your judgement that you gave based only on the reading of the report document?

Mr LEVINE: Forgive me, I have just got to think.

The Hon. ADAM SEARLE: It is not a trick question.

Mr LEVINE: Yes. To my recollection, the answer would be yes and I reported on the document said to constitute the Emblems report.

The Hon. ADAM SEARLE: We have also received a document that has been identified to the Committee as at least an advanced version or perhaps even the final version of the Strike Force Emblems report. It is a document of some 43 pages. You describe the document or the report as abstruse and unsatisfactory, so much so that it is not in the public interest for its findings or recommendations to be made public. I have had the opportunity of reading the document that we have and I must say the description you gave the parliamentary oversight committee does not resonate with me when I read the document myself. Can you explain to us why you found the report unsatisfactory if you can recall now why that was the case?

Mr LEVINE: Perhaps I could be assisted by this Committee to know that we are all talking about the same documents.

The Hon. ADAM SEARLE: I am happy to show the witness a copy but I am conscious of the fact that we have not published it. Is there any objection to me showing it to this witness?

CHAIR: No.

Mr LEVINE: Are you about to show me what I wrote or are you about to show me the report I commented on?

The Hon. ADAM SEARLE: I am about to show you what I think is the report you commented on. I am happy to provide you a copy of your letter.

The Hon. LYNDA VOLTZ: Would you like a copy of your letter as well, Mr Levine?

Mr LEVINE: Thank you, yes.

The Hon. ADAM SEARLE: However, the extract of your letter is on page 5 of the extract of the transcript that was been provided to you already. For example, at page 38 of the document I have just handed to you there seems to be a series of recommendations. Whether you agree with them or not, they certainly seem to be relatively clear as to what they mean. I guess I am just trying to work out what it was about them that you found to be abstruse or unsatisfactory such that it would not be in the public interest. Is it their subject matter, for example?

Mr LEVINE: The recommendations?

The Hon. ADAM SEARLE: Yes. Well, you make it clear in your letter—

The Hon. TREVOR KHAN: Just before we get there, Mr Levine asked to be able to see the document to see that we are working off the same hymn sheet.

The Hon. ADAM SEARLE: Sure, but then he asked me a question.

Mr LEVINE: Yes. I will just find the recommendations.

The Hon. ADAM SEARLE: The findings are on pages 36 and 37 and the recommendations are on page 38.

Mr LEVINE: Your question is why I found it to be abstruse and unsatisfactory?

The Hon. ADAM SEARLE: That is right.

Mr LEVINE: The whole report or the recommendations or the findings? The whole report I would still say is abstruse and unsatisfactory.

The Hon. ADAM SEARLE: In your letter you were very clear that it was the findings and the recommendations that should not be made public. I am just trying to understand. I know there is a certain style about the document but if you have familiarity with police internal documents it seems from my recollection to have the same style and flavour. Certainly, the recommendations and the findings are understandable and they are relatively clear. Whether you agree with them or not, I just do not understand what is abstruse or unsatisfactory. What do you mean by unsatisfactory?

Mr LEVINE: Because to my recollection I could find on reading the material that I had, there might have been some additional papers—I had great difficulty in understanding this document as a whole. I had difficulty in correlating its contents with its findings and recommendations. I was concerned about the disclosure of the identity of an informant. That comes back to me quite clearly. In one part, whereas pains had been taken by the author to keep that identity secret—can I give you an example? It is coming back to me. Go to page 30 under findings, "1. The conclusions and findings reached by Strike Force Emblems have been"—

The Hon. LYNDA VOLTZ: Do not quote it. We will just read it, Mr Levine.

Mr LEVINE: That is why I asked.

The Hon. LYNDA VOLTZ: It is not in the public domain.

CHAIR: You can talk about them to us because we have copies but you cannot read them on to the public record because it is not a public document.

Mr LEVINE: If you read number one.

The Hon. ADAM SEARLE: This is on page 36?

Mr LEVINE: Yes, it is a finding.

Mr DAVID SHOEBRIDGE: What is your concern with finding number one?

Mr LEVINE: It is not a finding.

Mr DAVID SHOEBRIDGE: Well, it is a statement but how does that in any way affect the balance of the report, other than you criticise it should not be under the heading "Findings"?

The Hon. ADAM SEARLE: It is a stylistic criticism surely.

Mr LEVINE: No, not all. It is a criticism of profound substance and gave rise to the greatest reservations in me as to the rational integrity.

CHAIR: I, like you, coming to read this Emblems report found it stylistically difficult. I found a lot of references in there opaque to me simply because I did not have the background knowledge, skill or expertise in policing. To what degree did the Government give you help or provide documents to try to work your way through this process?

Mr LEVINE: I cannot think of anything additional to the provision to me of this report and some additional documents which were appended to it.

CHAIR: You were given this report—

Mr LEVINE: I think I got more than this.

CHAIR: Yes, but basically that.

Mr LEVINE: I did not seek any help. I was not troubled by the fact that I had not had a career in the police force or service. I was asked by the Minister to advise on three or four matters.

Mr DAVID SHOEBRIDGE: What were the three or four matters?

Mr LEVINE: If you excuse me I can find his letter.

Mr DAVID SHOEBRIDGE: That would be beneficial.

Mr LEVINE: You do not have it?

The Hon. LYNDA VOLTZ: No, we do not have it.

Mr LEVINE: Have you asked for it?

The Hon. LYNDA VOLTZ: We were going to ask you if you had a copy.

Mr DAVID SHOEBRIDGE: To date, our requests for information or assistance from the Government have not been fruitfully addressed.

Mr LEVINE: That does not concern me, Mr Shoebridge.

CHAIR: Could you table that document?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: You also got a letter from the Premier.

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Could you provide that as well?

Mr LEVINE: Yes. The letter from the Hon. Michael Gallacher is dated 11 May 2012 and that from the Premier is dated 25 May 2012.

Documents tabled.

CHAIR: Did at any stage the Government suggest to you or did you ask for the opportunity to talk to any of the authors of the Emblems report?

Mr LEVINE: No.

The Hon. ADAM SEARLE: Did you seek to do so yourself?

Mr LEVINE: No.

The Hon. ADAM SEARLE: The report, at least on my reading, sets out the information it relies on. It sets out what it understands to be the limitations of that information and it sets out what it says are its findings. I am certainly not disclosing anything that is confidential or has not been published, but the central allegation of the report is that Operation Mascot was attended to by illegally obtained evidence of criminality or, at the very least, improper administration. Those are very serious allegations which have impacted a number of serving and past officers as well as other members of the public. Should not that report making those findings, at least in some kind of version that is edited, withhold the names of informants or other persons whose identity should not be released? Should not those restrictions be made public so that the truth of these matters could be got to?

Mr LEVINE: Is that a statement or a question?

The Hon. ADAM SEARLE: It is a question. There is a central allegation in the report.

Mr LEVINE: Where is it? Could you remind me where it is?

The Hon. ADAM SEARLE: It is point 6 on that page.

Mr LEVINE: Which page?

The Hon. ADAM SEARLE: Page 36. That is the distillation of much of what is discussed in the body of the document.

Mr LEVINE: Yes, and your question is, now that I have read that again?

The Hon. ADAM SEARLE: My question is: These are very serious allegations. Should they not be brought to light and properly investigated so that the truth or otherwise of those allegations are got to the bottom of?

Mr LEVINE: If they could be distilled into precise allegations as opposed to an expression of opinion as to there being an overwhelming inference and made clear almost to the point of an indictment and the evidence in support of it identified then I would agree. But, based on paragraph 6, I would not.

The Hon. ADAM SEARLE: Paragraph 6 is the distillation of a lot of discussion in that document.

Mr LEVINE: No, I do not agree with that. I did not understand paragraph 6 in relation to the whole of the document.

The Hon. ADAM SEARLE: You say, and I am quoting now from your letter to the Minister, which is extracted at page 5 of the transcript, that the findings and recommendations of the Emblems report, on your reading of accompanying internal police communications, do not enjoy support or confidence among police commentators of high rank. That suggests that as well as the Emblems report you had access to what you describe as internal police communications.

Mr LEVINE: Yes.

The Hon. ADAM SEARLE: What communications did you have access to?

Mr LEVINE: There were documents attached, and I did not know whether they formed part of the Emblems report or not, from other officers, to my recollection critical of the recommendations, findings, of the report.

The Hon. ADAM SEARLE: We have received evidence that that report went from its authors all the way through the chain of command in the NSW Police Force to the very top without criticism.

Mr DAVID SHOEBRIDGE: Indeed, with endorsement.

The Hon. ADAM SEARLE: You are now saying, or you have said in this, that you had access to other police documents that are critical. Are you saying you do not know where those documents came from, they were just provided to you by the Government?

Mr LEVINE: They were provided to me with the report.

Mr DAVID SHOEBRIDGE: But you say that they were provided in a way that you do not know whether or not they formed part of the report?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Do you know who authored those documents?

Mr LEVINE: No. Would you excuse me? By saying no, that means now, at this point of time, I do not know who the authors were.

The Hon. ADAM SEARLE: At the time, the documents had the names of the authors on them.

Mr LEVINE: Yes, the documents identified them, and that is why I think I referred to them as senior police officers.

The Hon. ADAM SEARLE: How senior? Are we talking superintendents? Are we talking commissioner?

Mr LEVINE: I cannot remember.

The Hon. ADAM SEARLE: Deputy commissioners? Assistant commissioners?

Mr LEVINE: I would have remembered had it been the commissioner.

Mr DAVID SHOEBRIDGE: What about a deputy commissioner?

Mr LEVINE: It could well be.

Mr DAVID SHOEBRIDGE: What about Deputy Commissioner Burn?

Mr LEVINE: No.

Mr DAVID SHOEBRIDGE: No you cannot remember or no it was not?

Mr LEVINE: I cannot remember.

Mr DAVID SHOEBRIDGE: Could I ask you to take that question on notice? Could you check your records and check your memory and provide the Committee with an answer as to the content of the documents and the authors of the documents?

The Hon. ADAM SEARLE: You went on to say that you understand that the difficulties with the affidavit giving rise to the listening devices warrant could, and I quote your words, "understandably give rise to concern". But we have received evidence from people who were subject to those warrants who have given evidence about their distress and the devastation that they feel has been visited upon them and their careers as a

result of this Operation Mascot. It goes a bit beyond mere concern, do you not think, and there is a significant issue of public interest here?

Mr LEVINE: I do not know what evidence you have received. I was looking at a document that expressed my view of that matter in the way I did and, as a quote from what you say, it has turned out to have been a fairly accurate forecast. I am not saying I am surprised or nobody should have been upset or anything.

The Hon. ADAM SEARLE: You just think it should have continued to be kept secret.

Mr LEVINE: There is a difference between keeping something secret, continuing to keep something secret and there being grounds for not making it public, to my mind.

The Hon. ADAM SEARLE: Not making it public is keeping it secret, surely.

Mr LEVINE: It has been kept from the public.

Mr DAVID SHOEBRIDGE: What is the difference between keeping something secret and keeping it from the public? Is there some third class that you are suggesting?

Mr LEVINE: Yes. It might depend upon the level of distribution of the document or documents otherwise than to the public. I think I distributed my report to at least four people.

Mr DAVID SHOEBRIDGE: You were the Inspector and you still are the Inspector of the Police Integrity Commission?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: It is a part-time job?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Do you have any resource assistance in that?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: At the time you wrote your report what resource assistance did you have?

Mr LEVINE: I cannot remember whether it was the one or two people I now have.

Mr DAVID SHOEBRIDGE: Is that secretarial assistance?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: No investigators or the like?

Mr LEVINE: No.

Mr DAVID SHOEBRIDGE: Did you know at the time that you wrote your critical report on Strike Force Emblems that there were some 30 boxes of material relating to Strike Force Emblems and, indeed, there were about 20,000 pages of material contained on computer disks?

Mr LEVINE: I was inundated at some point with material of that volume.

Mr DAVID SHOEBRIDGE: Did you read it?

Mr LEVINE: No.

The Hon. NIALL BLAIR: Your Honour, can I just take you back to a concern you raised earlier about the report itself where you were describing the fact that there was an attempt to keep informants' details private

within the report? You had some concern about that. Can I ask you to turn to page 30 of the report that you have there?

Mr LEVINE: Yes.

The Hon. NIALL BLAIR: The last six points on that page, is that the section that you are referring to that led to those concerns about the validity?

Mr LEVINE: Yes.

The Hon. NIALL BLAIR: Particularly that concern you had in relation to the report?

Mr LEVINE: Yes.

Mr DAVID SHOEBRIDGE: Those concerns could have been met by redacting that section or redacting the names, could they not?

Mr LEVINE: Well, the whole report could have been rewritten—that is my view—before being made public to make it comprehensible.

Mr DAVID SHOEBRIDGE: But that does not answer my question. I would ask you to answer my question.

Mr LEVINE: And that process would not necessarily involve consistency to avoid naming an informant. Yes, you redact it or you rewrite it.

Mr DAVID SHOEBRIDGE: So, yes, your concern could have been met by redacting that. That is your evidence, is it?

Mr LEVINE: Well, I will not agree with that isolated proposition, Mr Shoebridge. The whole report, to my mind then and now, reflects hardly well, if not ill, upon its author, upon the police, and upon the people named in it.

Mr DAVID SHOEBRIDGE: But Mr Levine, you did not get a neutral brief from the police Minister, did you? The police Minister in his letter to you said—it is the third paragraph—"Since becoming"—

The Hon. LYNDA VOLTZ: We have not published it.

Mr DAVID SHOEBRIDGE: This is already extracted in the Ombudsman's evidence. "Since becoming Minister for Police I have reviewed those recommendations and I am of the view that they cannot be released in their current form. Firstly, I am not confident that these recommendations have been concluded. Secondly, I am conscious of the need to ensure that no one person is denied natural justice." That was not a neutral brief. The police Minister had already coloured the issue by telling you that in his brief, did he not?

The Hon. TREVOR KHAN: What—that people should be given natural justice?

Mr DAVID SHOEBRIDGE: No, that he was of the view that they cannot be released in their current form.

Mr LEVINE: Is that a serious question, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: It is.

Mr LEVINE: I reject it and answer it in the negative, and I resent it if you are suggesting that I would be influenced by what the Minister—what you say the Minister—was trying to get me to do, or to influence my thinking.

Mr DAVID SHOEBRIDGE: No. If you would allow me to ask the next question: In addition to the report you have now given evidence that you had a number of documents that were critical of the report provided to you by the Minister. Is that right?

Mr LEVINE: That is right.

Mr DAVID SHOEBRIDGE: So you in fact had the case for the prosecution delivered to you, did you not? You had the report and the criticism of the report, but did you ever think to ask for the case for the defence of the report? Did you speak to the authors or in any way undertake that task?

Mr LEVINE: No. I reject the question as absurd, and the answer to it is no.

Mr DAVID SHOEBRIDGE: In so far as you did not ask for anyone who might have been in a position to defend the report—

Mr LEVINE: No, I did not ask.

Mr DAVID SHOEBRIDGE: —to give you evidence to defend the report. Is that your answer?

Mr LEVINE: I did not ask anyone. The Minister wrote to me, "Here's the report. Should I do A, B, C and D?", and I answered.

Mr DAVID SHOEBRIDGE: No, he did more than that. He delivered the critique of the report and you never sought a defence of the report. That is the truth of the matter, is it not?

Mr LEVINE: Well, standing alone like a pillar in the desert, I suppose yes. That is the truth of the matter but—

The Hon. ADAM SEARLE: You did not seek to speak to anyone about the report.

Mr LEVINE: No.

The Hon. ADAM SEARLE: Its authors or anybody else involved in its preparation to explore some of your concerns?

Mr LEVINE: No.

The Hon. ADAM SEARLE: To give them the opportunity of answering any concerns you might have had about it, for example, before you reached a concluded view.

Mr LEVINE: I did not see that as my task or brief.

The Hon. ADAM SEARLE: On what basis did you carry out your task or brief? What legislative power did you have to do so?

Mr LEVINE: Oh, well, that concerned me. I think there was an issue about that.

The Hon. ADAM SEARLE: In fact I think you agreed with me in the Police Integrity Commission [PIC]-Ombudsman parliamentary committee hearing that you did this task without any legislative authority or protection.

Mr LEVINE: As it turned out.

The Hon. ADAM SEARLE: Was that a proper thing to do, sir?

Mr LEVINE: I was not conscious of it at the time.

The Hon. ADAM SEARLE: You were not conscious, as a former Supreme Court judge—

Mr LEVINE: No.

The Hon. ADAM SEARLE: —that you were being asked to fulfil a function by a Minister of the Crown without any legislative authority or protection?

Mr LEVINE: No. There are a lot of things, as a former Supreme Court judge, I am not conscious of or am conscious of. I do not think that that is relevant. But the issue of whether—

The Hon. ADAM SEARLE: Sorry, sir, I do not mean to interrupt you, but that answer that you have just given, in fairness I just need to explore it with you.

The Hon. NIALL BLAIR: He has not finished the answer.

The Hon. LYNDA VOLTZ: He has not finished it.

The Hon. TREVOR KHAN: Yes.

The Hon. ADAM SEARLE: Well, he has. He said he was not—

The Hon. NIALL BLAIR: He has not finished the answer.

CHAIR: Order!

The Hon. NIALL BLAIR: Point of order: His Honour had not finished the answer. He was prefixing his answer by the fact that—

The Hon. ADAM SEARLE: If my friend could cease being excited, I will give way and allow the witness to continue.

Mr LEVINE: Well, that has successfully impacted on my mind such that I have forgotten the question. What is your question again?

The Hon. ADAM SEARLE: In the transcript of the parliamentary committee meeting of 22 February 2013 there was a discussion about whether or not you had any legislative authority to carry out—

The Hon. TREVOR KHAN: Where is that?

The Hon. ADAM SEARLE: I am just trying to find it.

Mr LEVINE: I remember the issue.

The Hon. ADAM SEARLE: Yes.

Mr LEVINE: I think, if I might be permitted to say so—

The Hon. ADAM SEARLE: It is on page 2 of the transcript, sir.

Mr LEVINE: Is it? Oh. Yes. I am sorry, on page 2. Yes, I remember that, and that is what I was about to, in effect, repeat. I think that the "dropping of the penny" referred to brought about the letter from the Premier, who was my Minister. That is what concerned me—that the police Minister was not my Minister. It was the Premier, and I raised that with someone.

Mr DAVID SHOEBRIDGE: Mr Levine, did you form a view one way or another as to whether or not the recommendations of task force Emblems had been satisfactorily implemented?

Mr LEVINE: I think, if you will permit me to look at my letter, yes I did, and that is in the opening sentence of the letter—page 2 of my letter to the Minister.

Mr DAVID SHOEBRIDGE: The opening sentence on page 2?

Mr LEVINE: No, the second-last paragraph: "To revert to the four matters", et cetera—"First".

Mr DAVID SHOEBRIDGE: "That it cannot be assured that the recommendations have been properly dealt with."

The Hon. NATASHA MACLAREN-JONES: Is this a public document?

CHAIR: Yes, it is.

Mr LEVINE: This one? I recommended that it be made public.

The Hon. ADAM SEARLE: Yes.

Mr LEVINE: I presume.

Mr DAVID SHOEBRIDGE: What did you do to satisfy yourself as to the solidity of your view that the recommendations had been satisfactorily implemented? Whom did you ask?

Mr LEVINE: Nobody.

Mr DAVID SHOEBRIDGE: How did you form your conclusion one way or another that the recommendations made by task force Emblems more than a decade ago had been satisfactorily implemented?

Mr LEVINE: By relying on the material I had—reading it.

Mr DAVID SHOEBRIDGE: What material led you to that conclusion?

Mr LEVINE: The report itself is the principal one and the commentary on it.

Mr DAVID SHOEBRIDGE: How on earth could you possibly know from reading the report as to whether or not the recommendations had been implemented?

The Hon. TREVOR KHAN: No, no. Fairly, clearly he said, "and the commentary on it".

Mr DAVID SHOEBRIDGE: I am asking you about the report. How could you possibly know, from reading the report, whether or not the recommendations contained within it had been satisfactorily implemented?

Mr LEVINE: By bringing to bear my experience in reading reports and bearing in mind that I had to just advise the Minister.

Mr DAVID SHOEBRIDGE: Mr Levine, I have got to say—and I will give you the opportunity to give a further explanation—I cannot possibly see how your answer has any support in logic. Did you want to revisit it?

Mr LEVINE: Do I want to revisit my answer in the light of your observation as to the logic? The answer is no. I stand by what I wrote.

The Hon. ADAM SEARLE: Sir, could I ask you a question about this: We have received a briefing note in our evidence from Cath Burn wherein she sets out as an attachment an extract from what is called a statement of debrief—a list of names who were on the listening devices warrant and a descriptor of why they are there. In many of the cases there is an allegation that the persons the subject of the warrant are suspected to have been involved in or have knowledge of corrupt or criminal conduct by police. But when one turns to the affidavit advanced to the authorising judge for the warrant, while many of those names appear in the affidavit there are no frank allegations in the affidavit to make good those assertions advanced in that memo. That raises in my mind a severe question mark about whether the warrants were validly or even legally obtained. Getting to the bottom of that issue is important. It would be important and in the public interest to get to the truth of this matter that has now been lingering for a decade and a half, would you not agree?

Mr LEVINE: I agree that it is desirable that there be finality, and I have said so. When you talk about the legality of it—the issue of the warrant—if that is seriously to be challenged and tested, the only place it can be done, in my respectful view, is in the Supreme Court and not by a committee of this Parliament.

The Hon. ADAM SEARLE: Okay, but this is an issue that has been running for a long time. We have received some quite sensational material, including this morning, about the allegation that there was this operation by the police and the Crime Commission that was either illegal or improper in a number of ways. It is a controversy that continues. It has not gone away. It now involves at least two, if not all three, of the most senior police in this State and it is having a negative impact on the operation of the police force. Finality is one thing, but just ignoring it and hoping that it goes away appears not to have done the trick in the last decade and a bit. Should we not endeavour to get to the truth of this matter to resolve the controversy rather than just ignore it?

Mr LEVINE: The truth of what matter?

The Hon. ADAM SEARLE: The allegation that this operation was somehow tainted by illegality or impropriety. That is the allegation. Should that not be tested and found to be either true or false? Is it not in the public interest that we resolve that controversy, or that somebody resolves that controversy?

Mr LEVINE: Well, that that controversy is in the public domain compels an affirmative answer generally to your proposition, yes. That is what I have said myself somewhere: that this matter started in the last decade of the last century and that it is still being agitated, not least by two officers who, notwithstanding the apparent controversy are the protagonists or antagonists—two of whom have reached the exalted rank of deputy commissioner in the meantime. I say that probably more as an informed citizen rather than in my role as Inspector. I just find this continuing controversy extraordinary.

The Hon. ADAM SEARLE: Well, sir, I guess it is—

Mr LEVINE: And I agree that if there are issues as to the legality of the conduct of anyone in these prior operations, of which I know nothing, then they should be tested in the appropriate place.

Mr DAVID SHOEBRIDGE: And the focus should be on obtaining an honest answer and a just outcome, should it not?

The Hon. TREVOR KHAN: Obviously an honest answer.

Mr DAVID SHOEBRIDGE: And a just outcome.

Mr LEVINE: After 40 years the obtaining of a just outcome is often more subjective than objective. That is a reality of life. There is a winner and there is a loser, each of whom would have different views as to the justice of the outcome.

Mr DAVID SHOEBRIDGE: In your letter to the police Minister determining to support the referral of the matter to the Ombudsman you make this statement: "This is not a question of the avoidance of public scrutiny but, rather, of the operation of a transcending public interest in the fair and considered protection of the good name of the NSW Police, of those who serve in it and of other members of the community." On what basis do you say that there is this "transcending public interest"?

Mr LEVINE: On what basis do I say that?

Mr DAVID SHOEBRIDGE: Why is there that transcending public interest?

Mr LEVINE: At the very least because I believe it. At the very least I believe that there is a public interest in the fair and considered protection of the good name of the NSW Police Force.

Mr DAVID SHOEBRIDGE: I am not asking you about that. I am asking you why it is a transcending public interest and what you mean by a "transcending public interest".

Mr LEVINE: In determining whether or not the report was to be made public I weighed various factors and the scales tipped in favour of not making it public because at the time of reviewing the report I considered that the public interest in the good name of the police force transcended the interest of the public disclosure of material that I have found to be unsatisfactory within the report and potentially extremely damaging without evidence to the police force generally and the named people in particular. I weighed it and the scales tipped in favour of not releasing it.

The Hon. ADAM SEARLE: But when you read the reports you did not, for example, read the material that underpinned or informed the report. That was not provided to you—for example, the 35 people the investigators claim to have spoken to and the documents they said they had read. Did you have an opportunity afforded to you to review that material to see whether or not the conclusions reached in the report were defensible? You judged it solely on the report itself and the commentary of other police documents you said you have had access to that were critical of it.

Mr LEVINE: I think the best answer I can give to that is to agree with you, with a reservation. I am trying to recall how it came about and when it came about that I was inundated with this material principally from the Commissioner of Police, which I could not read because of its frank state of disorder as far I could see.

CHAIR: At any stage were you personally briefed by the police in relation to this matter?

Mr LEVINE: What is "this matter"?

CHAIR: In relation to your report or in relation to the Emblems report.

Mr LEVINE: No.

CHAIR: So you had no meetings with the police at all.

Mr LEVINE: I have no recollection of meeting with any police officer in connection with my report to the Minister.

Mr DAVID SHOEBRIDGE: How did you come to get this material from the Commissioner of Police? This referral had not come to you from the Commissioner of Police; it had come to you from the police Minister and the Premier. How did you come to have this direct communication with the Commissioner of Police?

The Hon. TREVOR KHAN: That is unfair.

Mr DAVID SHOEBRIDGE: How did you come to have this communication with the Commissioner of Police?

The Hon. TREVOR KHAN: That is unfair. That is not what he said. He said he has ended up with a bucket load of documents. He has not said he has had a communication with the Commissioner of Police.

Mr DAVID SHOEBRIDGE: How did you come to get this material from the Commissioner of Police?

Mr LEVINE: To satisfy both of you, at some point I asked—it is the chronology that I do not have clear in my mind. At some point I asked for material relating to Emblems from the Commissioner of Police, the NSW Crime Commission, Mr Tree, who I think was the chief executive officer of the police department, and I think the Police Integrity Commission itself. I received a telephone call from the Commissioner of Police indicating that he would be pleased to assist and the next thing that happened I was inundated with white boxes of white paper. My present recollection of the chronology is that the decision to refer it to the Ombudsman was made in light of that entity having the resources instead of what had been delivered to me. Notwithstanding that that decision had been made, I still decided that it was appropriate for me to report to the Minister. That is the best I can do.

Mr DAVID SHOEBRIDGE: If you think that that answer can be in any way furthered or clarified after a review of your records on notice, I invite you to do that.

Mr LEVINE: I would be happy to do it to clarify it for my own mind.

The Hon. ADAM SEARLE: I note the time.

CHAIR: We have run out of time. Thank you for your attendance. I note that you have taken some questions on notice. The Committee has resolved that answers to questions taken on notice be returned within

five calendar days following the receipt of the transcript. The secretariat will contact you in relation to the questions you have taken on notice.

(The witness withdrew)

(Luncheon adjournment)

CATHERINE JUDITH BURN, Deputy Commissioner, NSW Police Force, Specialist Operations, sworn and examined:

CHAIR: Welcome to the inquiry. Would you like to make a short opening statement?

Ms BURN: Yes. Thank you for giving me the opportunity to address the Select Committee. As the Committee is aware I have made a submission to the Committee, which is publicly available, and I stand by that submission. I trust in this process, I can set the record straight, on matters which have harmed my reputation over a number of years. I wish to emphasise that I do not have and have not had access to the secret documents relating to Operation Mascot for many years since I left the Special Crime Unit and that the information that I now have is not complete for that reason. I was examined in the Ombudsman's inquiry about a number of those documents but I was not given copies. Having said that, it is clear to me that those who made accusations against me have also not had access to most of those documents and I believe that their accusations have been made out of ignorance from incomplete information. I wish to place the evidence that I can give the Select Committee in context.

On 9 February 1999 the then Minister for Police, Mr Paul Whelan, signed the original Mascot reference. The management committee for that reference comprised Minister Whelan, Commissioner of Police Peter Ryan, Commissioner of the NSW Crime Commission Phillip Bradley, and the chair of the National Crime Authority. According to the NSW Crime Commission annual report for 1998 to 1999 the committee met on 10 occasions during that year. The Mascot reference was conducted by the Special Crime Unit, which comprised members of the Crime Commission and the NSW Police Force. The commander in charge of Special Crime and Internal Affairs, sometimes referred to as SCIA, was Assistant Commissioner Mal Brammer and the commander of the Special Crime Unit was Superintendent John Dolan. Mr Dolan reported to Mr Brammer. Mark Standen was an assistant director of the NSW Crime Commission and was a member also engaged in the reference. I was one of three inspectors in the Special Crime Unit and reported directly to Superintendent Dolan. There were a number of persons involved in the management of the Mascot operation and an operation committee comprising Mr Bradley, Mr Dolan, Mr Standen, sometimes Mr Brammer, myself and others from the Mascot team met on a weekly basis to review operational direction and strategies.

On 9 November 2000 Mr Whelan, the then Minister for Police, signed the Mascot II reference. The applications for listening device warrants by members of the Special Crime Unit to the Supreme Court were made by the investigating police officer deposing an affidavit on advice by the NSW Crime Commission solicitor Mr Neil Owen on most occasions. Other NSW Crime Commission solicitors also provided advice from time to time. The form of the affidavits and the warrants that were then issued by court order were prepared by Mr Owen. The warrant in question: listening device 266, to the best of my recollection authorised the wearing and carrying of listening devices and was not in relation to devices placed in homes or other premises, other than M5, or for intercepting and recording phones.

I deny absolutely that there was any direction by me or as far as I am aware by any of the other participating members of the operation's committee that false affidavits be sworn and presented to the court so that illegal warrants could be issued. If this direction had occurred it would have involved a substantial number of persons within the Special Crime Unit and would amount to a conspiracy of all of those persons to pervert the course of justice. As far as I am aware this simply did not happen. If it is suggested that there has been a cover-up of the activities of the Special Crime Unit in relation to the applications and warrants I deny absolutely that I have done so. I left the Special Crime Unit in 2002 and have been obliged by statute not to disclose information about the activities of that unit since. I have had no control over the investigations and inquiries that have since been conducted but I have fully cooperated with them all. Thank you.

CHAIR: Would you care to table your opening statement.

Ms BURN: I have made some additional notes on it. Would you mind if I tabled it later?

CHAIR: It is not necessary but you can if you wish to.

Mr DAVID SHOEBRIDGE: Ms Burn, you described your role in one of the records of interview that you gave to the task force Emblems team as being a team leader. Do you remember that?

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: Could you describe what your tasks were in that role?

Ms BURN: Yes. As I explained, we worked at the Special Crime Unit at the NSW Crime Commission premises. So as the team leader of Mascot I was at the rank of an inspector. My responsibilities consisted of managing the day-to-day activities particularly of M5 and the staff we had on the Mascot team and reporting clearly to my superior Mr Dolan and associated activities around supervision and management of a team.

Mr DAVID SHOEBRIDGE: The key asset, if I could describe it that way, of Mascot I and II was M5, this undercover operative?

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: The scope of Mascot's inquiries were directed by what M5 brought to initially Mr Standen at the Crime Commission but then eventually to the Mascot inquiries, is that right?

Ms BURN: A very large part of Mascot was about that, yes.

Mr DAVID SHOEBRIDGE: It would be fair to say that M5 had had minimal involvement with Mr Kaldas prior to coming to Mascot?

Ms BURN: From my knowledge of M5 and his involvement it probably was minimal.

Mr DAVID SHOEBRIDGE: Did Mascot use M5 to approach Mr Kaldas?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: With a listening device?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: How many times?

Ms BURN: I can go into detail clearly—I do not know if there are public interest immunity issues here or issues about police methodology that we might need to consider. I am very happy to answer but I am just wondering if that is a consideration.

The Hon. ADAM SEARLE: We are only at this stage asking for how many times, not for any—

CHAIR: We are not asking for how.

Ms BURN: I do not recall how many times but it was probably at least three to four.

Mr DAVID SHOEBRIDGE: What was the rationale for sending your primary asset, who had had minimal prior involvement with Mr Kaldas, repeatedly to him with a listening device on?

Ms BURN: Again, I can broadly answer that in terms of—the Mascot investigation was an investigation about serious allegations of crime and corruption involving serving and former New South Wales police officers. It was extremely serious, the allegations were extremely serious. We had an opportunity with M5 to do something I think was actually unusual for the time and that was to attempt to gain corroboration for allegations that may have been made in the past or may have been made at the time. Corroboration for allegations is important for many reasons, whether it be to further the investigation and identify an offence or even to perhaps refute the allegation. So the context of the operation was that: to obtain corroboration, if there was corroboration to be obtained, through a particular strategy by using M5.

Mr DAVID SHOEBRIDGE: But M5 had never worked with Mr Kaldas. What on earth were you putting those two people together for?

Ms BURN: M5 knew of Mr Kaldas. M5 had some association with Mr Kaldas even though they might not have worked together. It is not unreasonable for people who are police, particularly if you are detectives, to actually go and talk to each other whether they worked with them or not.

Mr DAVID SHOEBRIDGE: So there was no rationale apart from the fact that it was not unusual to send M5 against Mr Kaldas?

Ms BURN: That was not necessarily unusual. Even though they might not have worked together they knew each other, they had spoken to each other and it is not unusual for one detective to go and speak to another.

Mr DAVID SHOEBRIDGE: And to start disclosing to that other about their sordid history just out of the blue? You say there is nothing unusual in that?

Ms BURN: Well I do not know if that is exactly how it happened or what happened but—

Mr DAVID SHOEBRIDGE: We have had evidence to that effect.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Do you want to correct the record?

Ms BURN: I do not know—I have not seen or I do not have a recollection of the conversations that were actually had at the time, and I do not recall the ins and outs of the conversations that M5 would have or may have had with Mr Kaldas. There were particular conversations clearly that they had but police talk to each other about a whole range of matters and when there are things that they might have in common it is understandable that they might talk about those matters.

Mr DAVID SHOEBRIDGE: What did M5 and Mr Kaldas have in common other than they both wore a similar uniform?

Ms BURN: I believe they had in common—they worked in crime squads, they had associates in common, some of the people they knew well were people in common, and in terms of a particular matter there was a commonality in regard to a particular allegation.

Mr DAVID SHOEBRIDGE: You did not get anything the first time you sent M5 against Mr Kaldas so you went back again and again?

Ms BURN: There were definitely a number of approaches, as I say, three to four at least and perhaps even more.

Mr DAVID SHOEBRIDGE: You went again and again and again and again?

Ms BURN: Those conversations can keep continuing. There is not a limit as to how many times that M5 might have gone and spoken to somebody.

Mr DAVID SHOEBRIDGE: You were under the direction of Mr Dolan, is that right?

Ms BURN: That is right.

Mr DAVID SHOEBRIDGE: You knew that Mr Dolan did not like Mr Kaldas? He did not keep that a secret.

Ms BURN: Post 2002 it became more widely known that Mr Dolan and Mr Kaldas did not like each other. At the time I did not know the extent of their dislike.

Mr DAVID SHOEBRIDGE: You knew they did not like each other. That is clearly the case, is it not, Ms Burn? You knew that they did not like each other.

Ms BURN: I do not necessarily think in around 2000 that I had that view in 2000.

Mr DAVID SHOEBRIDGE: What view did you have?

Ms BURN: I do not know if I particularly had a view, but I do not know if I had that view particularly then.

The Hon. ADAM SEARLE: Ms Burn, we have heard evidence this morning from Mr Kaldas.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Not only that he says there was a significant conflict between himself and Mr Dolan—

Ms BURN: Yes.

The Hon. ADAM SEARLE: —but that it was at a very high level and he has questioned, frankly and directly, the propriety of that task force targeting him and officers being involved in that decision-making, given that history of personal antagonism. What do you say to that?

Ms BURN: Look, I—well I did not have any personal antagonism towards him at all, whatsoever. The extent of the antagonism that you are talking about, I do not think I had that knowledge at that time. I did not know of Mr Dolan prior to this. I did not know of the issue that Mr Kaldas spoke about in detail today. I did not know that issue about the conflict. I had heard some bits and pieces, particularly post 2002, but I was not in those circles at that time.

The Hon. ADAM SEARLE: Given that history between Mr Kaldas and Mr Dolan, and I think Mr Brammer, it was not proper, was it, for Mr Dolan and Mr Brammer to be involved in making decisions about targeting persons with whom they were in a personal situation of conflict? That was not proper, was it?

Ms BURN: Well, there are a few points there. One, I do not know about the extent of that relationship amongst those three, and I know Mr Kaldas has given evidence today, but I suggest maybe Mr Dolan and Mr Brammer might help about the rest of it.

The Hon. ADAM SEARLE: I do not think we can find Mr Dolan. Do you know where he is?

Ms BURN: No. In relation to—

Mr DAVID SHOEBRIDGE: Sorry, Ms Burn, accept for the moment that what Mr Kaldas says is right—

The Hon. ADAM SEARLE: Just listen to her answer.

The Hon. NIALL BLAIR: Point of order—

The Hon. ADAM SEARLE: He is giving way.

Ms BURN: The other point I was going to make, sorry, was that doing internal investigations, working on allegations that involve police—your colleagues—is a very difficult task, but it is a necessary task. If we did not have that happening, I do not know what we would do, and it is important that we do it properly and that we have the public's confidence. There is always going to be a degree of conflict in one manner or another because of this. Whether or not you know the person, there is going to be conflict. If you know the person, there is going to be probably more conflict. I was in a position where I knew many of the people who were named and, quite frankly, in every internal investigation you will find police know the people that they are investigating, and there is conflict. To the degree that you are talking about, I do not know the degree of their conflict and what happened about that.

Mr DAVID SHOEBRIDGE: Ms Burn, if you ever had personal antipathy against an officer prior to coming into an investigation, surely you would excuse yourself and say, "I am not the right person to do this. We have history. We have antipathy. I cannot be impartial in my investigation." We would expect that of an officer, would we not?

Ms BURN: I, in the very least, would declare it. That would be the first thing. There might be more, but it would at least be declared.

Mr DAVID SHOEBRIDGE: Did Mr Dolan ever declare anything to you?

Ms BURN: I cannot remember specifically in relation to Mr Kaldas.

Mr DAVID SHOEBRIDGE: Did Mr Brammer ever declare anything to you?

Ms BURN: Yes, he did, at a later time.

Mr DAVID SHOEBRIDGE: What did he—sorry.

Ms BURN: Sorry, I am just trying to remember when. It was, I think, late 2001.

Mr DAVID SHOEBRIDGE: What was the effect of what Mr Brammer said to you in late 2001?

Ms BURN: Well, it was really he was setting out issues between Mr Dolan and Mr Kaldas that were—their history.

Mr DAVID SHOEBRIDGE: Do not be coy, Ms Burn; just say what it was.

Ms BURN: It was about their history.

Mr DAVID SHOEBRIDGE: You do not have to be concerned about setting out the detail of it. Feel free to put it on the record. What was it?

Ms BURN: I do not have a great recollection. It was a document I saw when I was being examined by the Ombudsman. I do not have that document, but I do recall when I looked at that document—but I do not have a great recollection—that he did set out that there was history between them. That is really all I can recall.

Mr DAVID SHOEBRIDGE: In 2001, Mr Brammer set out in a document the personal animosity or a version of the personal animosity between Mr Dolan and Mr Kaldas? Is that what you are saying?

Ms BURN: I would need to take that on notice about the exact date, but I believe it was late 2001 and it was about their history.

Mr DAVID SHOEBRIDGE: It was not a neutral history, was it; it was a history of conflict between them?

Ms BURN: There was conflict.

Mr DAVID SHOEBRIDGE: Was there conflict between Mr Brammer and Mr Kaldas included in that memorandum?

Ms BURN: I cannot recall.

Mr DAVID SHOEBRIDGE: From that point on did Mr Dolan continue to have a role in Mascot, including having a role in relation to any activities regarding Mr Kaldas?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: When did Mr Dolan cease having any of those roles?

Ms BURN: I do not know the exact date, but mid-2001, potentially.

The Hon. ADAM SEARLE: Do you know who it was who made the decision that Mr Kaldas should be the subject of inquiry?

Ms BURN: Initially, as a part of the Mascot operation, there were a series of allegations.

The Hon. ADAM SEARLE: From M5?

Ms BURN: Not necessarily from M5, but there were a series of allegations against numerous police. The management committee and the operational committee—I outlined who they consisted of in my opening statement—made decisions about the operational direction of Mascot and where the opportunities were, depending on where M5's abilities lay, and considered those factors, considered factors about the seriousness of the allegations and other factors and made decisions about who M5 would seek to further investigate through—whether it be listening devices or other.

Mr DAVID SHOEBRIDGE: Did the management committee then make the decision to target Mr Kaldas? Is that what you are saying?

Ms BURN: It is more the operations committee. That committee, we met weekly.

Mr DAVID SHOEBRIDGE: That is you and Brammer and Dolan, and who else?

Ms BURN: Mr Bradley, Mr Standen, most of the Mascot team. So all the operational activities were discussed, what had happened that week, what was intended or planned for the week after and potentially some of the more longer-term strategies.

Mr DAVID SHOEBRIDGE: Mr Kaldas was not one of the original 19 named persons in the original reference, was he?

Ms BURN: I do not recall.

Mr DAVID SHOEBRIDGE: You do not recall that he was, or you do not recall one way or the other?

Ms BURN: I do not recall one way or the other if he was one of the 19.

Mr DAVID SHOEBRIDGE: Would you like to take that on notice?

Ms BURN: I can take that notice. I do not have a document that would assist me in answering that, however.

Mr DAVID SHOEBRIDGE: Was his name in the pot at the beginning of Mascot or did it come in at a later point?

Ms BURN: It was at the beginning.

The Hon. ADAM SEARLE: I think you said it was a decision of the operations committee as to who was to be targeted?

Ms BURN: Yes.

The Hon. ADAM SEARLE: Do you recall who it was who made the proposal that he be targeted?

Ms BURN: Not specifically. There were different opportunities, depending on M5's location, where he was working. For instance, for a period of time he worked at Manly, and for that period of time there were particular officers that he had more contact with. When he moved to work in crime agencies, there were another lot of different officers that he had contact with. So it was more about where it was more likely he would come into contact with them.

The Hon. ADAM SEARLE: It was opportunistic in the sense of who he would intersect with?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: We have received evidence that on 23 August M5 admitted to Standen and Dolan that he had committed perjury. We have also received evidence that on or about 5 September 2000 you ordered a report about that admission.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Do you recall doing that?

Ms BURN: I do not recall doing that but if you have a document, I could review the document.

The Hon. ADAM SEARLE: No, sadly, the journalist who gave the evidence and has written about this no longer has the documents. You have no recollection of that?

Ms BURN: I do not have—I cannot recall now. However—

The Hon. ADAM SEARLE: Does it ring a bell?

Ms BURN: I was examined on this by the Ombudsman, but I do not recall now what was in that document.

The Hon. ADAM SEARLE: Can you recall the matter in relation to which M5 apparently admitted perjury?

Ms BURN: No.

The Hon. ADAM SEARLE: You cannot give us any details about what happened to that particular investigation?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: It would be a significant issue, would it not, if your key asset committed perjury?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Surely if you were going to rely upon that asset to persuade the Supreme Court to give further listening device warrants, you would have an obligation to the court to tell the court that he had previously perjured himself, would you not?

Ms BURN: Potentially.

Mr DAVID SHOEBRIDGE: We have seen affidavit materials from September 2000, which make no mention of M5's perjury, and also from 2001, which make no reference to M5's perjury. How do you explain that?

Ms BURN: I do not have any explanation for that.

Mr DAVID SHOEBRIDGE: Another important part of M5's history was the significant mental illness that he had suffered. Would you say that is important?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: And in your experience as a police officer, if someone has suffered from significant mental illness and is continuing to be on medication and treatment, that is a relevant factor as to whether or not you would accept the veracity of their evidence, is it not, not necessarily disqualifying, but it is relevant?

Ms BURN: It is relevant. It is a relevant factor for a number of things. What are you actually—what is the question in relation to the relevance of that? For listening device affidavits?

Mr DAVID SHOEBRIDGE: It is relevant for whether or not you could wholly rely on the evidence being given by the individual. It is a directly pertinent part of the history.

Ms BURN: I think that is the case. I think you have to consider a number of issues that might impact on the information and evidence that people can give. This is one of the issues in the NSW Police Force we face all the time when people come forward and give police information and they have themselves committed crime, what we then—how would we then manage that. But you are right, it happens all the time and that is a consideration.

Mr DAVID SHOEBRIDGE: I was talking about the history of mental illness and the continuing treatment for it, not the admitted corrupt conduct. Do you understand that was the import of my question, Ms Burn?

Ms BURN: Well, yes, but in answer I am saying yes. That mental health issue is a consideration, yes.

Mr DAVID SHOEBRIDGE: Can you explain how there is no reference to that pertinent history in the affidavits that were presented to the Supreme Court in those ex parte hearings?

Ms BURN: I cannot explain that. However, I think it is important to say two things. One, I have not actually read the affidavit in detail. I was shown—I assume we are talking about the 266—listening device 266?

Mr DAVID SHOEBRIDGE: Correct.

The Hon. ADAM SEARLE: Yes.

Ms BURN: I was shown a copy during the Ombudsman's hearings, but I have not read it—did not read it in absolute detail. The second is critically important. The process for obtaining warrants at the Crime Commission was such, as I mentioned in my opening statement, that the person who was the deponent would put together the information, would speak to the assistant director and the New South Wales Crime Commission solicitor, and they would be responsible for the information that went into that affidavit for that warrant.

Mr DAVID SHOEBRIDGE: It was someone from your team who gave the basic information to the solicitors, was it not?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: You cannot avoid responsibility for that simply because the affidavit was settled by the solicitor.

Ms BURN: I cannot accept responsibility for what was put in that affidavit, what the solicitor then did with it and the form it then took when it was taken to the court. That was not my responsibility.

The Hon. ADAM SEARLE: Did you choose the person who was to be the deponent for listening device warrant No. 266?

Ms BURN: No.

The Hon. ADAM SEARLE: Who did?

Ms BURN: I do not know.

The Hon. ADAM SEARLE: But you were the team leader, were you not? Surely you would have input into that decision, given that it was such an important matter?

Ms BURN: A number of warrants were part of this operation. There were a couple of deponents and it would have been whoever was the investigator at that particular time or whoever had management of that issue at that time. It was not a matter of, "We need an affidavit and a warrant today. You go and do that."

The Hon. ADAM SEARLE: But in relation to warrant No. 266, which is the one we are talking about, you say you have no recollection about its preparation.

Ms BURN: I was not involved in the preparation of that application.

The Hon. ADAM SEARLE: Take us through the process. Who would have approved the preparation of that application to the court for that warrant? Who in your team?

Ms BURN: The investigator.

The Hon. ADAM SEARLE: Who was the investigator?

Ms BURN: On this particular one?

The Hon. ADAM SEARLE: Yes.

The Hon. LYNDA VOLTZ: Would you like a copy of the affidavit?

Ms BURN: Yes, whichever document shows who was the investigator.

The Hon. ADAM SEARLE: I think this affidavit is dated 14 September 2000—nine days after you apparently authored a report about M5's admitted perjury. The affidavit is in support of an application for a warrant that would permit M5 to operate a listening device and to acquire the information.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Is that affidavit familiar to you?

Ms BURN: I have seen this recently.

Mr DAVID SHOEBRIDGE: If you need a minute to look at it, please feel free to do so.

Ms BURN: I do not know what I am looking at. The question was who was the investigator and the answer is on the front.

The Hon. ADAM SEARLE: As team leader would you have had to approve this application being made to the court?

Ms BURN: No.

The Hon. ADAM SEARLE: Who would have approved that?

Ms BURN: The investigator as the deponent through the assistant director—

The Hon. ADAM SEARLE: Who was?

Ms BURN: —Mark Standen, and the solicitor, who was generally Mr Neil Owen, but on this occasion it was—

The Hon. ADAM SEARLE: You do not need to say the name. It has not been published. I am trying to get the process right.

Mr DAVID SHOEBRIDGE: So it was one of your team members who adopted this affidavit?

Ms BURN: Yes.

The Hon. ADAM SEARLE: Before I take you further through that document, you authored a briefing note. The copy I have is dated 13 April 2002. It is about Operation Mascot Florida listening device warrant No. 266. Do you remember doing that briefing note?

Ms BURN: I have heard a lot about that briefing note.

Mr DAVID SHOEBRIDGE: I think there is a copy.

The Hon. ADAM SEARLE: You should have a two-page briefing note, which appears to have your name on the bottom of the second page.

Mr DAVID SHOEBRIDGE: And a signature.

The Hon. ADAM SEARLE: Is that your signature?

Ms BURN: Yes.

The Hon. ADAM SEARLE: Attached to the document is what seems to be an extract from what we have been told is a statement of debrief in relation to a number of targets.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: In relation to most of those targets there are allegations of serious wrongdoing or that they have been involved in or have knowledge of corrupt or criminal conduct by police officers. Do you see that allegation is made in relation to a number of persons?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: When you prepared this briefing note you understood that to be the case; that is, that there were allegations of this kind against these people?

Ms BURN: Yes. At this point, I believe the attachment—

Mr DAVID SHOEBRIDGE: The 12-page attachment.

The Hon. ADAM SEARLE: There is a 12-page attachment.

Mr DAVID SHOEBRIDGE: You should get the unredacted copy.

The Hon. ADAM SEARLE: We redacted the names when they were published so they were not revealed to the public.

Ms BURN: Yes, I did sign this report. Yes, I am aware that there are serious allegations made against people.

The Hon. ADAM SEARLE: Where would your knowledge have come from to sign this document? Would this have been your personal knowledge from the material you were exposed to in relation to Operation Mascot?

Ms BURN: Absolutely, over a number of years. I did not prepare the attachment; it was prepared by another officer who examined the affidavit. I then attached it to my report.

The Hon. ADAM SEARLE: And you adopted it as being true as best you knew at the time?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: By way of example, I refer to page 10 and the third name from the bottom. Serious allegations are made against one officer—Mr Kaldas.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Please put that document to one side and look at the affidavit. This is the affidavit of 14 September; the one that was said to support the application for the warrant.

Ms BURN: Yes.

The Hon. ADAM SEARLE: That same name is mentioned on page 3 of that document; that is the list of names of people to be on the warrant.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Then, on page 4, from paragraph 5 onwards are the facts and grounds upon which the application is based.

Ms BURN: Yes.

The Hon. ADAM SEARLE: And there is a series of details provided in support of the warrant.

Ms BURN: Yes.

The Hon. ADAM SEARLE: In my reading of the document I have not seen any allegations fleshed out or made good against that officer.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Where is the information making good those allegations against that officer that was put before the court to authorise a warrant effectively to spy on him? Where was the information provided to the court to make good those allegations to any degree?

Ms BURN: I think, as this report says, in terms of this particular affidavit, it is not mentioned in the September affidavit next to that name. I do not know how that happened; I did not prepare the affidavit. However, that information clearly is not in the September affidavit.

The Hon. ADAM SEARLE: Just pause there. The Committee has been introduced to the concept of rolling warrants.

Ms BURN: Yes.

The Hon. ADAM SEARLE: That is warrants that are approved and then extended. However, legally each application to the court is a fresh application. The Listening Devices Act does not appear to have the concept rollover warrants; they are just warrants. Do you understand that to be correct?

Ms BURN: Yes.

The Hon. ADAM SEARLE: That means that each time a judge approves a warrant the grounds must be made good. Do you understand that to be the law?

Ms BURN: Yes.

The Hon. ADAM SEARLE: Looking at the application for the warrant and the affidavit in support I see no evidence upon which the court could have approved a warrant against that officer in that no allegations were made out against him to any degree.

Ms BURN: I agree; he is not mentioned in that affidavit; the allegations relating to him are not mentioned there. I cannot explain that. I do not know; I did not prepare that document.

The Hon. ADAM SEARLE: Sure. First, do you agree with the proposition that I am now advancing to you that that is a very serious matter? Your task force, of which you were a member, sought a warrant against one officer asking a judge to approve that warrant with no evidence provided to the court against that officer.

Ms BURN: Yes; in that particular affidavit, yes.

The Hon. ADAM SEARLE: That is disgraceful, is it not?

Ms BURN: It is serious, yes.

The Hon. ADAM SEARLE: It is shocking, is it not?

Ms BURN: It is serious, yes.

The Hon. ADAM SEARLE: It is shocking, is it not?

Ms BURN: Yes.

The Hon. ADAM SEARLE: If that same gap in the evidence occurred in respect of a number of officers against whom the warrants were sought and obtained that would be a very serious miscarriage by your task force, would it not?

Ms BURN: When you say "a gap in evidence"—

Mr DAVID SHOEBRIDGE: A complete absence of.

The Hon. ADAM SEARLE: You are seeking warrants against persons who are targets of investigation—

Ms BURN: Yes.

The Hon. ADAM SEARLE: —against whom there are serious allegations as set out in the extract attached to your briefing note—the statement of debrief.

Ms BURN: Yes.

The Hon. ADAM SEARLE: There are serious allegations against these people. Then you put together an application to spy on them, an affidavit is drawn up by your task force without any evidence against those officers—even hearsay evidence—and your task force approaches the court and invites the court to approve a warrant against people with no evidence and the court approves it. Without some very serious explanation, that seems to me both shocking and disturbing. It is a gross miscarriage of justice. Do you think that is a fair characterisation or is there some other explanation?

Ms BURN: I think there are a couple of issues there. You would probably need to speak to the person who put the affidavit together.

Mr DAVID SHOEBRIDGE: It was a junior officer in your team.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: We are asking you as his senior officer. Do you understand that?

Ms BURN: Absolutely.

Mr DAVID SHOEBRIDGE: And he is responsible for his own affidavit. We are asking about your role as the team leader.

Ms BURN: I did not have a role in affidavits. To answer the question, this went through an assistant director and a solicitor. It was the solicitor's responsibility to check those things off and to make sure those things were happening. There were checks and balances. On my examination of this particular issue, through the Ombudsman's hearings, I was shown a series of documents. One of those documents was an email that I actually sent in March 2000 to the senior sergeants on Operation Mascot reminding them of the importance of affidavits and about their correctness and quality. I was reminding them that it was their responsibility.

Mr DAVID SHOEBRIDGE: You said there were a number of issues in relation to this. Did you finish the list and detail the issues?

The Hon. LYNDA VOLTZ: She has forgotten now.

Ms BURN: Sorry.

The Hon. ADAM SEARLE: Even given what you have said, it still seems that there was the obtaining of warrants against serving officers and others—more than 100 persons—against whom no evidence was provided to the court.

Mr DAVID SHOEBRIDGE: For the better part of 50 of them. Evidence was presented against 66 of the 114 names. You acknowledge that in your own memorandum.

Ms BURN: Yes.

The Hon. ADAM SEARLE: But you do not draw a conclusion in your memorandum that there was a serious problem with the evidence upon which those warrants were based.

Ms BURN: There is an issue; I have not said otherwise. There is an issue that the evidence or the allegations were not mentioned in that affidavit. They might have been, as is said there, mentioned in previous affidavits. However, for whatever reason, they were not mentioned in the September affidavit.

Mr DAVID SHOEBRIDGE: This shows the better part of 50 people being targeted with no evidence, does it not?

Ms BURN: This shows that the evidence was not in the September affidavit.

Mr DAVID SHOEBRIDGE: All the people who you have set out in that annexed list were targets, were they not?

The Hon. NIALL BLAIR: I want to clarify something. Did the deputy commissioner not state earlier that she did not set out that list and that it was prepared by someone else? Is that correct?

Mr DAVID SHOEBRIDGE: Those set out in the attached list?

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: They were all targets.

Ms BURN: That is correct. I did not prepare that document.

Mr DAVID SHOEBRIDGE: But you annexed it and adopted it.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: You said that in answer to Mr Searle's question earlier.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: You annexed it and adopted it.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: All the people set out on that list were targets, were they not?

Ms BURN: The vast majority had allegations against them or they were suspects of potentially being involved in corruption.

Mr DAVID SHOEBRIDGE: But you put allegations against every one of them.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: They were all targets.

Ms BURN: I think from memory—

The Hon. ADAM SEARLE: Without going through each one, can we assume that where allegations of criminality or involvement in or knowledge of criminality is set out that it is fair to say that these people were targets in their own right and that they were not merely to be put on the warrant because they happened to be somewhere and were unintentionally overheard or recorded?

Ms BURN: There are a few questions. There are a couple of questions. Mr Shoebridge, in relation to yours, I am just trying to find—

Mr DAVID SHOEBRIDGE: Do not say the names. You can identify where they are on a page, if you like.

Ms BURN: I cannot find them but from memory there were three whose conversations might have been recorded because they would have been with M5. But for the majority there were allegations. In relation to your question, Mr Searle, about names appearing, I assume you are talking about—is this the King send-off? Is that what you are referring to?

The Hon. ADAM SEARLE: Yes, as you raise that issue. I think Commissioner Ryan on 14 April of that year gave an explanation on *60 Minutes*, I think it was, that the reason why so many names were on this particular warrant was that they were all going to be at a particular social function that we on this Committee understand to be called the King send-off. That is the Jim King event, an event that had happened in fact three months beforehand. The warrants were issued in September. On 30 June I think that event occurred. Do you agree that these people were targets in their own right? They were not just happening to be there?

Ms BURN: Well, there are a number of issues there. In relation to the report, without mentioning names, for instance—

The Hon. LYNDA VOLTZ: If it assists, Ms Burn, there is a letter you wrote to the Inspector of the Police Integrity Commission that names three people. Are they the three you are referring to?

Ms BURN: That is probably that.

The Hon. LYNDA VOLTZ: That is attachment L that we have.

Ms BURN: But in relation to the King send-off matter, the annexure notes that they were the King send-off list and then you mentioned Mr Ryan's comments. I have been examined on this as well by the Ombudsman. It appears, as you will note, that many of these on the King send-off list were on affidavits between April and July but then they were not in the September affidavit. That is noted in that annexure. The King send-off was something that was being planned as early as February that year.

The Hon. ADAM SEARLE: Is there a list of people who were to attend that event, a dedicated list?

Ms BURN: There was.

The Hon. ADAM SEARLE: And your task force had a copy of that list?

Ms BURN: Yes. I have got a copy of it. It was in my diary.

Mr DAVID SHOEBRIDGE: Could you provide us with a copy?

Ms BURN: I can provide you with a copy.

The Hon. ADAM SEARLE: Who compiled that list?

Ms BURN: It was compiled by me in our meetings with M5. So around February there was discussion about planning for the send-off and we made notes of a number of names who M5 potentially thought would be on that invitation list because he was one of the people who was organising it and could invite them.

The Hon. ADAM SEARLE: The information was from M5 and these were people he thought would be there?

Ms BURN: Yes, that could be there and that he could potentially organise to be there, to invite, because he was one of the organisers of it. So that was happening definitely in March. I have got some entries about that happening in March in terms of planning for that send-off. From my recollection, what has happened is those names have gone on an April affidavit in anticipation. The send-off was in June, as has been established. Then many of them came out of the affidavit in July but their names stayed on the warrant.

The Hon. ADAM SEARLE: Because they were still targets?

Ms BURN: Well, many of them were and they still stayed on the warrant because they had initially been put on it because of a send-off, potentially.

Mr DAVID SHOEBRIDGE: But there are more than 30 people in that category.

Ms BURN: Beg your pardon?

Mr DAVID SHOEBRIDGE: There are more than 30 people in that category if you are right.

Ms BURN: At the send-off?

Mr DAVID SHOEBRIDGE: Who were, you say, put on because of the send-off who just remain there. How do you explain such an enormous error?

Ms BURN: I cannot explain it because I did not do the affidavit and I did not do the warrant and I am going from the documentation. But, in addition, they also had allegations.

Mr DAVID SHOEBRIDGE: Just quickly going back to the King send-off list, this was not a list that Inspector King was creating; this was a list that M5 was populating of people who might be going there and people you wanted to entice there in order to record their conversations. Is that right? It was a mixture of the two.

Ms BURN: These were people that M5 had made allegations about or knew of allegations and that he was of the view would be going to the send-off.

Mr DAVID SHOEBRIDGE: I thought you said "or could be invited to"?

Ms BURN: Or could be invited for those same reasons.

Mr DAVID SHOEBRIDGE: That is where I got the concept of enticing them to come so as they could be the subject of a listening device warrant.

Ms BURN: They still had to be associates of Mr King.

The Hon. ADAM SEARLE: A number of people who were on that list have told this inquiry that they do not believe they were ever invited, that they did not attend and would not have attended if invited. If the basis for having so many people on the warrant as advanced by Commissioner Ryan on *60 Minutes* was that they were all going to be at the same function, that explanation does not ring true, does it?

Ms BURN: But that explanation for the September warrant is not accurate anyway.

The Hon. ADAM SEARLE: But that is what is in the application, is it not? Is it not the rationale that they were on the King send-off list?

Mr DAVID SHOEBRIDGE: No, that is the explanation you adopt in the memorandum. That is the explanation you adopt in 2002 in the memorandum, Ms Burn.

The Hon. LYNDA VOLTZ: Point of order—

Ms BURN: In this document?

Mr DAVID SHOEBRIDGE: Yes. You said you adopted the list which includes the summary which includes time after time after time the King send-off.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: And you do not say in your memorandum that it is a completely implausible reason because the King send-off happened three months before the warrant was applied. You adopt it as though it is a reason.

Ms BURN: Yes. In the last paragraph of—has this document been released?

Mr DAVID SHOEBRIDGE: The two-page memorandum has, yes.

Ms BURN: It says that of the total, 100 had explicit adverse mentions by M5 or were reasonably suspected of being involved. Then it goes on to say about 13. They may have had mentions, allegations about them, but they were also a part of the King send-off list, which was a reason they ended up being on a warrant initially and their names still appear on a warrant in September.

Mr DAVID SHOEBRIDGE: The allegations against Mr Kaldas attached to this memorandum—it frankly acknowledges that he was not mentioned in the September affidavit but then it says, and you have adopted the accuracy of this, that: King send-off list; part of Mascot strategy to gather corroborative evidence; suspected to have been involved in or have knowledge of corrupt or criminal conduct by police; mentioned in affidavits covering 19 April 2000 to 16 July 2000; adverse SOD—statement of debrief—involvements. They are very, very serious allegations to make against Mr Kaldas.

Ms BURN: They are very serious allegations to make against anyone.

Mr DAVID SHOEBRIDGE: What basis did you have to include that in a briefing that you gave to your commander?

Ms BURN: I did have a reasonable suspicion. I do have a reasonable belief. I do not believe it is something I should necessarily be saying in public.

CHAIR: Do you want to go in camera?

Ms BURN: I am happy to talk about it.

Mr DAVID SHOEBRIDGE: Before we do that—

Ms BURN: I am happy to talk to the Committee about it.

Mr DAVID SHOEBRIDGE: Did it relate to two matters in about 1990 and 1991, one involving an armed robbery and potentially some firearms and one involving a search and some money?

Ms BURN: That is difficult to answer. It could have—

Mr DAVID SHOEBRIDGE: Well—

CHAIR: Let the witness answer or not.

Ms BURN: It could relate to the first set of circumstances that you mentioned.

Mr DAVID SHOEBRIDGE: Was any other member of the police teams that were involved in this alleged wrongdoing apart from Mr Kaldas targeted by your investigation?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: How many from those operations?

Ms BURN: I cannot recall specifically, but several.

The Hon. ADAM SEARLE: Many of these names that are attached to your memo talking about the King send-off list—the King event had well and truly happened before this.

Ms BURN: Yes.

The Hon. ADAM SEARLE: We have had evidence that many of these people did not attend and were not invited. How could your task force be maintaining that they were on some King send-off list when they did not attend and were not invited?

Ms BURN: At the time of the list there was an honest belief that those people would be attending the send-off.

Mr DAVID SHOEBRIDGE: This is the list that is in your diary. It is your list.

Ms BURN: It is a list. I do not know if this list is the whole list that ends up on—that we are talking about.

The Hon. ADAM SEARLE: Your briefing note is in April 2002?

Ms BURN: Yes.

The Hon. ADAM SEARLE: The King send-off list was 30 June 2000?

Ms BURN: Yes.

The Hon. ADAM SEARLE: Your memo two years later adopts a list of people against whom allegations are made and specifies that a number of them are associated with the King send-off list. It just was not true, was it? A number of these people did not attend and had never been invited.

Ms BURN: I do not recall and I do not know who attended or who did not.

The Hon. ADAM SEARLE: There was no quality control; no-one bothered to check whether the list was ever verified.

Ms BURN: I do not recall at this point who attended the send-off or not or who was invited or whether they responded, et cetera. I cannot recall that.

The Hon. ADAM SEARLE: This list contained old information, at least in part.

Ms BURN: The list?

The Hon. ADAM SEARLE: The list that you have attached to your memo underneath these names as well as the allegations against a number of them—there is the association with some King send-off event which many of them never attended and were not invited to.

Ms BURN: I do not know. I do not know if that is the case or not.

The Hon. ADAM SEARLE: What I am saying is no-one from your task force then checked the information to see whether they ever attended.

Ms BURN: I do not know if that happened or not but there is no great conspiracy here. There was an honest belief that there were potentially going to be a number of people who Sea, M5, would come in contact with through the King send-off list, through the King send-off, which was on 30 June.

CHAIR: Given that the King send-off list was now redundant in the preparation of that later affidavit or the second warrant, why would those people not have just simply been removed?

Ms BURN: Mr Borsak, I do not know. I was not—

CHAIR: With respect, you were the team leader. You are where the buck stops. In my view, whether or not you prepared those affidavits for warrants, you were responsible for them, were you not?

Ms BURN: I think I have attempted to explain a couple of times about—

CHAIR: No, you have explained the methodology but as far as who was in charge, who was in charge? Was it you?

Ms BURN: Who was in charge of what?

CHAIR: And responsible for identifying who should and should not have been on that warrant? Are you telling me that the junior officer who signed it should have been in charge?

Ms BURN: I think that there is responsibility on the officer who signs it as the deponent. I think there is a responsibility on the assistant director. I think there is a responsibility on the solicitor who then takes the affidavit and warrant to the court. As I outlined as well, I also reinforced with the senior sergeants about their responsibility for the correctness and quality of affidavits.

Mr DAVID SHOEBRIDGE: The targets you said earlier were identified by this day-to-day operational committee that would meet and identify the targets to go on listening device warrants. It was not up to the deponent of the affidavit to work out who to obtain a warrant against; that was a decision made in a group of which you were a member. Is that not right?

Ms BURN: Yes, which consisted of the Mascot team as well. It consisted of all of them.

Mr DAVID SHOEBRIDGE: One hundred and fourteen names came out of a decision of a group that you are a member of.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Yet it appears at the time the application is made to the Supreme Court there is no basis that is identified for including some 50-odd of the names.

Ms BURN: For the September affidavit that we are talking about?

Mr DAVID SHOEBRIDGE: For the warrant that your team got a Supreme Court judge to sign.

Ms BURN: As we have established, the affidavit for the September warrant did not have information relating to all the people on the warrant; that is correct.

The Hon. ADAM SEARLE: And therefore it should not have been approved, should it, without any evidence?

Ms BURN: That is not a question I can answer. It was approved.

CHAIR: By whom?

The Hon. ADAM SEARLE: You are a senior law enforcement officer; you are one of the top three police people in this State. Are you seriously saying that it is proper for a court to approve a listening device warrant against a person without any evidence and the fact that a court did approve it makes it okay? Is that your evidence?

Ms BURN: Not at all.

The Hon. ADAM SEARLE: Please explain.

Ms BURN: There is a responsibility clearly for information and evidence to be in an affidavit to support the warrant; there is no doubt about that.

The Hon. ADAM SEARLE: You understand that central to this ongoing controversy is the proposition that a number of officers in the police force, past and current, maintain that they were included on listening device warrants, they should not have been and there was no evidence for that. Do you understand that that is the matter of controversy?

Ms BURN: Yes.

The Hon. ADAM SEARLE: And you understand that was also the substance of the findings of the report of Strike Force Emblems—that was the thrust of their findings?

Ms BURN: I have come to that conclusion via the media. I have never seen the Emblems report. When I asked the Emblems investigators about that I was interviewed under direction by Emblems and subsequently there was no conclusion. I do not know what the Emblems report actually says or what conclusion it comes to.

The Hon. ADAM SEARLE: So you do not know what is in the report?

Ms BURN: No.

The Hon. ADAM SEARLE: In paragraphs 6 and 7 of your submission to this Committee you are very critical of it.

Ms BURN: Yes.

The Hon. ADAM SEARLE: Even though you have never read it.

Ms BURN: Yes.

The Hon. ADAM SEARLE: How do you maintain your criticism when you have not read the report?

Ms BURN: I did read a review by Justice Levine, who reviewed the Emblems report, and he provided a letter and that was the letter that I referred to in my submission, which I think was quite forceful in relation to his review.

The Hon. ADAM SEARLE: But you do not know what is in it; you have not seen it yourself?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: You understand the substance of the findings is that these warrants were illegally or improperly obtained? You understand that to be the substance of it?

Ms BURN: The finding? I do not know if that was the finding in that report.

The Hon. ADAM SEARLE: But you understand that is the central controversy in this matter?

Ms BURN: I do agree that it is a controversy. I do not know if that was the finding of the report.

The Hon. ADAM SEARLE: You understand that is the controversy that brings this Committee about?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And you also understand that the Emblems report has never been publicly released?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: It has been circulated but you say you have not read it?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And therefore its contents are a continuing source of mystery, at least to the general public, other than what has been in the press?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And would you accept that this controversy is unhelpful to the NSW Police Force?

Ms BURN: Yes.

The Hon. ADAM SEARLE: And it is a controversy that has now embroiled you, Mr Kaldas and possibly the commissioner, Mr Scipione?

Ms BURN: Yes.

The Hon. ADAM SEARLE: The top three police officers in this State are caught up in this controversy, which is not helpful for the NSW Police Force?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And it would be a matter of public importance to get to the truth of the matter, do you agree?

Ms BURN: Yes.

The Hon. ADAM SEARLE: And for the matter to be put to bed once and for all?

Ms BURN: Yes.

The Hon. ADAM SEARLE: And you would support that coming about?

Ms BURN: I believe that is why we have an Ombudsman's inquiry into this.

Mr DAVID SHOEBRIDGE: Can you say the circumstances in which you came to draft the 13 April 2002 memorandum? What led to that being done on that day?

Ms BURN: Again, from examination by the Ombudsman on this issue, this report was compiled from 13 April and, as you will note at the bottom right of each page, it is actually 15 April when it is completed, printed. My recollection about this report was on Saturday 13 April—we have heard evidence there was an article in the *Sydney Morning Herald* in relation to the matter we are talking about, the listening device—from my duty book, from the records I have seen of this, I went to work at 4.45 p.m. on Saturday and, with others, we started to work on the report. This report, which was the 15th, was a report that was prepared for the commissioner and the Minister in relation to a meeting on Monday the 15th.

Mr DAVID SHOEBRIDGE: But it is signed by you on the 13th.

Ms BURN: Yes. I was in the office on the 13th.

Mr DAVID SHOEBRIDGE: And that is when you signed it?

Ms BURN: Yes. I was in the office on the 13th. I assume I might have signed it on the 13th because it was signed but finished on the 15th.

Mr DAVID SHOEBRIDGE: Signed on the 13th but finished on the 15th?

Ms BURN: The annexures. I do not know, but this report was ongoing. I started work later that afternoon and it is completed on Monday the 15th.

Mr DAVID SHOEBRIDGE: That is the print-out date, is it, in the bottom right-hand corner, "15.04.02"?

Ms BURN: Well, I am assuming that is.

Mr DAVID SHOEBRIDGE: Was it your normal practice to backdate things?

Ms BURN: I disagree completely.

Mr DAVID SHOEBRIDGE: You would say no, I assume, that you would only sign documents that are dated the day you sign them?

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: So we can safely assume that this was signed by you—and surely you only signed the completed document—on 13 April 2002.

Ms BURN: That is potentially—that is correct.

Mr DAVID SHOEBRIDGE: It is not potentially correct. You either know or you do not know that you have a practice of only signing documents on the day that they are dated. You tell me that you have, I assume, to the best of your knowledge, almost an infallible practice of signing documents only the day they are dated. I assume that is your evidence?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: So you have signed it on 13 April. We can assume with an enormous level of comfort that it was completed and signed on 13 April, can we not?

Ms BURN: Yes, but in terms of the completion of the annexure not so because that was a more comprehensive document, the annexure that we were examining.

The Hon. ADAM SEARLE: So, Ms Burn, are you saying—

The Hon. TREVOR KHAN: Point of order: I do not believe she had finished answering.

The Hon. ADAM SEARLE: Had you finished your answer?

Ms BURN: The report is dated the 13th and I have signed it and I refer to the annexure. The annexure is the more detailed examination of the document which we were working on. It might have been completed on the 13th but it was in preparation for the 15th.

Mr DAVID SHOEBRIDGE: Let us be absolutely clear about it. You have said it is your, as best you can tell, infallible practice to sign things only on the date which the document contains.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: The document is signed by you on 13 April and it references the annexure.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: When dealing with the balance of probabilities, or even probably beyond reasonable doubt giving this evidence, we can safely conclude that the document was done on the day that you signed it, can we not?

Ms BURN: You can safely conclude that my report here, signed the 13th and the referenced annexure—the annexure may not have been necessarily completed on the 13th.

Mr DAVID SHOEBRIDGE: But it probably was, was it not?

Ms BURN: It might have been. We started work to come and do it on that day.

Mr DAVID SHOEBRIDGE: Where did you send it to when you completed it?

Ms BURN: You will note on the bottom it has "Commander, Special Crime and Internal Affairs". The practice is for a chain of command—for all reports to go through a chain of command.

Mr DAVID SHOEBRIDGE: This is because the Minister and the commissioner had demanded a briefing?

Ms BURN: The Minister and the commissioner were having a briefing, that is correct.

Mr DAVID SHOEBRIDGE: And you had to provide the material?

Ms BURN: Yes, that is correct.

Mr DAVID SHOEBRIDGE: Which you did in this memorandum on 13 April.

Ms BURN: In the report, and the document was provided.

Mr DAVID SHOEBRIDGE: The reason you came in was because it was urgent.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: So as soon as you completed it, consistent with the urgency, you passed it up the chain of command. You did not sit on it for two days.

Ms BURN: I do not recall.

Mr DAVID SHOEBRIDGE: We can safely assume, can we not, that with an urgent briefing demanded by the Minister and the commissioner, you did not sit on it for two days. As soon as you completed it and signed it you passed it up the chain of command. We can safely assume that? We live in the real world, Ms Burn.

Ms BURN: I do not recall if that was the case. I just do not recall.

Mr DAVID SHOEBRIDGE: It is extraordinarily likely to be the case, is it not? When you have come in in the afternoon to do this briefing, you complete it, you sign it and you pass it up the chain of command? Anything else would not make sense, would it?

Ms BURN: The chain of command might not be there, it might not be available, I do not know. There might be other reasons but—

Mr DAVID SHOEBRIDGE: So they call you in for an urgent briefing—

The Hon. TREVOR KHAN: Just hold on; you are getting a little ragged.

Mr DAVID SHOEBRIDGE: I am sorry; you were completing your answer.

Ms BURN: The chain of command might not have been there. In any case, the briefing was for Monday, the report was for Monday.

Mr DAVID SHOEBRIDGE: Did you have a briefing with the commissioner on Monday yourself?

Ms BURN: I do not have an independent recollection of that but I do have a notation in my duty book that there was a briefing with the commissioner on Monday.

Mr DAVID SHOEBRIDGE: Let us assume that you finished your briefing and the annexure is completed on the day that you signed it and, consistent with the request for an urgent briefing, you passed it up the chain of command that day. Let us assume that for the moment.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Do you know that on the same day your commissioner gave an interview with *60 Minutes*?

Ms BURN: I have heard that evidence, yes.

Mr DAVID SHOEBRIDGE: You would know, would you not, that he appeared on *60 Minutes* the day after you did this briefing?

Ms BURN: The day after, yes.

Mr DAVID SHOEBRIDGE: You, of course, would have known at the time that he had appeared on *60 Minutes* and had spoken in detail about an investigation that you were centrally involved in. You knew that on and from the time he appeared on *60 Minutes*, correct?

Ms BURN: From my understanding, as Mr Barrett gave in evidence yesterday, Mr Ryan was interviewed at 2 o'clock on Saturday the 13th and it was shown on the Sunday night the 14th. He was interviewed at 2.00 p.m.; I started work at 4.45 p.m. on a report for Monday, for a briefing with the Minister and the commissioner.

Mr DAVID SHOEBRIDGE: Did you speak to anybody on the Saturday prior to getting to work? I assume you did not just turn up at work for no reason.

Ms BURN: I had conversations with officers on the Saturday before I turned up.

Mr DAVID SHOEBRIDGE: Who?

Ms BURN: From recollection, again from my duty books after examination—do you want me to name them?

Mr DAVID SHOEBRIDGE: Yes.

The Hon. ADAM SEARLE: Perhaps not.

CHAIR: No.

Mr DAVID SHOEBRIDGE: What about your commander? Was that one of them?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: What about people senior to you?

Ms BURN: I have a recollection—I would need to take it on notice—but potentially Mr Bradley.

Mr DAVID SHOEBRIDGE: And you gave a summary, I assume, of what you knew at the time and said, "But I will come in and put in a memorandum."

Ms BURN: If I spoke to Mr Bradley, yes.

Mr DAVID SHOEBRIDGE: What you would have said obviously would have been consistent with what went in your memorandum. You would not have said one thing on the phone and another thing in the memorandum, would you?

Ms BURN: Well, one, we are assuming that I had a conversation, so I really do not know.

The Hon. ADAM SEARLE: You do not have any independent recollection.

Ms BURN: I am not going to speculate at all.

The Hon. ADAM SEARLE: Did you speak to Commissioner Ryan on that day before he gave the interview with *Four Corners*?

Ms BURN: I have absolutely no recollection and I do not know why I would have.

The Hon. ADAM SEARLE: When you were interviewed by Strike Force Emblems you were asked about the explanation Commissioner Ryan gave for why so many names were on that particular warrant.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And the reason he advanced is that they were all going to be at a particular social function.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: Presumably, that is a reference to the King send-off.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: When you were asked about that, you said you do not know why he gave that explanation and that it was not correct.

Ms BURN: Yes, because the question was: They were all going to be at the King send-off, which is not correct.

The Hon. ADAM SEARLE: Yes.

Mr DAVID SHOEBRIDGE: Sorry, the issue you were taking was with the use of the word "all". Is that right?

Ms BURN: Yes, yes. That was what I think or believe that you said. You said they were all going to be at the function.

Mr DAVID SHOEBRIDGE: I will read it. I have it here in front of me, Ms Burn.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: "Okay. All right. Okay." This question: "In relation to the listening device warrants, were you aware of the comments by former Commissioner of Police Ryan on *60 Minutes*. Can you recall that?" You say, "*60 Minutes*." The investigator says, "Yes. Can you recall those?" And then you say, "No." Then you are asked, "He states that the warrant related to a function." You say, "Okay."; "And that all persons would be attending."; "Mm-hm."; "Have you any comment to make about that statement that he has made?" And you say, "I have no idea why he said it. I'd say he wasn't briefed." Then the question is asked, "Well, is that statement true?" Then you say, "No." And then he has asked, "Well, why would he make a statement such as this?" And you say, "I don't know. You'd have to ask him." Question: "Do you know who briefed him in relation to—". You say, "I have no idea." Why did you not say, "Look, I've got an issue with the word 'all'. It was a partial explanation that at least I was giving in April 2002." You give them nothing but a bare denial. Can you explain why that is?

Ms BURN: No, not at all. I am saying I do not know why the commissioner said that. I do not know why the commissioner said that.

Mr DAVID SHOEBRIDGE: But you knew you had a memo on that very day and you knew that you had spoken to a bunch of people that very day about the issue where the question of the King send-off was at least part of the explanation. Why did you not volunteer that information?

Ms BURN: Well, I actually do not have—still do not have—an independent recollection of the Ryan interview. Nevertheless, from my answers, it is not something that either I had a recollection of or recall at that particular time.

Mr DAVID SHOEBRIDGE: Ms Burn, you were called in to do an urgent briefing on a matter for the commissioner and the Minister for Police about a matter that the commissioner went on *60 Minutes* the following day—

The Hon. TREVOR KHAN: No, no, David. You cannot put that.

Mr DAVID SHOEBRIDGE: —on a matter that the commissioner went on *60 Minutes*—

The Hon. TREVOR KHAN: You cannot put that.

Mr DAVID SHOEBRIDGE: —the following day. You say you have no recollection of that—

The Hon. TREVOR KHAN: You cannot put that.

Mr DAVID SHOEBRIDGE: —12 months later.

The Hon. TREVOR KHAN: That is just misleading. You know the facts. You heard what Mr Barrett said.

The Hon. LYNDA VOLTZ: She said it numerous times.

The Hon. TREVOR KHAN: He had given his interview at 2 o'clock. Do not put something which is misleading to the witness.

Mr DAVID SHOEBRIDGE: Ms Burn, you were called in on an urgent basis to a briefing on the Saturday. You signed the briefing on the Saturday. The following day you see your commissioner on *60 Minutes*. It turns out that, on your evidence, you commenced your briefing two hours after he was interviewed, but the following day you see your commissioner giving a detailed and, you say, erroneous explanation on *60 Minutes*. What did you do?

Ms BURN: Well, we made sure that this report on the Monday was discussed at a briefing with the commissioner and others.

The Hon. ADAM SEARLE: So the commissioner was set straight.

Ms BURN: Look, I do not recall. Look, I do not have an independent recollection of that meeting. I do—

The Hon. ADAM SEARLE: The meeting occurred, you believe, because that would have been standard practice, not because you have a recollection of it.

Ms BURN: There was a note in my duty books to the effect of that meeting.

The Hon. LYNDA VOLTZ: You were requested to make the note for that meeting.

The Hon. ADAM SEARLE: No.

Ms BURN: Well, I do not know specifically if it was for that meeting. However, there was a meeting going to be on the Monday and so a report was compiled.

Mr DAVID SHOEBRIDGE: The only explanation on the public record—now for well over a decade—you knew was wrong. What did you do to correct it, other than give a briefing which seems to fail to mention the fact that the King send-off, which is the primary issue spoken about by the commissioner, could never have been an explanation?

Ms BURN: Well, I think that we could go through that again. There were names that were on that warrant that potentially had been on the warrant because of the King send-off list. Nevertheless the September warrant—the affidavit—did not reflect some of those other people. In any case Mr Ryan went on *60 Minutes*. He was interviewed the day before. Some of those names were on the list because they were going to a function—there is no doubt about that—at a particular time.

Mr DAVID SHOEBRIDGE: Three months before the warrant.

The Hon. ADAM SEARLE: The September warrant.

Ms BURN: That is exactly right—a function that was planned in February-April, when they first appeared on a warrant. I was interviewed sometime later about my recollection of that but at that particular time a report was compiled. It went up through the chain of command—so an assistant commissioner—and there is a meeting with at least the Minister, the commissioner and others about this where it actually mentions what the circumstances of those were: that some—well, a hundred—had explicit adverse mentions, et cetera.

Mr DAVID SHOEBRIDGE: But you knew that everybody except for three was on the warrant because they were live targets and your commissioner has gone on national television and said, "Oh, don't worry about it. I would've been on that warrant if I'd been attending the function." How could you let that lie on the public record without at least documenting the commissioner's error in some material?

Ms BURN: This is documented and this is passed up the chain, so you will definitely need to ask this chain of command and others as to what happened and why the public record was not corrected.

The Hon. ADAM SEARLE: Who was the commander of Special Crime and Internal Affairs at that time that you signed the memo, as best you recall?

Ms BURN: Do you want the name?

The Hon. ADAM SEARLE: Yes.

Ms BURN: I am of the—it was Brian Reith.

The Hon. LYNDA VOLTZ: I am sorry?

Ms BURN: Brian Reith.

Mr DAVID SHOEBRIDGE: We have had other people say that at the time it was Mr Scipione. Is that wrong?

Ms BURN: My reports were to Brian Reith as the Commander of SCIA, Special Crime and Internal Affairs.

Mr DAVID SHOEBRIDGE: When Mr Levine was doing his review, were any reports authored by you provided to Mr Levine?

Ms BURN: I do not know what was provided to Mr Levine.

Mr DAVID SHOEBRIDGE: You were not asked to do anything in relation to Mr Levine's review?

Ms BURN: No.

The Hon. ADAM SEARLE: Ms Burn, I want to take you back to the issue of quality control on your task force.

Ms BURN: Yes.

The Hon. ADAM SEARLE: You say this affidavit and the warrant was prepared by a junior officer and then approved by the commander, the more senior officer, but that you were not involved in the chain of paperwork or approvals. Is that your evidence?

Ms BURN: The chain of approvals was that the officer, the investigating officer, who is generally a sergeant or a senior sergeant, would go to the assistant director of the New South Wales Crime Commission and then a solicitor of the New South Wales Crime Commission, and then a court. I have given evidence in relation to the responsibility for the correctness and quality of affidavits and where that lay.

The Hon. ADAM SEARLE: What was your function then on the task force?

Ms BURN: My function was I was a team leader so it was to coordinate the day-to-day activities of M5 and the team in terms of supervision. If you in fact—

The Hon. ADAM SEARLE: So that would have involved, would it not—

The Hon. TREVOR KHAN: Sorry, I do not think she has finished her answer.

Mr DAVID SHOEBRIDGE: "If in fact".

Ms BURN: Sorry, I was just going to—there was a notation made in a diary, my diary, in March 2000 about quality of affidavits, speaking to the team. But I am happy to read out the list of the things that I was engaged in, if you would like.

The Hon. ADAM SEARLE: No. I am happy for you to provide the document to the Committee, but my question is this: The individual who prepared the warrant application and the affidavit—were you responsible for supervising him? Was he part of your team?

Ms BURN: He was part of Mascot team.

The Hon. ADAM SEARLE: He was one of the people you managed.

Ms BURN: For that particular person, he reported to a senior sergeant; the senior sergeant reported to me; I reported to the superintendent; the superintendent reported to the assistant commissioner, et cetera.

Mr DAVID SHOEBRIDGE: Ms Burn, in the second half of 2012 this issue again arose. Do you remember that?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Yes. In the course of that there were some decisions to be made by the Government about how to deal with it, and the decision was ultimately made to refer it off to the Ombudsman.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Did you meet with the police Minister at any point to discuss that?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: Did you meet with Mr Brammer at any point to discuss it?

Ms BURN: Mr Brammer?

Mr DAVID SHOEBRIDGE: Yes.

Ms BURN: In 2012?

Mr DAVID SHOEBRIDGE: Yes.

Ms BURN: No.

Mr DAVID SHOEBRIDGE: You said earlier that you have given evidence before the Ombudsman.

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: On how many occasions?

Ms BURN: Four or five.

The Hon. ADAM SEARLE: Roughly when did you give evidence to the Ombudsman about this?

Ms BURN: July last year and November.

The Hon. ADAM SEARLE: Were the questions asked of you asked by the Ombudsman or by the counsel assisting?

Ms BURN: The majority by counsel assisting.

The Hon. ADAM SEARLE: But the Ombudsman was in the room presiding?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: Did the majority of the inquiry of you relate to the substance of what we will call the Mascot Florida controversy—the matters of substance—or did they relate to the public leaking of the documents and who might have done that?

Ms BURN: They related to the substance of the allegations around Mascot. I do not recall being asked any question about any leaking.

Mr DAVID SHOEBRIDGE: The questions to you were all about your version of events about the substantive issues.

Ms BURN: That is correct.

Mr DAVID SHOEBRIDGE: Ms Burn, when you were with SCIA do you recall a circumstance where an informant of SCIA—or an operative; however you want to describe it—had a listening device on him when he gave evidence in court proceedings about a breach of bail?

Ms BURN: No, I do not recall that specific circumstance.

Mr DAVID SHOEBRIDGE: Do you recall anything like that?

Ms BURN: Have you got any more information?

Mr DAVID SHOEBRIDGE: Well, where an informant was asked to approach a police officer, who was part of the investigating team that had arrested that informant for armed robbery and, having been directed to do so by SCIA in circumstances in which that was a breach of the informant's bail conditions—does it ring a bell now, the circumstances?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: When did you first become aware of that having happened?

Ms BURN: Of what having happened?

Mr DAVID SHOEBRIDGE: Of the informant of SCIA being directed to approach an investigating officer in breach of bail conditions.

Ms BURN: Well, from my recollection, the person was not directed to do it in breach of bail conditions, and this is a matter that I was examined on by the Ombudsman. I was shown some documents but I am aware of it through the examination. I do not have an independent recollection of it at the time.

Mr DAVID SHOEBRIDGE: Are you aware that the allegation is that the informant perjured themselves in the witness box and SCIA investigators were either present in court at the time and/or afterwards received an account of it through the listening device and/or the informant?

Ms BURN: I am aware of some parts of that, not all of what you have said surrounding that, through the examination last year.

Mr DAVID SHOEBRIDGE: But you cannot recall becoming aware of that when you were in SCIA at the time?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: I take you back to the second page of your briefing note and the statistics about the warrant. Just on the face of your explanation to your superiors, it is quite clear that a significant number of people mentioned in the warrant had no evidence put before the court that September. Apart from drawing their attention to it and punting it up the line, what other action did you take to draw people's attention to the fact that what seems to be quite an improper exercise took place?

Ms BURN: It was in April 2002 that this examination was done. At that particular time I was the acting commander of the special crime unit and I was in that position of acting commander from March to the end of June.

The Hon. ADAM SEARLE: Is that when you became aware of this discrepancy between the names in the warrant and the evidence underpinning the warrant and the affidavit?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: You say this is the first time you became aware of that issue?

Ms BURN: Yes. From my recollection, this was right and yes, that is correct. At this particular point in time there were a number of reviews underway in terms of policies and practices and procedures, both in the NSW Police Force and the NSW Crime Commission. There were two reviews being undertaken at the Special Crime Unit, and practices and procedures about warrants was one of them.

The Hon. ADAM SEARLE: What was done to correct what had happened, the fact that a number of warrants had been obtained without the requisite evidence and that your task force had effectively spied on a number of officers without any evidence?

Ms BURN: In terms of the September affidavit, there were a number of people's names on the warrant where the evidence was not in the September affidavit. That does not mean that there was no evidence against the officers.

The Hon. ADAM SEARLE: Just pause there. Each warrant has to be approved by the judge, correct?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: Each warrant has to stand alone and be approved on its own merits.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: So you cannot have a warrant approved in September against somebody relying on evidence given in April of the same year.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: To a different judge.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: You just cannot do it.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: It is not legal.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: Yet this is what your task force invited the court to do and got away with. The court did approve the warrant. Is it disturbing that a court approved a warrant against people without having evidence before that judge?

Ms BURN: I think we have gone through this. I have been asked these questions.

The Hon. ADAM SEARLE: Sure.

Ms BURN: And we have gone through that. The relevant issue is that following this there was then a review conducted by Mr Finlay and there were some findings by Mr Finlay. So that was that matter but, importantly, there were also reviews of the Special Crime Unit, of SCIA, of the NSW Crime Commission, et cetera.

The Hon. ADAM SEARLE: That sounds like getting things right going forward. But you have become aware of a significant deficiency in the process in relation to this matter and apart from doing a memo and sending it up the line I am not detecting what action was taken to redress the injustice against those people against whom the warrants were obtained without evidence in September.

Ms BURN: The September warrant did not have evidence against all the people named in the warrant.

The Hon. ADAM SEARLE: All 66 of them.

Ms BURN: I understand that is why Mr Finlay was brought in.

The Hon. ADAM SEARLE: We are going around in circles. You are not telling us what was done to redress the injustice against the people against whom warrants were obtained without evidence by your task force—

CHAIR: When you knew about it.

The Hon. ADAM SEARLE: —and you knew about it from this time at least.

Ms BURN: I am going from what Mr Finlay had said when he reviewed it in terms of his review and his finding about the obtaining of the warrant.

The Hon. ADAM SEARLE: This sounds like buck passing. I have to put this to you squarely. You do not seem to appreciate the magnitude of the problem identified in your own memo. Your task force obtained warrants against a number of police officers from a judge without providing to that judge any supporting evidence. You were aware of it from at least 13 April 2002 and other than writing this memo and shuffling paper and talking about Mr Finlay you do not tell us what action was taken by you or the NSW Police Force to redress the injustice to those officers against whom the warrant was obtained without evidence. And can you ask your barrister to stop pulling faces at the Committee members? He is entitled to his opinion but—

Ms BURN: I take this very seriously. I take this extremely seriously.

The Hon. ADAM SEARLE: You do not seem to appreciate the magnitude—

Ms BURN: And I do not appreciate that you do not appreciate that I do not appreciate the magnitude.

Mr DAVID SHOEBRIDGE: There is a lack of appreciation.

Ms BURN: I do appreciate the magnitude of this. You keep saying it is my task force. It was not my task force.

The Hon. ADAM SEARLE: Okay, the task force on which you served.

Ms BURN: Yes. I just wanted to clarify that you have said a number of times that it was my task force. So I do not know what you were trying to attempt to—

The Hon. ADAM SEARLE: It was a task force on which you were a senior member.

Ms BURN: Yes, but I think there is a bit of a distinction there, and I do understand the magnitude of this.

The Hon. ADAM SEARLE: Tell us what was done to redress the injustice.

Ms BURN: An inquiry was conducted by a justice, Mr Finlay, into this matter, and that inquiry came up with some recommendations. From my memory, it was justifiably sought is what he had said. In terms of what you are talking about in terms of how this could happen, it is clear that a mistake was made. There is no doubt at least a mistake was made, and I have said if a mistake was made that was not my mistake and in fact I had warned people about correctness and quality of affidavits if a mistake was made. If there were false representations and illegalities I was not aware of them. In terms of what we did, there was a review. A justice came in and reviewed it. There was visibility at the chain of command about this and we were reviewing internal procedures.

Mr DAVID SHOEBRIDGE: You made a recommendation in your memorandum, did you not?

Ms BURN: Which memorandum?

Mr DAVID SHOEBRIDGE: The key memorandum where you found this extraordinary set of events. You saw this warrant provided with a complete absence of evidence. You saw this Supreme Court judge signing off on a warrant with no evidence and then you made a recommendation, did you not? Can you read out what the recommendation was?

Ms BURN: You are referring to the report of the 13th?

Mr DAVID SHOEBRIDGE: Yes, your recommendation. I will read your recommendation to you.

The Hon. TREVOR KHAN: No, you have asked a question.

Ms BURN: I am happy to read it out.

Mr DAVID SHOEBRIDGE: What was your recommendation?

Ms BURN: In relation to this report, that this information be maintained as highly protected.

Mr DAVID SHOEBRIDGE: So the only recommendation you made after this extraordinary set of circumstances became apparent was that it remain highly protected.

Ms BURN: Absolutely, at this point.

Mr DAVID SHOEBRIDGE: That there be a blanket placed over it as highly protected. Surely there would be an obligation, when you are the acting commander of this unit, to say that this matter must be investigated, that we need to find out if it was a one-off incident or a systemic problem.

Ms BURN: This matter, I knew, was going to be reported up the chain to the commander of Special Crime and Internal Affairs for a meeting on Monday.

Mr DAVID SHOEBRIDGE: Where your recommendation to that meeting is simply that it remain highly protected, not that anything is being done to address the injustice.

Ms BURN: Not at this particular time.

Mr DAVID SHOEBRIDGE: When did you make an alternative recommendation?

Ms BURN: I do not know. I do not know if I did in terms of any recommendation specifically, but I have outlined what I believe then happened after it as a consequence.

Mr DAVID SHOEBRIDGE: Would it be fair to say that you never did make a recommendation to get any substantive address to this?

Ms BURN: I do not recall in terms of any reporting, any other reporting. There might be—I do not know.

The Hon. LYNDA VOLTZ: With regard to this document once you have sent it up the chain of command, they could make another decision, could they not? Even though you have put a recommendation, they can accept or reject your recommendation?

Ms BURN: Absolutely. My chain of command at this particular point would be an assistant commissioner who then reports to a deputy commissioner who then reports to a commissioner. Anything in terms of recommendations at any of those levels could occur.

The Hon. LYNDA VOLTZ: So when the Minister at that time saw this document he could have decided to release it or do something about it?

Ms BURN: I do not know what the Minister might have wanted to do. I do not know if the Minister actually saw this document. I do not know.

The Hon. ADAM SEARLE: We have both the warrants from April and September but we only have the affidavit from September—I think we have a warrant and telephone intercept for the following year—so the information we have is not complete. I think the information we have was provided to us anonymously. The Legislative Council passed a resolution to ask the government agencies for all of the documents but the Government declined to provide them. So we are operating on incomplete information. When you say that there was this evidence against people named in the warrants in September but not in the September affidavit, would that evidence have been in the April affidavit?

Ms BURN: I do not know.

The Hon. ADAM SEARLE: You simply do not know. You were not involved in the preparation or the settling of the April affidavit?

Ms BURN: No.

The Hon. ADAM SEARLE: So it is just speculation by you that there would have been evidence against those people in that affidavit?

Ms BURN: Yes.

The Hon. ADAM SEARLE: So when you say that there was evidence against these other people that is again speculative on your part. You do not actually know.

Ms BURN: No. There was evidence against these people. Whether or not it was in the April affidavit, as you just asked me, I do not know.

The Hon. ADAM SEARLE: Do you know that there was evidence in existence against the people named in the warrant in September because you had seen it first hand or simply because you had a report of it?

Ms BURN: No. I am of the view that there was reasonable suspicion relating to those allegations about those people.

The Hon. ADAM SEARLE: Without going into the detail, what enabled you to form that view? Did you see evidence first hand or did somebody tell you?

Ms BURN: Via a number of sources of information, predominantly—now we are just talking about all the information, intelligence and evidence on hand at Mascot, so M5's information and evidence, other evidence from related allegations and complaints, other source information, other operatives' information, previous complaint files. There was an enormous amount of information that was gathered as part of this operation in an attempt to do something about these very serious allegations that we had in front of us.

The Hon. ADAM SEARLE: The information against Mr Kaldas in particular was not in the September affidavit and you have no idea whether it was in any earlier affidavit either.

Ms BURN: That is correct.

The Hon. ADAM SEARLE: In fact, you do not know whether the previous warrants might have suffered from the same deficiency that we have been discussing in relation to the September warrant.

Ms BURN: That is correct.

The Hon. TREVOR KHAN: If we go to the schedule that deals with Nick Kaldas—that is, to the memo—I think Mr Searle asked you about affidavits covering 19 April 2000 to 16 July 2000 on the last line of his entry. We have talked about an April warrant. You have clearly kept an eye on the evidence.

Ms BURN: Yes.

The Hon. TREVOR KHAN: An April warrant and a September warrant. Do I take it from the wording that refers to 19 April to 16 July that while we have talked about two warrants there was a series of warrants that were sought and obtained between 19 April and 16 July and then there is a further warrant that is obtained in September?

Ms BURN: That would be correct because the warrants are only in existence for 21 days.

The Hon. TREVOR KHAN: So while we have talked about a missing April affidavit at times in evidence, there is a whole series of affidavits, good or bad—you would say you do not know—supporting warrants that were issued over that period.

Ms BURN: That is correct.

The Hon. TREVOR KHAN: The only one that we have seen, as I think you are probably aware from the evidence, is the September one?

Ms BURN: You say you have just seen the September one. That is correct.

The Hon. TREVOR KHAN: Do I take it also that I am to conclude that until various of these proceedings you had not seen any of the affidavits either?

Ms BURN: Not until the Ombudsman's inquiry.

Mr DAVID SHOEBRIDGE: Could you provide the Committee with the King send-off list that you have?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: Including the material so we can see where it came from?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: You said that you had some further basis upon which to support the material against Mr Kaldas but you were not providing it with names and the like—the other officers?

The Hon. NATASHA MACLAREN-JONES: No, I think she said she was happy to go in camera and discuss it.

Mr DAVID SHOEBRIDGE: I might ask you some questions on notice rather than going through the in camera process.

Ms BURN: I am happy to do that if we could clarify what you are actually after.

Mr DAVID SHOEBRIDGE: I will put that on notice.

Ms BURN: Absolutely.

The Hon. TREVOR KHAN: Mr Chair, just before Ms Burn leaves, we gave Mr Kaldas the opportunity of consulting with his lawyers before he evacuated the building. I am just wondering if the same courtesy could be shown to Ms Burns.

CHAIR: Of course.

The Hon. TREVOR KHAN: She should be allowed to consult with her lawyers and then Ms Burns may have something more to proffer.

The Hon. LYNDA VOLTZ: That is if you want to add anything more.

Ms BURN: Okay, just quickly.

The Hon. ADAM SEARLE: If you need to step outside and consult in private that is not a problem.

CHAIR: Do you have anything further to add?

Ms BURN: If you do not mind?

CHAIR: Of course.

Ms BURN: In relation to the question from Mr Searle and Mr Shoebridge particularly about April 2000 in relation to what we did—

CHAIR: Excuse me but we need to turn the audio back on. Please proceed now.

Ms BURN: I mentioned Mr Finlay. This is just an extract from the Ombudsman's report, paragraph 67, which does indicate that on 15 April the then Minister for Police requested the then Inspector of the Police Integrity Commission, the Hon. Mervyn Finlay, QC, to examine the warrant that had been issued under section 16, et cetera—there was a bit more information. The Inspector concluded that the warrant was justifiably sought, complied with the legislation in all material aspects—there was one irregularity—et cetera. In terms of your question: What was done? On 15 April that was put into play. I just wanted to clarify that.

The Hon. ADAM SEARLE: Is there any indication that Mr Finlay had access to the evidence that underpinned the warrant or were his examinations limited to the warrant?

Ms BURN: I do not recall exactly what Mr Finlay had access to.

The Hon. ADAM SEARLE: You can take that on notice if you would like.

Ms BURN: Okay.

Mr DAVID SHOEBRIDGE: Ms Burn, one of your answers has been troubling me—namely, where you said that you had reasonable suspicion against Mr Kaldas, which is why you included that in the schedule. Do you remember giving that evidence?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: That troubles me because in your submission to this Committee you said:

I deny that as Team Leader of Operation Mascot, I directed Internal Affairs police to use illegal warrants to secretly record conversations of my rivals in the police force and in particular Deputy Commissioner Nick Kaldas when I had no suspicion that he had committed an indictable offence.

What is true? Did you have reasonable cause for suspicion as you have told the Committee or that you had no suspicion that he had committed an indictable offence as you say in your submission to the Committee?

Ms BURN: I think to be reasonable that paragraph is there because I am responding to what I believe was the irresponsible media reporting and that has been what was reported in the media, that it was illegally conducted—that whole paragraph—and I deny that.

Mr DAVID SHOEBRIDGE: You cannot be clearer. You say in your submission, "I had no suspicion that he had committed an indictable offence" yet your evidence here was that you had reasonable suspicion?

Ms BURN: Yes.

Mr DAVID SHOEBRIDGE: What was it: none or reasonable?

Ms BURN: Well the full sentence is that I directed the use of illegal warrants as a part of a vendetta, et cetera, when I had no suspicions. So I am saying that I deny that I directed the use of illegal warrants when I had no suspicion that he had committed an indictable offence, and that still stands. I have said yes there was suspicion, I had suspicion but there is no way that I directed the use of illegal warrants when I had no suspicion. That is what has been alleged against me in media reporting and I am denying that.

Mr DAVID SHOEBRIDGE: But in that submission you are not denying that you directed them?

The Hon. TREVOR KHAN: No, what she is saying is—you have misstated what she is saying in the submission.

Mr DAVID SHOEBRIDGE: You are denying that you directed them in circumstances where you had no suspicion? Is that what you are saying?

Ms BURN: That is what I am saying. I am saying I did not direct people to use illegal warrants when I had no suspicion, et cetera.

Mr DAVID SHOEBRIDGE: I understand.

The Hon. TREVOR KHAN: You misstated her submission.

Mr DAVID SHOEBRIDGE: No. I understand your explanation.

Ms BURN: Thank you.

CHAIR: Thank you for attending. You have taken a number of questions on notice. The Committee has resolved that answers to questions taken on notice be returned within five calendar days following the receipt of the transcript. The secretariat will contact you in relation to the questions that you have taken on notice.

Ms BURN: Thank you.

(The witness withdrew)

(Short adjournment)

MARK MORRI, Crime Editor, *Daily Telegraph*, sworn and examined:

CHAIR: Welcome, Mr Morri. Thank you very much for coming. Would you like to start by making a short statement?

Mr MORRI: Yes, that will be handed around to the Committee. I would like first to thank you, Chairman, and the Committee for giving me the opportunity to speak today. I have worked as a journalist for more than 34 years, specialising in police rounds and crime reporting. As the Committee would appreciate, my ability to work as a professional journalist depends almost entirely on my ability to cultivate and retain confidential sources. My sources trust me and I trust them. Many of the biggest stories that I have been involved in could not have been written without those sources. If not for those sources, the public would not get to know about important events involving police. But none of these arguments mattered when the Office of the Ombudsman sent me a subpoena to give evidence behind closed doors for Operation Prospect in August 2014.

I was called to give evidence about my confidential sources for articles written about operation Emblems. While the Ombudsman did not force the issue, I made it clear to him, as I do before the Committee today, that I cannot and will not divulge the identity of confidential sources. I am ethically bound to protect my sources. The fact that the Office of the Ombudsman called me before a secret inquiry to ask about my contacts is a dangerous path to go down, I believe. I was stunned when the Office of the Ombudsman revealed that he had phone records showing dates and times when I had spoken to a number of officers. I thought the focus of Operation Prospect would be why the Emblems report had been kept secret for so long and not about who was leaking it. But the questions put to me by the Ombudsman were almost entirely about possible leaks.

The Office of the Ombudsman went to ridiculous lengths to keep their inquiry secret. They would not even give me a copy of the transcript of my own testimony. The Office of the Ombudsman and, for that matter, all government agencies, should appreciate that our democracy is stronger when journalists are able to operate without the fear of having to divulge the identity of their confidential sources. I should not have been put in that position. No journalist should ever be put in that position. I would be happy now to answer any questions.

CHAIR: Mr Morri, I note that your submission is still under the request of confidentiality.

Mr MORRI: That is okay. It was just a matter before—my editor was away and I did not want him reading it before he came back to work.

Mr DAVID SHOEBRIDGE: A far more threatening individual than the Ombudsman, probably.

Mr MORRI: Yes.

The Hon. ADAM SEARLE: Make no concessions, or admissions.

Mr MORRI: That is fine to go up now.

Mr DAVID SHOEBRIDGE: Mr Morri, did you make a submission to the Ombudsman?

Mr MORRI: No.

Mr DAVID SHOEBRIDGE: In what circumstances did you find yourself coming before the Ombudsman?

Mr MORRI: I was rung by an officer who said, "Where can we send the subpoena? How would you like to be subpoenaed?"

Mr DAVID SHOEBRIDGE: When was that?

Mr MORRI: I cannot recollect exactly, but sometime last year. I then said, "Could you just forward it via email and I will forward it to our legal department."

Mr DAVID SHOEBRIDGE: But there was no suggestion you might voluntarily come in. It was just, "How do you want to be subpoenaed?"

Mr MORRI: As far as I can remember, it was, "Do you know about Prospect? We are going to subpoena you." Then, "How would we best go about that?" That is when I said, "Email it to me and I will forward it to legal people."

The Hon. TREVOR KHAN: Perhaps like we have done here.

Mr DAVID SHOEBRIDGE: When did you first write about Prospect, or Emblems, if I could ask more accurately?

Mr MORRI: About the last two or three years.

Mr DAVID SHOEBRIDGE: Beginning of 2012?

Mr MORRI: Yes, when it became fairly common knowledge.

Mr DAVID SHOEBRIDGE: When you refused to give up your sources in questioning by the Ombudsman, what happened?

Mr MORRI: He kind of went around it a couple of times, kept asking, but then it was apparent that he had phone records that indicated who maybe I had spoken to.

Mr DAVID SHOEBRIDGE: So—

Mr MORRI: But not what I had spoken about.

Mr DAVID SHOEBRIDGE: All right. But someone had gone through your phone or your records and worked out who you had been speaking to?

Mr MORRI: Not my phone—I do not know. He just said, "I have phone records here that you were in phone contact", or, "This person contacted you", so it could have been their records, not mine, but obviously they crosschecked them to mine.

Mr DAVID SHOEBRIDGE: They obviously knew your phone number, did they not?

Mr MORRI: Obviously, yes.

Mr DAVID SHOEBRIDGE: But you were not shown a list of your own phone records?

Mr MORRI: No, I was not shown anything.

Mr DAVID SHOEBRIDGE: You were not shown any documents?

Mr MORRI: Not that I can remember, no.

Mr DAVID SHOEBRIDGE: How long were you questioned for?

Mr MORRI: I think—I would have to check with my lawyer—about an hour or so. I went out a couple of times.

Mr DAVID SHOEBRIDGE: Were there any questions about the substantive issue, the circumstances of the warrant?

Mr MORRI: I cannot recall one in that hour or so.

Mr DAVID SHOEBRIDGE: It was all about—

The Hon. TREVOR KHAN: He could not have answered questions with regard to the warrant, could he?

Mr MORRI: No.

The Hon. TREVOR KHAN: No.

Mr DAVID SHOEBRIDGE: Any questions about the substantive content of what your sources had told you?

Mr MORRI: No. Going to Emblems and Mascot?

Mr DAVID SHOEBRIDGE: Yes.

Mr MORRI: No.

Mr DAVID SHOEBRIDGE: What were the questions about then?

Mr MORRI: Purely who I had spoken to and whether I had had conversations about Emblems.

Mr DAVID SHOEBRIDGE: At the end of your interrogation by the Ombudsman, or at the beginning—was it both—was any direction given to you?

Mr MORRI: Yes, to keep my appearance and all evidence secret; not to divulge it to anyone.

Mr DAVID SHOEBRIDGE: Was there any threat attached to that? If you do, then—

Mr MORRI: No, but I knew there was the threat of that.

Mr DAVID SHOEBRIDGE: Criminal sanction?

Mr MORRI: Yes, and that it carries a jail term. I know the power of the Ombudsman.

Mr DAVID SHOEBRIDGE: Did the Ombudsman tell you that, given you are a journalist, should you want some relief from this secrecy, that you only had to apply and he would consider it?

Mr MORRI: No, I do not think so. I really cannot remember. As I said, I could not get the transcript. You would have to ask the Ombudsman; he has the transcript.

Mr DAVID SHOEBRIDGE: But your recollection is nothing to that effect was said?

Mr MORRI: No.

Mr DAVID SHOEBRIDGE: Did you know that you could make an application to the Ombudsman and he would potentially relieve you of some or all of the confidentiality?

Mr MORRI: No, I do not think I did.

Mr DAVID SHOEBRIDGE: You said earlier that once you had been called in and subpoenaed and then investigated and potentially had your phone records reviewed, that it has an impact upon you as a journalist. Is that right?

Mr MORRI: Oh, it has not, as far as I know.

Mr DAVID SHOEBRIDGE: What is your concern then?

Mr MORRI: It disturbed me. I have to admit I was shocked when it was produced that they had phone records of times of when I had spoken to certain police. That shocked me. I will admit it shocked me.

Mr DAVID SHOEBRIDGE: Was there evidence they had actual intercepts, recording of the conversations?

Mr MORRI: No, I think—no.

The Hon. LYNDA VOLTZ: When they spoke to you about the intercepts did they show any documentation?

Mr MORRI: No.

The Hon. LYNDA VOLTZ: It was just a list of times you had spoken?

Mr MORRI: He just said basically, "I put it to you that between these dates and those dates this officer and you conversed eight times." I cannot remember exactly. However, it was clear that they knew how many phone calls had gone from me to somebody and from somebody back.

The Hon. LYNDA VOLTZ: Did they ask you for any documents or if you had any further documentation?

Mr MORRI: Yes, I think they did.

The Hon. LYNDA VOLTZ: Did you offer any up?

Mr MORRI: No.

Mr DAVID SHOEBRIDGE: Is that because you did not have any?

Mr MORRI: No, I do not, so it was a fairly easy answer.

The Hon. LYNDA VOLTZ: Did the Ombudsman tell you whether he had the power to compel you to provide documents?

Mr MORRI: No, not that I can recall.

CHAIR: Thank you more for appearing before the Committee today.

(The witness withdrew)

(The Committee adjourned at 4.01 p.m.)