

<p>1 (Wednesday, 10 April 2024) 2 (10.04) 3 THE CHAIRMAN: You are okay to 4 proceed? 5 MS GALLAGHER: I am indeed, sir. Thank 6 you very much. 7 THE CHAIRMAN: Okay, well they will 8 need a mid-morning break, but it is much 9 better if you choose your moment. 10 MS GALLAGHER: Thank you very much, I 11 am very grateful. Mr Chairman, sir, I of 12 course appear today for Mr Ian McGrail, the 13 former Commissioner of the Royal Gibraltar 14 Police, with Adam Wagner and Nicholas 15 Gomez who sit beside me, and we are 16 instructed by Charles Gomez and supported 17 by Daniel Benyunes and the team of Charles 18 Gomez and Company. Mr McGrail, of 19 course, retired as Commissioner of Police 20 almost four years ago in June 2020 after a 21 long, distinguished and highly decorated 22 career in the Royal Gibraltar Police. He 23 joined the Royal Gibraltar Police in 1984, 24 and worked his way up the ranks over the 25 decades. He served his country, sir, with</p> <p style="text-align: center;">Page 1</p>	<p>1 holder such as him of constructive dismissal, 2 the phrase used when an employee is forced 3 to quit their job against their will because of 4 their employer's conduct. And as we shall 5 come to, the circumstances of that June 2020 6 decision followed an unfair, frankly 7 shambolic and sham process, in which the 8 GPA had essentially outsourced their 9 statutory role to become a conduit for what 10 was in effect a decision of, and directed by, 11 the Chief Minister and secondarily the 12 Governor. And, a decision which was in the 13 case of the Chief Minister self-interested, 14 unfair and unjustified, and in the case of the 15 Governor unfair and unjustified. This 16 Inquiry, sir, of course concerns, as you 17 recognised at the outset, issues of the utmost 18 public importance, both nationally within 19 Gibraltar and internationally. There is a huge 20 amount at stake for a number of individuals: 21 particularly Mr McGrail but also the Chief 22 Minister; the Attorney General, Mr Llamas; 23 Mr Pyle, the then interim Governor; and for 24 Mr James Levy. Most importantly, there is 25 much at stake for Gibraltar itself. Mr Wagner</p> <p style="text-align: center;">Page 3</p>
<p>1 distinction and honour, and had an 2 unblemished record for almost four decades 3 since 1984. Now, the sequence of events 4 which led to Mr McGrail retiring on 9 June 5 2020, and whether he did so voluntarily or 6 not, gave rise to widespread public concern, 7 as you of course indicated at the outset of this 8 final hearing on Monday, and eventually 9 resulted in this public inquiry being instituted 10 two years ago in February 2022. Mr 11 McGrail, sir, has waited a long time for this 12 final hearing to start, and when you used the 13 words "at last" in your opening sentence on 14 Monday Mr McGrail was in firm agreement. 15 At a time of life when he, like Mr 16 Richardson, should be enjoying retirement, 17 his life has instead been on hold whilst 18 waiting for this hearing to start, dealing with 19 the fallout from the events in May and June 20 2020, and the cloud which has unfairly and 21 inappropriately been placed over him since. 22 Mr McGrail's career, his reputation and his 23 life were ruined by the events leading up to 24 what was effectively a forced retirement in 25 June 2020, the equivalent for a senior office</p> <p style="text-align: center;">Page 2</p>	<p>1 and our team have filed detailed written 2 opening submissions, sir, running to 69 3 pages; indeed, you may be pulling them up at 4 the moment. We know that they will be 5 uploaded to the inquiry website in due 6 course, with certain redactions arising from 7 the Restriction Notice made by the 8 Government at the end of last week. And, in 9 our oral submissions today we do not intend 10 to repeat each and every point; we rely in full 11 on those written submissions. Indeed, it 12 would be impossible to do so given their 13 length and detail, and would certainly disrupt 14 your careful timetable (with which we are in 15 agreement). Rather, we intend today to 16 highlight a number of key points at this 17 opening stage, before we move to the stage 18 of witnesses giving evidence. Mr Wagner 19 and I intend today to cover six topics, and I 20 will set out the roadmap and then turn to the 21 first one. Number one: the context of this 22 Inquiry and your role, sir. Number two: 23 natural justice, the core unfairness at the very 24 heart of those May/June 2020 events. And as 25 we will come to, whilst the time-frame set in</p> <p style="text-align: center;">Page 4</p>

<p>1 the provisional list of issues includes matters 2 which span a large period, we say in effect 3 that this case centres on 28 days between 4 May and June 2020: that is the critical time. 5 Issue three is the role of key office holders, 6 their legal powers and responsibilities, and 7 importantly the appropriate limits to their 8 roles. That will include us considering the 9 roles of the then Commissioner of Police Mr 10 McGrail, the Chief Minister, the Attorney 11 General and the interim Governor. Topic 12 four is the role of the GPA, and the 13 correspondence of May 2020 in what we say 14 was a deeply flawed process. Number five: 15 briefly, sir, we will turn to the witness 16 inducement issue. And number six: 17 concluding remarks. And so it assists you, 18 sir, I intend to deal in their entirety with 19 issues one and two. And, when it comes to 20 topic three I will commence, dealing with Mr 21 McGrail and the Chief Minister, and my 22 colleague Mr Wagner will then pick up and 23 deal with the Attorney General, the interim 24 Governor, and topics four, five and six. We 25 are a double act, sir, today. Now, topic one:</p> <p style="text-align: center;">Page 5</p>	<p>1 law to be applied to them like acid to litmus 2 paper. The matter, as lawyers like to say, is 3 at large." And, that description recognises 4 that a public inquiry, sir, can have the best of 5 both worlds: can draw on the one hand upon 6 the Olympian sense of detachment that one 7 has in a court, the formal structures of 8 evidence gathering and witness questioning, 9 and yet also address issues of policy and 10 practice which are, to use Sir Stephen 11 Sedley's words, "not litigable, but still need 12 somehow to be got away from the public 13 shin-kicking contests which they frequently 14 provoke." Now, a number of the opening 15 submissions in the past two days have 16 painted your task as deciding between 17 incompatible rival views, as if this Inquiry is 18 fiercely-fought litigation. And, we make 19 clear at the outset that that is not your task; 20 your task, sir (as you have indicated in your 21 opening remarks and with which we agree), 22 is to examine the evidence, make factual 23 findings and answer the question posed in 24 your terms of reference. The views and 25 interpretations of the core participants and</p> <p style="text-align: center;">Page 7</p>
<p>1 the context of the Inquiry your role. Counsel 2 to the Inquiry, Mr Santos, confessed on 3 Monday to his bedtime reading habits and his 4 devotion to Jason Beer's book on public 5 inquiries. And, you may recall he quoted that 6 memorable phrase from its opening 7 paragraph by Stephen Sedley QC, as he then 8 was. And, that quote is derived from a 1989 9 article by Sir Stephen Sedley, in which he 10 described the public inquiry's unique 11 usefulness and said, "By being public it 12 borrows one of the strengths of the legal 13 system, funnelling the arguments away from 14 the anarchy and subjectivity of public debate 15 and into the apparently objective and orderly 16 forum of a proceeding which the world can 17 watch but in which nobody speaks unless 18 spoken to. By taking the form of an inquiry 19 it escapes the constrictions of subject-matter 20 and procedure which make litigation an inapt 21 solution. There are now no parties, only 22 those whose legitimate interest has gained 23 them entry on sufferance; no isolated issue to 24 be resolved; no predefined questions of fact 25 to be answered or body of statute or common</p> <p style="text-align: center;">Page 6</p>	<p>1 witnesses are things you can take into 2 account; they are not in any sense 3 determinative. You could, for example, reach 4 a conclusion which is quite different to that 5 advanced by the Government parties, or 6 indeed by Mr McGrail. Our concern is that 7 the danger of the fiercely competing views 8 approach is that the Inquiry will become 9 mired in the quicksand of competing 10 perspectives. And, we say that you can start 11 from a much firmer footing using two critical 12 foundation stones. The first foundation stone 13 is the principles of natural justice. To put it 14 less grandly: was what happened between 12 15 May 2020 and 9 June 2020 fair? And the 16 second foundation stone, sir, is the statutory 17 background, which carefully and precisely 18 defines the roles of each of the key players 19 (the key office holders) in what happened. 20 We are grateful to Mr Cruz for introducing 21 some of those issues yesterday, and we agree 22 with that approach. Because we say, sir, that 23 it is only by understanding those statutory 24 roles that it is possible to assess whether 25 individuals were actually properly in the</p> <p style="text-align: center;">Page 8</p>

<p>1 boundaries of their offices or not. And 2 indeed, we say that what has happened here 3 is that one individual was punished for trying 4 to fulfil his statutory duties, to do his job 5 without fear or favour, and that is Mr 6 McGrail. Now, those two simple foundations 7 (principles of natural justice, and the 8 statutory background which sets out and 9 defines the roles of each of the key players) 10 should not be matters of dispute. Indeed, one 11 of the submissions that every core participant 12 appears to have made is about the importance 13 of the rule of law, and those foundation 14 stones are integral parts of the rule of law. 15 And, we also say that the competing-views 16 approach misses an important truth about this 17 Inquiry, which is that many if not most of the 18 key facts are undisputed and are 19 unambiguously recorded in contemporaneous 20 documents. It is vital, we say, to remember 21 that the provisional list of ten issues is not the 22 equivalent to a fixed, predefined list of topics 23 to which definitive answers must be given, or 24 the equivalent of an indictment in a criminal 25 context. It is also vital that we avoid a silo</p> <p style="text-align: center;">Page 9</p>	<p>1 what may be lost is what really matters: what 2 was in the minds primarily of the Chief 3 Minister, Mr Pyle and Mr McGrail in the 28 4 days from 12 May 2020 (when the RGP 5 attempted to execute a warrant against James 6 Levy) and 9 June 2020 (when Mr McGrail 7 offered his early retirement). And, one of 8 those remarkable features of what happened 9 in that period of four weeks (as we will 10 explore in more detail) is that in many 11 instances Mr McGrail was simply not told 12 about, let alone given an opportunity to 13 respond to, the so-called issues of concern, 14 many of which have emerged long since 9 15 June 2020 and only, indeed, during the 16 passage of this process since February 2022. 17 The airport incident was mentioned in 18 passing in internal notes between the Chief 19 Minister. The assault investigation, 20 Federation complaints and the Alcaidesa 21 claims were given practically no billing at 22 all. They were certainly not notified to Mr 23 McGrail as part of a process whereby he was 24 asked for a response, and not in any detail 25 that meant he could understand the complaint</p> <p style="text-align: center;">Page 11</p>
<p>1 approach to each of the ten issues, and we 2 have been concerned over the last number of 3 days that some have adopted a silo approach. 4 We made submissions to you two years ago 5 sir, at the first opening hearing and since 6 then, about the importance in an inquisitorial 7 context of having, the phrase that is used in 8 the Lewis case is "a funnel", where at the 9 outset, a preliminary stage, many issues will 10 appear on a list, but then their relevance may 11 recede into the background as you learn 12 more. And critically, although those ten 13 issues must of course be looked at having 14 been identified at preliminary stage, at its 15 core what this Inquiry is about is the reasons 16 and circumstances leading to Mr McGrail 17 ceasing to be Commissioner of Police on 9 18 June 2020 by taking early requirement. It is 19 not an inquiry into the airport incident, the 20 assault investigation, the incident at sea, the 21 HMIC report, or indeed the RGP's conduct of 22 Operation Delhi. And, there is a significant 23 risk that if we over-focus on each of those 24 issues in a silo way by attempting to reach an 25 objective assessment of those issues, then</p> <p style="text-align: center;">Page 10</p>	<p>1 or the allegations, or have a meaningful 2 opportunity to address them. And, as to the 3 issues which Mr Picardo focused on in the 4 letter of 22 May from the GPA, which we 5 now know he part-drafted, only two topics 6 were mentioned: the incident at sea and the 7 HMICFRS report. And, one of the critical 8 challenges for this Inquiry is making sense of 9 it all: what have the Alcaidesa claims (which 10 happened ten years before Mr McGrail left 11 post) to do with anything else; the airport 12 incident (which happened three years before, 13 when he was not even Commissioner). It is 14 somewhat bewildering, and in our 15 submission it is because many of these topics 16 are a smokescreen only. It is possible to 17 make sense of it, to build a coherent 18 narrative, and that is what Mr Wagner and I 19 today (on behalf of Mr McGrail) will try to 20 do in these submissions. But, we emphasise 21 at the outset that even if our narrative (which 22 we have drawn and distilled from the 23 materials) is not borne out, it is vital that the 24 assumption is not therefore made that an 25 alternative, competing view wins the day.</p> <p style="text-align: center;">Page 12</p>

1 Because, we say the alternative, competing
 2 view from the Government parties is
 3 nonsensical and not supported by the
 4 evidence. Now, many people have referred
 5 to individuals saying: well, I am not a lawyer.
 6 Well, I am not a physicist, but I do want to
 7 make a reference to Isaac Newton's great
 8 revelation about the law of gravity. I am
 9 simplifying here, which my 15 year old
 10 daughter will not be surprised at given my
 11 pour attempts to assist her with her physics
 12 homework. It is that objects attract other
 13 objects in proportion to the product of their
 14 masses. In other words: the more mass, the
 15 greater the pull. No matter where you look
 16 in this Inquiry, sir, there is an object of great
 17 mass which has a relentless gravitational
 18 pull. It skews every decision, it dominates
 19 every meeting, it is present in every text-
 20 message exchange that we have received (the
 21 ones we have, anyway). That massive object
 22 is sometimes visible and obvious, sometimes
 23 it is concealed, but its pull can clearly be felt
 24 once you know what you are looking for.
 25 And, that massive object is the warrant

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1 against James Levy which the RGP
 2 attempted to execute on 12 May, at which
 3 point (to put it frankly) all hell broke loose.
 4 When you see that massive object, it is
 5 impossible to unsee it. One consequence of
 6 that is that any attempt to divide the
 7 motivations and reasons into neat silos, ten
 8 different topics, simply does not fit the facts
 9 of the Inquiry. It is only because of the
 10 RGP's attempt to execute the warrant on 12
 11 May that Mr Picardo contacted the acting
 12 interim Governor, Mr Pyle. If there had been
 13 no warrant, none of the events which this
 14 Inquiry is now investigating would have
 15 happened. Mr Picardo would not have
 16 approached Mr Pyle; Mr Pyle would not have
 17 attempted to remove the Commissioner of
 18 Police on his own. Because, we now know
 19 from the material we have got (we expect the
 20 evidence will bear this out, and indeed it is
 21 part of the Government's own submissions)
 22 that both Mr Pyle and Mr Picardo made up
 23 their minds that Mr McGrail had to go well
 24 before only two of the issues were presented
 25 to Mr McGrail in writing on 22 May.

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1 Against that background it is essential that
 2 this Inquiry does not, even if inadvertently)
 3 end up repairing the shambolic process
 4 which occurred in May and June 202 by
 5 conducting the kind of forensic and objective
 6 examination of serious allegations against Mr
 7 McGrail which was not in the slightest
 8 carried out at the time, many of which did
 9 not even feature in the contemporaneous
 10 documentation. What matters is not what Mr
 11 Picardo has managed to discover well after
 12 the event but what he knew at the time, and
 13 the same is also true of Mr Pyle. And we
 14 note, critically, that you have much in the
 15 way of contemporaneous evidence including
 16 correspondence, WhatsApp messages,
 17 transcripts of recordings and notes of
 18 meetings, and there is of course voluminous
 19 witness evidence, including six witness
 20 statements from Mr McGrail himself. But,
 21 nothing is as valuable evidentially as the
 22 evidence which was generated at the time,
 23 before certain individuals had a chance to
 24 review, look back and settle on convenient
 25 narratives. And, our submission is that you

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1 may think, sir, when we start going through
 2 that detailed contemporaneous evidence such
 3 as the WhatsApp exchanges between Mr
 4 Picardo and Mr Levy's lawyer Mr Baglietto
 5 and with Mr Llamas, that the warrant is ever-
 6 present, pulling the protagonists towards
 7 taking practically any action to prevent the
 8 warrant being executed against a very
 9 powerful figure in the Gibraltar legal
 10 community. Minimising Mr Levy's
 11 involvement in the investigation, even
 12 including discussing methods to remove Mr
 13 McGrail, and the astonishing sight of the
 14 Chief Minister advising behind the scenes on
 15 what action could be taken against his own
 16 Commissioner of Police. And we also note,
 17 if I may because we are in a library give a
 18 literary reference, you may know of the
 19 Sherlock Holmes' dog that did not bark in the
 20 night. The dog that did not bark in the night
 21 is of course a Sherlock Holmes murder
 22 mystery: the dog at the house did not bark at
 23 the intruder, so Holmes believed that the dog
 24 knew the intruder. And the lack of evidence,
 25 like the lack of barking, was itself the

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<p>1 evidence. And, there are many critical gaps 2 in the material before you; we highlight a 3 number of them. And, the first is that in the 4 letter from the GPA (the GPA's second letter 5 of 22 May) and the GPA process more 6 generally, the warrant is not mentioned at all. 7 What Mr McGrail's lawyer at the time 8 referred to as the vanishing reason. But, its 9 gravitational pull cannot be doubted once 10 you know where to look. And, yesterday Mr 11 Gibbs referred to the WhatsApp messages 12 between the Chief Minister and Mr Levy 13 which (amongst the huge amounts of 14 evidence) simply have not shown up. Again, 15 missing evidence which in itself you may 16 think is relevant. And, a critical gap is that 17 there was not complaint whatsoever about 18 Mr McGrail until 12 May: no complaint 19 about incidents in 2017 or about incidents in 20 2018. And, even the GPA, in their own 21 evidence and in their submissions yesterday, 22 made clear that they had not appreciated the 23 significance that Mr Pyle or Mr Picardo 24 placed on the Inspectorate report published 25 earlier until after 12 May. And part of your</p> <p style="text-align: center;">Page 17</p>	<p>1 why Mr Picardo so fiercely advocated for Mr 2 McGrail's removal on and after 12 May. 3 And, if you answer that question the other 4 issues fall into their proper places. And, if I 5 can put it this way sir, it is vital that we 6 ensure that we distinguish the wood from the 7 trees. That is of course reflected in the very 8 language of the provisional issues, which 9 reflects (like the Lewis funnel) that over time 10 matters which appear on the list at the 11 preliminary stage may in fact recede in 12 significance. Now the second topic, sir, to 13 which I wish to turn is the issue of natural 14 justice and the core unfairness at the heart of 15 the May/June 2020 events. And, Mr Wagner 16 will later be turning back to look at the GPA 17 process and the correspondence in a little 18 more detail, but if I can just by way of 19 overture outline some key principles. 20 Natural justice and procedural fairness are of 21 course fundamental concepts reflected in the 22 Gibraltar Constitution, section 8, "Provisions 23 to secure protection of law" in respect of 24 criminal and civil proceedings, and has also 25 long been clear as a matter of settled</p> <p style="text-align: center;">Page 19</p>
<p>1 task, of course, will also be to consider the 2 issue of recommendations, and it seems to us 3 that at this very early stage it is not a matter 4 we will address, save to say that even in the 5 first number of days with these opening 6 submissions we can immediately see that 7 some topics are crystallising on which, 8 potentially, there may be a benefit to 9 Gibraltar arising from this process in their 10 being some recommendations made. The 11 GPA, Mr Neish, in his submissions yesterday 12 referred for example to concerns that there is 13 not a detailed process, or guidance, or 14 procedure, about the section 34 process and 15 how it is intended to work. We should say: 16 myself, Mr Wagner and our team are alert to 17 this issue, we are keen to ensure that lessons 18 are learnt from this process, and that in our 19 closing submissions we anticipate we will 20 attempt to assist your team on the issue of 21 recommendations and whether lessons can be 22 learnt from what happened on those days in 23 2020. Our view, from the material we have 24 seen (the tens of thousands of pages), is that 25 in truth the central question in this Inquiry is</p> <p style="text-align: center;">Page 18</p>	<p>1 common law that these principles apply 2 outside judicial and quasi-judicial contexts. 3 It is public law 101 that natural justice and 4 fairness require that a person complained 5 against has three things. One: the right to be 6 heard by an unbiased tribunal, a decision 7 maker who is both independent and 8 impartial, and hears all sides. Two: the right 9 to a fair notice of the case or allegations 10 being made against him or her. And, three: 11 the right to be heard, to be afforded a fair and 12 meaningful opportunity to answer the 13 complaint. And at common law, sir, there is 14 of course a longstanding and deeply 15 engrained recognition that where an 16 individual faces sanctions, or a decision is to 17 be reached which may have grave 18 consequences for them, it is an underlying 19 requirement that the decision makers act in a 20 procedurally fair manner, and that the 21 individual receives such measure of 22 procedural protection as is commensurate 23 with the gravity of the consequences. And, 24 we will provide for your team's authorities 25 bundle a number of key authorities on those</p> <p style="text-align: center;">Page 20</p>

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<p>1 basic principles, and we will address it in 2 more detail in our closing submissions. But, 3 just highlighting a small number of the cases 4 on the principles, this year (2024) marks 60 5 years since the seminal House of Lords case 6 of Ridge v Baldwin, a case about a senior 7 police officer (Mr Ridge, the Chief Constable 8 of Brighton) who was dismissed by a watch 9 committee. Now, Mr Ridge in many ways 10 was fundamentally very different to Mr 11 McGrail. Mr Ridge had been arrested and 12 tried for conspiracy resulting in a suspension 13 from duty, you may recall. He was 14 subsequently indicted on a corruption charge 15 and acquitted, but the sentencing judge 16 commented adversely on his character and 17 suitability. And the watch committee, under 18 their statutory powers to dismiss Chief 19 Constables, proceeded to dismiss him. And, 20 like the situation in Gibraltar, there were no 21 specific procedures set out as to how to 22 exercise the power under the Municipal 23 Corporations Act 1882. Like the situation in 24 Gibraltar, Chief Constables were not subject 25 to ordinary disciplinary processes. And, the</p> <p style="text-align: center;">Page 21</p>	<p>1 against him and hearing his defence or 2 explanation." And accordingly, the decision 3 to dismiss him was not lawfully exercised, 4 made without regard to the principles of 5 natural justice, and was accordingly void. 6 That of course has been echoed many times 7 since, and I am sure over the years, sir, you 8 will often have heard reference to the speech 9 of Lord Hailsham in the Chief Constable of 10 the North Wales Police v Evans case in 1982, 11 making clear that the rule of law requiring an 12 office holder under threat to be told of the 13 matter put against him, being described as a 14 fundamental rule. And the timing is 15 important, also, because Ridge v Baldwin 16 (focused on individual rights and marking a 17 sea change in administrative law) was closely 18 followed by the key cases later in the 1960s 19 of Padfield and Anisminic, concerned not 20 only with protecting the individual from the 21 abuse of power but also ensuring that abuses 22 of power were curtailed and the rule of law 23 maintained for the good of society as a 24 whole. That is why it is vitally important 25 that when you turn to the issue of process it</p> <p style="text-align: center;">Page 23</p>
<p>1 committee dismissed Mr Ridge from office 2 by exercising the power conferred on them 3 without informing him of the charges against 4 him, without giving him the opportunity to 5 address the concerns and present his case. 6 And, the court of appeal held that the 7 principles of natural justice did not apply, as 8 the decision was administrative in nature. 9 The principles applied only, they said, to 10 decisions of a judicial or quasi-judicial 11 nature. Wrong, said the House of Lords 12 unanimously, finding that the doctrine of 13 natural justice and the right to a fair hearing 14 are not limited only to executive decisions 15 made in a quasi-judicial setting. It is, rather, 16 a rule of "universal application", was the 17 phrase used, in the case of administrative acts 18 or decisions which affect rights. And, that 19 list of the three features of natural justice that 20 I outlined a moment ago, public law 101, 21 were in fact set out by Lord Hodson in that 22 decision in 1964. And, Lord Reid said there 23 is "an unbroken line of authority to the effect 24 that an officer cannot lawfully be dismissed 25 without first telling him what is alleged</p> <p style="text-align: center;">Page 22</p>	<p>1 is not considered simply as some red-tape 2 tick-box matter, because it goes substantively 3 to core issues about the role of a key office 4 holder (in this case the Commissioner of 5 Police) in Gibraltar society. And, I note that 6 in the since decades since that Ridge v 7 Baldwin case, in cases repeatedly in the 8 Gibraltar courts, the UK courts, the Privy 9 Council, across the Commonwealth, in a 10 wide range of contexts it has repeatedly been 11 made clear that the common law needs to 12 apply in standards of fairness which go 13 beyond a natural reading of the standards in 14 some particular statutory regime. Of course, 15 in recent years in the UK it has often felt 16 more natural to conduct that exercise under 17 section 3 of the Human Rights Act, with 18 reference to article 6 of the ECHR, but it 19 need not be so: it is a common law 20 imperative. And indeed, Cook LJ in the New 21 Zealand case of Fraser v State Services 22 Commission (in fact it is a Saint Lucia case 23 but it is referred to in the New Zealand Law 24 Reports and cited repeatedly by the New 25 Zealand courts thereafter) about unfair</p> <p style="text-align: center;">Page 24</p>

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<p>1 dismissal of a magistrate, went so far as to 2 say that fairness, in the sense of natural 3 justice, goes so deep that the courts would 4 simply not accept that Parliament could have 5 intended to destroy, or had destroyed them. 6 But, we are not in that territory here. And, 7 the courts have also recognised that the 8 requirements of fairness are closely 9 conditioned by the legal and administrative 10 context, see for example Lord Mustill in the 11 Doody case and Lord Bingham and Lord 12 Hope in the West case against the parole 13 board, or Mason J in the High Court of 14 Australia in Kioa v West. The bottom line is: 15 it is difficult if not impossible to address 16 effective representations without knowing the 17 points troubling the decision maker. It is 18 even more difficult when the purported 19 decision maker is acting merely as a conduit 20 for the real decision makers who are 21 operating behind the scenes. The individual 22 must have the benefit of a procedure which 23 fairly reflects on the facts of the particular 24 case, the importance of what is at stake for 25 him or her and for society. And, in this case</p> <p style="text-align: center;">Page 25</p>	<p>1 starting point was that it was a done deal 2 already because of what the Governor had 3 said. The GPA felt this recourse was better 4 and gentler than the Governor potentially 5 activating section 13. The GPA was in little 6 doubt that the outcome of this matter was 7 that one way or the other Mr McGrail would 8 not remain in office. 9 So pulling the strings and the effective 10 decision-makers here were not the GPA. It 11 was Mr Picardo and Mr Pyle, and we are 12 grateful to Mr Neish for frankly accepting 13 and making clear yesterday that the GPA did 14 not independently investigate or reach its 15 own conclusions regarding the two matters in 16 the letter, the HMICFRS report of the 17 incident at sea. Rather, the decisive matter 18 for them was the state of loss of confidence 19 by the Chief Minister and the Governor, and 20 the basis for that state of loss of confidence 21 by the Chief Minister and the Governor we 22 now know in 2024 are multiple issues which 23 have now been produced after the event, not 24 put to Mr McGrail by the Chief Minister or 25 the Governor, and apparently not even raised</p> <p style="text-align: center;">Page 27</p>
<p>1 what was at stake for Mr McGrail could not 2 be more significant, and what was at stake 3 for Gibraltar could not be more significant. 4 So, when Mr Neish KC yesterday (in relation 5 to section 34) said (transcript page 82 from 6 yesterday), "It leaves everything at large." 7 (10.34) 8 That has to be seen in the common law 9 context. It is not an "anything goes" context 10 - far, far from it. 11 The key theme, we suggest, and we suggest 12 this may emerge from the evidence, is the 13 lack of compliance with basic principles of 14 natural justice and procedural fairness. We 15 have dealt with that in some detail in our 16 written submissions. It is what we describe 17 in writing as the fifth key theme. 18 The GPA, as Mr Neish made clear yesterday 19 and as Mr Wagner will develop further, was 20 the conduit rather than the effective decision- 21 maker. You may recall that he said yesterday 22 - transcript page 83 - the GPA cannot ask 23 the Governor to retire or the Chief Minister 24 to retire. It can ask the Commissioner to 25 retire. And at page 79 of the transcript their</p> <p style="text-align: center;">Page 26</p>	<p>1 with the GPA. However concerned they 2 were by other matters, Mr Picardo and Mr 3 Pyle gave Mr McGrail no opportunity 4 whatever to respond to their concerns. 5 Clearly contrary to natural justice; to put it 6 less grandly, it was simply unfair. 7 Now, critically much was made yesterday of 8 Op Delhi playing no part in the GPA's 9 decision-making, but in truth because the 10 GPA was not the decision-maker, that is 11 neither here nor there. We suggest that the 12 evidence is likely to show that Op Delhi was 13 critical to the Chief Minister's change of 14 heart regarding Mr McGrail, his rewriting of 15 history regarding matters such as the 2017 16 incident, and was central to the Chief 17 Minister and the Governor's decisions. It is 18 that gravitational pull point again. The 19 shadow decision-makers, outwith the 20 statutory scheme and without Mr McGrail 21 having a fair or indeed any opportunity to 22 address their concerns with the people who, 23 in fact, were behind that process in that 24 critical 28 days. 25 The Government parties in their written</p> <p style="text-align: center;">Page 28</p>

<p>1 opening say this at paragraphs 12 and 13, and 2 this is part of the attempt to frame what was 3 plainly contrary to natural justice as not 4 necessarily making a difference in any event: 5 "In any case, and regardless of the nature and 6 extent of the statutory removal procedures, it 7 is not realistically possible for a 8 Commissioner of Police to properly and 9 effectively discharge his or her functions and 10 therefore to continue in office without the 11 confidence of both the Governor and Chief 12 Minister. This is true in Gibraltar as much as 13 it is in London. Two very recent 14 Metropolitan Police Commissioners, Ian 15 Blair and Cressida Dick, have both retired 16 early, outside of the statutory removal 17 procedure after losing the confidence of the 18 incumbent Mayor of London." The 19 Government parties here have proved 20 perhaps more than they intended, sir. Since 21 the Government parties have brought up 22 Cressida Dick, we will briefly quote from Sir 23 Tom Winsor's review into the circumstances 24 of Dame Cressida Dick's departure. He 25 concluded that: "Due process was not</p> <p style="text-align: center;">Page 29</p>	<p>1 had to be reached on 10 February 2022 2 itself." 3 The critical paragraph then is: "The Mayor's 4 actions on 10 February 2022 failed to respect 5 the dignity of the Commissioner as an 6 individual, and as the holder of high public 7 office. He did not act, in particular on 10 8 February 2022 itself, in accordance with the 9 legislative scheme, still less its spirit." 10 He went on to say: "In cases where a 11 determined politician has created conditions 12 which apply undue, oppressive and perhaps 13 intolerable pressure on the Commissioner, in 14 particular by making or threatening to make a 15 public statement of no confidence 16 irrespective of the grounds for doing so, or 17 indeed without stating what those grounds 18 may be, nothing can prevent the making of 19 such a statement. It is therefore necessary for 20 the political price of doing so to be as high as 21 possible." 22 Sir Tom Winsor made clear that his opinion 23 was that what was done by the Mayor and 24 through that process in February 2022 was 25 not only oppressive and unreasonable</p> <p style="text-align: center;">Page 31</p>
<p>1 followed by the Mayor of London and the 2 Mayor's Office for Policing and Crime in 3 their taking of actions which led, on 10 4 February 2022, to Dame Cressida Dick 5 stepping aside as Commissioner of Police of 6 the Metropolis. The Commissioner is not an 7 employee of the Mayor, but she was in effect 8 constructively dismissed by him. Those 9 acting on behalf of the Mayor told the 10 Commissioner that the Mayor intended 11 publicly to announce his loss of trust and 12 confidence in her, and that he intended to 13 commence the statutory removal process, on 14 the afternoon of 10 February 2022. The 15 Commissioner was given a very short period 16 in which to consider her position following 17 that news. She was left in a position whereby 18 she felt, even if others might have felt 19 differently, that she had no option but to 20 announce that she would step aside, in part to 21 protect the Metropolitan Police itself. The 22 circumstances in which she reached that view 23 had been largely created by the actions of the 24 Mayor and his staff. No good reason has 25 been identified as to why such a resolution</p> <p style="text-align: center;">Page 30</p>	<p>1 treatment of the Commissioner, but the threat 2 publicly to invoke the statutory removal 3 procedure amounted to calling upon the 4 Commissioner to resign. It came to the same 5 thing. The pressure to resign was 6 considerable, and it succeeded." 7 In relation to Sir Ian Blair, Sir Tom briefly 8 considered that and said at paragraph 1.4: 9 "From the information I do have, I would 10 have similar concerns about the Mayor's 11 approach to the Commissioner then, too 12 (albeit that it predated the Police Reform and 13 Social Responsibility Act 2011 and the 14 Protocol). On no view can this assist the 15 Mayor in the present case: prior wrongful 16 conduct cannot establish a convention in 17 support of such behaviour..." 18 Now, we submit that the analogy drawn with 19 Dame Cressida Dick is apt in some ways and 20 the Government did it themselves. The 21 circumstances here bear some of the factors 22 that Sir Tom identified. The statutory 23 process was circumvented by the reliance on 24 the loss of confidence as being the trump 25 card, regardless of what the basis for that loss</p> <p style="text-align: center;">Page 32</p>

<p>1 of confidence was. Mr McGrail, like Dame 2 Cressida Dick, was placed under oppressive 3 and unreasonable pressure, to use Sir Tom's 4 phrase. 5 There are, of course, significant differences. 6 Dame Cressida was given an opportunity, 7 however unreasonably truncated, to respond 8 to the concerns of the Mayor of London. 9 Indeed, just to take a step back, she was told 10 of the concerns. Mr McGrail was never 11 given the particulars of the supposed reasons 12 for Mr Picardo and Mr Pyle's loss of 13 confidence, still less asked for a response. 14 Of course, a critical key difference is that 15 Sadiq Khan was not at the time Dame 16 Cressida resigned deeply involved in a 17 criminal investigation by the Metropolitan 18 Police of his close friend, mentor and 19 business partner, and an investigation which 20 he himself or his colleagues in his law firm 21 may have been potentially implicated in. like 22 Mr Ridge in the 1960s and Dame Cressida in 23 this decade, Mr McGrail has been treated 24 unfairly. Fundamental rules of natural justice 25 and procedural fairness were simply not</p> <p style="text-align: center;">Page 33</p>	<p>1 example on the provisional list of issues, 2 issue 5.3 which refers to whether 3 inappropriate pressure was placed on Mr 4 McGrail by the Attorney General or the 5 Chief Minister. Of course, in order to 6 determine with the Attorney General or the 7 Chief Minister placed any inappropriate 8 pressure, it is essential to understand the 9 boundaries of the role and how they fit 10 within the scheme in Gibraltar. 11 Now, here every single key individual had a 12 role which was constrained by statute. In 13 order to consider whether their actions were 14 appropriate, inappropriate, what were the 15 boundaries set by their terms of office and 16 whether personal interest which conflicted 17 with their responsibilities in their office: they 18 are all key matters. We also, of course, agree 19 with Mr Cruz and will not repeat it on the 20 Nolan Principles. 21 I intend in a moment to turn to running 22 through the four key officeholders: Mr 23 McGrail, the Chief Minister, and Mr Wagner 24 will deal with the Attorney General and the 25 Governor. Could I pull up on screen a core</p> <p style="text-align: center;">Page 35</p>
<p>1 complied with in circumstances which had 2 the gravest of ramifications for Mr McGrail 3 and for Gibraltar as a whole. 4 I turn against that, sir, to topic three in 5 relation to key officeholders. We made clear 6 at the outset the importance of officeholders 7 in Gibraltar complying with their roles and 8 with their boundaries, and Gibraltar is, of 9 course, a jurisdiction which punches far 10 above its weight, is greatly respected. That is 11 in large part because of its move to being a 12 constitutional democracy, clear standards, 13 and at the heart of that process working is the 14 rule of law being intact. We heard 15 powerfully from Mr Cruz yesterday of the 16 importance of the rule of law, with which we 17 agree, and central to that are the correct 18 boundaries and respecting the duties and 19 powers and limits to those duties and powers 20 of key officeholders. 21 When considering your terms of reference, 22 sir, that legal framework is key. What is 23 expected of the officeholders, how their 24 duties and responsibilities are affected by 25 those statutory boundaries. To take one</p> <p style="text-align: center;">Page 34</p>	<p>1 point which relates to all of these 2 officeholders. It is bundle A page 235 3 paragraph 17 at the bottom of the page. You 4 will have seen this on screen when counsel to 5 the Inquiry was introducing the issues on 6 Monday. It is a quote from the Chief 7 Minister, Fabian Picardo. You see the last 8 sentence: "The high office that I held and 9 continue to hold does not disqualify me from 10 doing so..." This relates to him having 11 spoken to and expressed views to Mr Levy 12 on the day the search warrant had been 13 executed in his home. He says: "The high 14 office that I held and continue to hold does 15 not disqualify me from doing so, still less 16 does it require me to engage in an unnatural 17 omission to do so towards speculative and 18 reckless suspicions of Mr McGrail or anyone 19 else." Our submission to you, sir, is that is a 20 fundamental misunderstanding of the role of 21 Chief Minister. The high office that he holds 22 does precisely disqualify him from engaging 23 on the day a search warrant has been 24 executed by his police force, the Royal 25 Gibraltar Police, and expressing his views</p> <p style="text-align: center;">Page 36</p>

<p>1 about the legality or otherwise of the search 2 warrant. It is astonishing that even now 3 when the dust has settled, not in the heat of 4 the moment in 2020, the Chief Minister 5 continues, it appears, to hold the view that 6 that is appropriate conduct. Our submission 7 is that with each of the officeholders there is 8 conduct which you are disqualified from 9 doing because of the high office that you 10 hold. 11 Starting with Mr McGrail, Mr Cruz yesterday 12 very helpfully outlined the Police Act 2006, 13 the role of the Commissioner of Police and 14 its place in the legal framework. We are 15 grateful to him and we will not repeat that, 16 and you have our written submissions on 17 those issues. At its core, the central principle 18 is that of operational independence which is a 19 fundamental principle of policing in Gibraltar 20 and indeed a fundamental principle of British 21 policing. A clear line of accountability and 22 operational independence are central 23 principles. Often cited as a key authority on 24 operational independence are those words of 25 Lord Denning in the case of Blackburne in</p> <p style="text-align: center;">Page 37</p>	<p>1 honours include being awarded the Overseas 2 Territories Police Medal by Her Majesty the 3 Queen for meritorious service in the Queen's 4 Birthday Honours List in 2015, the year 5 before Mr Pyle took up his role here in 2016; 6 the Long Service and Good Conduct Medal 7 with first and second clasps; the St John's 8 Ambulance Long Service Medal for 9 Voluntary Service; the Queen's Gold and 10 Diamond Jubilee Medals. He is a Master of 11 Science in policing studies, he holds a 12 certificate in criminal justice from the 13 University of Virginia, and he worked his 14 way up through the ranks, was appointed as 15 Commissioner on a four-year term of warrant 16 on 1 May 2018, the culmination of a decades 17 long highly decorated meritorious period of 18 service for his country. Even after his 19 retirement, sir, his efforts in combating 20 organised crime, fostering cross-border law 21 enforcement cooperation, have been 22 recognised by the Cuerpo Nacional de 23 Policia - with apologies for my poor Spanish 24 - the Spanish National Police, where he was 25 presented with an award in 2021. Mr</p> <p style="text-align: center;">Page 39</p>
<p>1 1968 - I am spending a lot of my time today 2 talking about the 1960s. He said, referring to 3 the Metropolitan Police Commissioner and 4 extending what he said to every Chief 5 Constable: "No minister of the Crown can 6 tell him that he must, or must not, keep 7 observation on this place or that or that he 8 must, or must, not prosecute this man or that 9 one. Nor can any police authority tell him 10 so. The responsibility for law enforcement 11 lies on him. He is answerable to the law and 12 to the law alone." 13 Now, Mr McGrail, the man, is a part of this 14 case, but you have heard very little about him 15 as a person, sir, and if I may just briefly give 16 you an introduction to some key points which 17 again are set out, first witness statement at 18 the very start of your bundle, paragraph 4 19 onwards. I mentioned that he joined the 20 ranks of the Royal Gibraltar Police in 21 October 1984 and he worked his way up 22 through the ranks over the course of a 23 number of decades. He is highly decorated, 24 never once disciplined throughout the 25 entirety of that time. His many awards and</p> <p style="text-align: center;">Page 38</p>	<p>1 McGrail has a high level of integrity, as is 2 confirmed by senior colleagues, his 3 impeccable record. 4 Richard Ullger, Mr McGrail's successor, 5 says: "In my opinion and judgment, Mr 6 McGrail led the organisation with strong 7 ethical values and had the organisation at the 8 heart of everything he did. He was a 9 committed police officer and a dedicated 10 leader and I was honoured to serve under his 11 command." 12 Sir, when in the final analysis after you have 13 heard all the evidence and you have heard 14 from witnesses including Mr McGrail and 15 you are measuring them, as we say you 16 should, against the yardstick of what is 17 expected in their office, Mr McGrail is the 18 single officeholder of the key players in this 19 Inquiry. He did what he was expected to do 20 without fear or favour, even though he has 21 now paid the ultimate price for it. The same 22 cannot be said of others. 23 I now turn to the Chief Minister. The Chief 24 Minister in Gibraltar is a creature of statute, 25 of course, was created in and is limited by</p> <p style="text-align: center;">Page 40</p>

<p>1 the Constitution and, relevantly to this 2 Inquiry, the Police Act. The Chief Minister, 3 of course, has very limited functions in 4 relation to the Royal Gibraltar Police. Mr 5 Wagner will explain this further in context 6 when dealing with the GPA later. Critically, 7 the Government and the Chief Minister have 8 specific powers in relation to the police and 9 the Police Act. Section 14: "The Minister 10 with responsibility for public finance shall 11 decide and seek the appropriation of 12 Parliament for the grant of recurrent and 13 capital expenditure to be made for the RGP 14 policing in Gibraltar. Section 15 gives the 15 Chief Minister specific powers on behalf of 16 the Government and is set out in section 15: 17 "To require factual or assessment reports 18 from the force or the authority on any 19 policing matter, to hold the force and the 20 authority to account for the cost effectiveness 21 and efficiency of the force within its 22 allocated budget; to hold the force and the 23 authority to account for those parts of the 24 annual policing plan which do not relate to 25 national security; to call for and hold</p> <p style="text-align: center;">Page 41</p>	<p>1 policing plan, to hold meetings with the 2 Commissioner, and he must be consulted 3 before the Gibraltar Police Authority 4 exercises its power under section 34. 5 Critically, the Chief Minister has no power, 6 responsibility or function to intervene in any 7 police investigation or to remove the 8 Commissioner. There is no reference to loss 9 of confidence or anything similar in the Chief 10 Minister's powers. This, of course, all makes 11 sense from a constitutional perspective. 12 Indeed, as Mr Picardo himself said when the 13 Police Bill was being considered by 14 Parliament, when criticising the fact that the 15 Police Bill, as it was at the time, provided 16 that the GPA members would be appointed 17 by the Governor and Chief Minister, he said 18 it was important that - I am quoting his 19 words - "The police can see themselves and 20 the community can see the force as a truly 21 independent one, acting always without fear 22 or favour." That is why the constitution and 23 the Police Act together have set up a careful 24 balance between the functions of the Crown 25 represented by the Governor, the Executive,</p> <p style="text-align: center;">Page 43</p>
<p>1 meetings with the Chairman, the 2 Commissioner and other senior officers of 3 the force to discuss matters under the 4 Government's responsibility or in respect of 5 which it has powers under this Act." That is 6 the 2006 Act. "The Chief Minister will keep 7 the Governor informed of any exercise by 8 him of a power under this section, shall 9 provide to the Governor a copy of any report 10 produced as a consequence thereof." Section 11 8, of course, provides: "The Chief Minister 12 shall be consulted by the GPA in respect of 13 the policing plan. Section 23.3 requires that 14 the GPA consult with the Chief Minister in 15 respect of any guidance it proposes to issue. 16 Section 34, to which Mr Wagner will return, 17 provides for a consultation obligation. "The 18 Chief Minister must be consulted by the GPA 19 and consent to an intention to call upon the 20 Commissioner of Police to retire in the 21 interests of efficiency, effectiveness, probity, 22 integrity or independence of policing." That 23 is the extent of the Chief Minister's powers in 24 respect of policing. To hold the police to 25 account in relation to its budget and annual</p> <p style="text-align: center;">Page 42</p>	<p>1 the police including the Commissioner, and 2 the Gibraltar Police Authority. 3 Mr Wagner is going to return in more detail 4 to section 34, but if I may, at the time of first 5 reading of the Police Act section 34 it was 6 described by the then Chief Minister - a 7 rather familiar figure, Peter Caruana QC, as 8 he then was - in these terms: "Section 34, 9 which deals with the removal of the 10 Commissioner, is new and also reflects the 11 new authority structure. That section says 12 that the Authority acting after consultation 13 with the Governor and the Chief Minister, 14 with the agreement of either of them, may 15 call upon the Commissioner to retire in the 16 interests of efficiency, probity, integrity or 17 independence of policing in Gibraltar, in 18 other words neither the Governor nor the 19 Chief Minister can remove the 20 Commissioner. Only the Authority can 21 remove the Commissioner, and not even by 22 themselves. They need to persuade either the 23 Governor or the Chief Minister that the 24 Commissioner should be removed." He also 25 says: "Obviously there are provisions that</p> <p style="text-align: center;">Page 44</p>

<p>1 before he can be removed the Commissioner 2 must be given opportunity to make 3 representations", etc. 4 I have already made submissions on 5 procedural fairness and the Chief Minister's 6 failings under topic two. I will not repeat 7 that. 8 I do wish to turn to three additional headings 9 in relation to the Chief Minister. One, Mr 10 Picardo's triple conflict of interest in relation 11 to the Op Delhi investigation. You will have 12 seen that in our written submissions as what 13 we described as "the first key thing". The 14 inappropriate interference by Mr Picardo in 15 the RGP investigation. You will have seen 16 that in our written submissions as "the 17 second key thing". Also, we submit that it 18 may be, sir, that when you see the evidence 19 you form the view that Mr Picardo's real 20 reason for acting in the way that he did was 21 his anger about the warrant, his desire to 22 protect Mr Levy, perhaps himself. That is a 23 matter for you and that is the sixth key theme 24 in the written submissions which we have 25 made.</p> <p style="text-align: center;">Page 45</p>	<p>1 steps to prevent it." At paragraph 7.8 in that 2 draft proposed by Mr Picardo in 2015 it said: 3 "Where exceptionally it is decided that a 4 Minister can retain an interest, the Minister 5 and the department must put processes in 6 place to prohibit access to certain papers and 7 ensure that the Minister is not involved in 8 certain decisions and discussions relating to 9 that interest." 10 In our submission, we suggest that the 11 material we have seen so far suggests that Mr 12 Picardo had a triple conflict of interest which 13 should have prevented him taking any 14 decisions relating to the investigation and 15 certainly precluded him from putting any 16 pressure on the police relating to it. The 17 reasons for this should have been obvious to 18 an experienced public official and lawyer, 19 indeed a King's Counsel, such as Mr Picardo, 20 and he should, quite frankly, have taken 21 some of his own medicine from that draft in 22 2015. First, Mr Picardo was personally 23 involved in the events being investigated. He 24 had been instrumental in 36 North being set 25 up, was kept up-to-date with its progress,</p> <p style="text-align: center;">Page 47</p>
<p>1 On that first topic, Mr Picardo's triple 2 conflict of interest in relation to the Op Delhi 3 investigation. A conflict of interest is, of 4 course, defined by Transparency 5 International as a situation where an 6 individual or the entity for which they work, 7 whether a Government, business, media 8 outlet or civil society organisation, is 9 confronted with choosing between the duties 10 and demands of their position and their own 11 private interests. The Gibraltar Ministerial 12 Code introduced in 2023 but proposed in 13 draft by Mr Picardo in 2015, says this at 14 paragraph 7.1: "Ministers must ensure that no 15 conflict arises, or could reasonably be 16 perceived to arise, between their public 17 duties and their private interests, financial or 18 otherwise." At paragraph 7.7 it said: 19 "Ministers must scrupulously avoid any 20 danger of an actual or perceived conflict of 21 interest between their Ministerial position 22 and their private financial interests. They 23 should be guided by the general principle that 24 they should either dispose of the interest 25 giving rise to the conflict or take alternative</p> <p style="text-align: center;">Page 46</p>	<p>1 texted two of the co-founders to wish them 2 luck before they left Bland, was informed by 3 Mr Levy that Tommy Cornelio had retained 4 access to NSCIS even after telling Bland, 5 who held the Government contract for the 6 maintenance of the security system, that he 7 would no longer have access. 8 Could we on screen have B 2968, please. It 9 is the second paragraph from the bottom. Mr 10 Levy texted Mr Picardo on 30 August 2018, 11 as you can see there: "You should know that 12 I have spoken to Tommy and, despite his 13 letter to James Gee, he will continue ensuring 14 that the system is kept going until a solution 15 is found acceptable [to] the Government." 16 This is one of the only text messages that has 17 been disclosed between Mr Levy and Mr 18 Picardo. Whilst on that topic, we note with 19 some dismay, sir, that all the key individuals 20 in this Inquiry have disclosed text messages 21 and in some cases emails between them and 22 other individuals. That is all except Mr 23 Picardo and Mr Levy. That is why at the 24 outset of my rather inelegant literary 25 reference I had the dog that did not bark in</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

1 the night reference to those text messages.
 2 You may consider that probative in itself.
 3 The
 4 Inquiry has been provided with no messages
 5 at all between them. This is an extract from
 6 something provided in a statement. It is clear
 7 there were relevant messages. For example,
 8 if you look at B 1423, if we could pull that
 9 up on screen, 17 May at 23.10, we see Fabian
 10 Picardo: "I have sent to JL. Let me know if
 11 he sees it." That is on 17 May at 23.10, five
 12 and a half days after 12 May, Mr Picardo
 13 says that he forwarded the excerpt from the
 14 HMICFRS report to Mr Levy. You will see
 15 it follows Mr Baglietto saying to Mr Picardo
 16 at 23.03: "Yes, excellent. We can put it to
 17 good use for sure."
 18 Neither Mr Picardo nor Mr Levy have
 19 provided evidence as to the steps they have
 20 taken to track down the emails, the
 21 WhatsApps and so on or satisfactory
 22 evidence about why they have not been
 23 provided. Just while we have that exchange
 24 on screen, you will see the tone - just so I do
 25 not have to return to it later. You will see

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1 22.48, Fabian Picardo: "That is page 13 of
 2 the HMIC report published last week. Look
 3 at the bit I've highlighted in red. Boom."
 4 Then Lewis Baglietto: "Shocking but sadly
 5 doesn't come as a surprise. Thanks for your
 6 time today, bro. I think it reassured him a
 7 lot."
 8 Going back, in 2015, going back to the role
 9 of a key officeholder, frankly this is
 10 explosive. "Boom" is right, but not for the
 11 reason that is given here. It is frankly
 12 shocking to read this exchange between the
 13 Chief Minister, a lawyer for an individual
 14 who was a suspect under suspicion being
 15 investigated, and to see the Chief Minister
 16 saying, as he does at 23.10, immediately after
 17 Mr Baglietto said: "We can put it to good use
 18 for sure. I've sent it to JL. Let me know if
 19 he sees it", thumbs-up.
 20 To return to the facts behind Op Delhi, and
 21 we have not gone through this in detail today
 22 for reasons of time but you will have seen in
 23 our written submission we ran through our
 24 distillation of the evidence we have seen so
 25 far, recognising entirely, sir, that at this stage

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1 there are likely to be some gaps that are filled
 2 through oral evidence, and so on, but we
 3 have done a job to assist you in our written
 4 submissions but setting out what we think the
 5 chronology is and what we think happened
 6 from the material so far. Much of it is based
 7 upon contemporaneous material which
 8 makes it clear.
 9 Throughout 2018 and 2019, from the
 10 material we do have, we know that Mr
 11 Picardo continued to make decisions related
 12 to the NSCIS contract whilst also privately
 13 remaining in contact with Mr Levy about 36
 14 North. We know from the material we have,
 15 which is limited, that on at least one occasion
 16 Mr Picardo used his personal email address.
 17 Could we put on screen B 5318, you will see,
 18 an exchange between Mr Levy, 30 August
 19 2018, and then it has been redacted but the
 20 description there placed by your team:
 21 "Fabian Picardo's personal email address."
 22 This is when, on 30 August 2018, Mr Levy
 23 emailed Mr Picardo enclosing a draft email
 24 which was intended to be sent from Tommy
 25 Cornelio to James Gaggero. Putting it

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1 frankly, why was the Chief Minister being
 2 asked to approve a draft email between an
 3 alleged co-conspirator and his former
 4 employer who was also the current holder of
 5 the NSCIS platform? That is one of many
 6 questions which we hope will be answered
 7 over the course of this Inquiry. Mr Picardo's
 8 encouragement of and support for the 36
 9 North founders was, in our submission, at the
 10 very least inappropriate. He must have
 11 known that in order for 36 North to succeed,
 12 success which would enrich Mr Picardo and
 13 his Hassans partners, the company would
 14 have to take the NSCIS maintenance contract
 15 from Bland, a decision which ultimately
 16 would rest with him in his capacity as Chief
 17 Minister. That is why, reflecting on for a
 18 moment in these early days before we turn to
 19 the witness evidence, there is no explanation
 20 as to why the Chief Minister would have
 21 been enthusiastically supporting 36 North
 22 except on the expectation that he would
 23 eventually transfer the contract to them and
 24 to a company which he part owned. We
 25 accept, of course, that there is no evidence

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1 that the Chief Minister knew there was any
 2 attempt to hack the NSCIS from what we
 3 have seen, but he must have known how 36
 4 North would pay back its loan to Hassans,
 5 which was by obtaining the contract from
 6 him. Mr Levy must have known that too but
 7 he was perfectly willing to attempt to
 8 strongly influence the Chief Minister to
 9 transfer the contract. There is multiple
 10 pieces of evidence which make that clear
 11 from the material that we have. So Mr
 12 Picardo was personally involved in the
 13 events being investigated.
 14 I said "triple conflict of interests". That is
 15 number one. Number two. Second, and
 16 relatedly, Mr Picardo and his then wife had a
 17 direct financial interest in the outcome of the
 18 alleged conspiracy as part owner of 36 North,
 19 the company which the alleged conspiracy
 20 was designed to benefit. Mr Picardo
 21 indirectly owned a part of 36 North through
 22 his partnership in Hassans. We do not need
 23 to turn it up, but see the company structure
 24 diagram at E 5187. You saw yesterday the
 25 extract from Mr Richardson's notebook

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1 which had the graph of the investigation
 2 looking at this structure and the relationship
 3 between Hassans, Astelon, and so on. Mr
 4 Picardo's wife, who was also a partner at
 5 Hassans, presumably also owned a part of 36
 6 North from what we know. It is a matter for
 7 you to consider. And Hassans was owed a
 8 substantial amount of money, some 476,000,
 9 by 36 North. The success of 36 North relied
 10 directly on obtaining the contract as proved
 11 by the projected cash flow document which
 12 showed the NSCIS as 36 North's primary
 13 source of projected income. If the business
 14 failed, Hassans was committed to employ the
 15 three Op Delhi defendants as consultants or
 16 in some other post with £300,000 per annum
 17 salaries, therefore increasing the direct
 18 financial risk to Hassans and its partners if 36
 19 North did not secure the NSCIS contract.
 20 We suggest that you may form the view, sir,
 21 those factors alone should have been enough
 22 for any public official to exclude themselves
 23 entirely from all matters relating to the
 24 contract and, even more importantly, the
 25 police investigation.

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1 In addition, third, Mr Levy, the subject of the
 2 action taken by the RGP on 12 May, is, as we
 3 have heard, a close friend, mentor and
 4 business partner of Mr Picardo. Mr Picardo
 5 has described their long-standing relationship
 6 in this way in his statements, and we heard
 7 this on Monday: "I consider him to be a
 8 mentor in my previous legal practice, a
 9 supporter in my current political career and a
 10 close personal friend." He referred to a long-
 11 standing continuing and much valued
 12 personal, political and professional
 13 relationship.
 14 Where does this all take us? In our
 15 submission you may form the view that Mr
 16 Picardo's failure to act on his conflict of
 17 interest was improper. That is a view which
 18 appears to have been shared by at least one
 19 Government official from the documents we
 20 have seen, the Senior Advisory Counsel,
 21 later Solicitor General. If we could have on
 22 screen A 1302, paragraph 21. None of this
 23 requires you, of course, sir, to take a view on
 24 ultimately what the final conclusion would
 25 have been to that investigation. At issue here

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1 is the decision-making in respect of conflict
 2 of interest. In that witness statement the now
 3 former Solicitor General says that after
 4 hearing about the background to the Op
 5 Delhi investigation, paragraph 21, he was
 6 deeply concerned about the implications of
 7 this information if true, given that the Chief
 8 Minister and others in the political and
 9 administrative spheres of Government were
 10 themselves partners of Hassans. Then you
 11 will see at paragraph 22 he goes on to say: "I
 12 recall mentioning to the Attorney General
 13 that in the context of this nexus it would be
 14 especially important to be alive to the
 15 possibility that those with an interest in the
 16 outcome of the NSCIS matter could seek to
 17 influence the investigative or legal process
 18 either directly or indirectly. I was especially
 19 anxious that concern for the good reputation
 20 of the jurisdiction and its officers and
 21 institutions not be exploited by anyone with
 22 an incentive to conflate Gibraltar's interests
 23 with their own. I particularly recall
 24 mentioning the importance of not regarding
 25 Gibraltar as a PLC but as a community

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<p>1 whose values transcend corporate ones, even 2 if it was important not to be naive about the 3 need to safeguard Gibraltar's economic 4 wellbeing and international standing." To 5 which we say: quite. Those paragraphs 6 encapsulate a key issue about which we are 7 concerned and which we hope the evidence 8 will explore. 9 In the investigation which followed, Mr 10 Picardo was always likely to be a witness, 11 potentially a person of interest, indeed he 12 was later requested to submit a witness 13 statement to the court when the 36 North 14 founders were prosecuted, although it took a 15 number of months to comply with that 16 request. These are all matters which can be 17 asked of him in his oral evidence. 18 We note that Mr Picardo appears to accept on 19 a number of occasions that he had a conflict 20 of interest or potential conflict of interest. 21 Just to give to examples, A 1374, paragraph 22 75. Of course, this will have to be 23 interrogated to check its accuracy. This is 24 James Gaggero, the chairman of Bland, in a 25 witness statement at paragraph 75. Do you</p> <p style="text-align: center;">Page 57</p>	<p>1 office. Precisely the time that the RGP 2 officers were still attempting to execute the 3 search warrant, Mr Picardo angrily berated 4 Mr McGrail in the presence of the Attorney 5 General, making clear in no uncertain terms 6 his strong views on an operational issue 7 concerning an extremely powerful figure in 8 Gibraltar and a very close personal friend, his 9 strong views that the RGP should not have 10 obtained and should not execute the search 11 warrant against James Levy. 12 (11.14) 13 Mr Picardo proceeded to use all his 14 significant political personal powers and 15 skills thereafter to engineer the removal of 16 Mr McGrail from post. 17 You will see, going back to the gravitational 18 pull of 12 May, there is the events before 12 19 May and the events after 12 May, and on 20 multiple issues you see a total U-turn from 21 Mr Picardo, and the dividing line is what 22 happened on 12 May with the search warrant. 23 The next key theme we wanted to turn to was 24 our second key theme in the written 25 submissions, is the inappropriate interference</p> <p style="text-align: center;">Page 59</p>
<p>1 have that? When he refers to "him" it is Mr 2 Picardo. "I then asked [Mr Picardo] if I 3 could speak to him in private as everyone left 4 his office. I advised him that it had become 5 clear to me that James Levy was involved 6 with 36 North. I told him that once a case 7 against 36 North had been commenced by 8 Bland the matter would be out of my hands. 9 He stated that if this occurred it would be 10 improper for him to interfere." And indeed it 11 would be improper for him to interfere. 12 Second, can we look at B 70. We saw this on 13 screen when counsel to the Inquiry, Mr 14 Santos, was running through material on 15 Monday. This is the text from Mr Picardo to 16 Mr McGrail, 12 May, 12.28, where he uses 17 these words: "Given my close personal 18 relationship with James Levy, I won't 19 comment further." To put it frankly, sir, if he 20 had taken his own advice Mr McGrail would 21 still be in post, this Inquiry would have been 22 unnecessary. But instead, within minutes, 23 Mr Picardo, hearing that Mr McGrail was at 24 6 Convent Place for another meeting, 25 demanded that Mr McGrail meet him in his</p> <p style="text-align: center;">Page 58</p>	<p>1 by the Chief Minister in the RGP 2 investigation. Interfere of course means to 3 intervene in a situation without invitation or 4 necessity, or prevent a process or activity 5 from continuing or being carried out 6 properly. Mr Picardo, we acknowledge, says 7 he did not interfere but in our submission that 8 is patently false, simply not supported by the 9 evidence. 10 He provided frequent advice to Mr Baglietto 11 KC, another partner at Hassans, Mr Picardo's 12 close personal friend, co-Hassans partner, Mr 13 Levy's defence lawyer. He was in direct and 14 apparently frequent contact with Mr Levy 15 himself, the suspect. He admits having 16 spoken to him multiple times about Op 17 Delhi, both before and after the search 18 warrant, and from 12 May Mr Picardo, from 19 what we have seen was enthusiastically 20 texting or Whatsapping Mr Baglietto, whom 21 he referred to in the messages as "bro" with 22 potential legal points Mr Baglietto could 23 make on behalf of Mr Levy when 24 challenging the warrant. Talk about friends 25 in high places, this is frankly astonishing.</p> <p style="text-align: center;">Page 60</p>

<p>1 We saw that in the boom exchange earlier. 2 Mr Picardo, on the material we have seen, 3 also appears to have shared highly 4 confidential information relating to advice 5 which the DPP allegedly provided to the 6 investigative officers during the 7 investigation, which ended up in the letter 8 Hassans sent to the RGP. This goes far 9 beyond limited blurring of lines, this is 10 wholly inappropriate and frankly shocking. 11 Could we look at B5419 at the bottom of the 12 page. It is the final sentence: 13 "There can be little surprise that, as we 14 believe is the case, the DPP advised the 15 Commissioner against the making of these 16 applications." 17 How do the lawyers of a criminal suspect 18 come to know or come to think what the DPP 19 had advised the Commissioner? Was it from 20 Mr Picardo? Was it from another source? It 21 is plain they should not know that. We are 22 extremely concerned they do. What is the 23 source of that? Was it the Chief Minister? 24 Hard to interrogate that in the absence of 25 having notes of the time, Whatsapp</p> <p style="text-align: center;">Page 61</p>	<p>1 warrant, from the evidence we have seen, it 2 looks as if Mr Picardo may have suggested to 3 Lewis Baglietto disciplinary action which 4 could be taken against Mr McGrail. Again, 5 this is utterly astonishing. Could we have 6 bundle E page 1422. This is a text from Mr 7 Picardo to Lewis Baglietto dated 14 May 8 2020, 16.45. Apologies, it is 1422 - it is me 9 not being clear - although the other page you 10 have landed on is also an exchange between 11 Mr Picardo and Mr Baglietto, by total 12 chance. Have we got it there? 1422 and it is 13 a text timed 16.45. Excuse me, it is 16.55, I 14 cannot read my own writing. This is Mr 15 Picardo to Mr Baglietto, bearing in mind Mr 16 Baglietto, amongst other things, is the lawyer 17 for Mr Levy. He refers to dismissal with 18 total loss or reduction of pension benefits: 19 "Forfeiture of pension benefits will be used 20 as a disciplinary matter only in Os where the 21 police officer is convicted of treason or some 22 other offence which is gravely injurious to 23 the State or is liable to lead to serious loss of 24 confidence in the police force." 25 That is a slightly mistyped excerpt, as we</p> <p style="text-align: center;">Page 63</p>
<p>1 messages, text messages, because we go back 2 again to the evidential gap on this critical 3 issue. Again you have to draw conclusions 4 from the limited material we do have, which 5 includes that sentence, with Hassans having 6 apparently inside knowledge about the DPP's 7 advice to my client, the Commissioner of 8 Police. 9 But in any event what we suggest the 10 evidence shows is that Mr Picardo appears to 11 have shared information provided to him 12 confidentially by the Commissioner of 13 Police, another key office holder, on a 14 repeated basis. It may be - it is a matter for 15 you to explore - whether that included 16 information which could be included in a 17 letter which Hassans were about to send to 18 the RGP challenging the legality of the 19 warrant. We certainly know he was offering 20 other legal points which could be made. You 21 saw, even in that limited exchange earlier, 22 him raising other points and suggesting to Mr 23 Levy, Mr Baglietto mud which could be 24 slung at my client. 25 Just two days after the attempted search</p> <p style="text-align: center;">Page 62</p>	<p>1 understand it, from the Police Disciplinary 2 Regulations, though he plainly did not have 3 advice from Mr Cruz or others on the 4 applicability of the Police Disciplinary 5 Regulations, so perhaps giving advice and 6 bad advice at that. 7 But in any event it is clear from this that Mr 8 Picardo's intention, we suggest, was to 9 punish Mr McGrail, or perhaps other 10 officers, not because, as he later claimed he 11 felt Mr McGrail misled him but because of 12 the search warrant himself. Why was he 13 discussing punishment with Mr Levy's 14 lawyer about this? Was this in any way 15 appropriate? Was this in keeping with the 16 high office which he holds? 17 Mr Picardo has admitted that after 12 May he 18 discussed with Mr Baglietto at length 19 potential avenues of challenge to the search 20 warrant, while at the same time as he 21 admitted, and I quote, "he discussed the 22 mechanisms to see Mr McGrail removed". 23 In other words, to spell it out, make the 24 inappropriateness of his actions as clear as 25 possible. The Chief Minister had lengthy</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

1 private discussions with the lawyer of a
 2 criminal suspect, his personal friend, in a
 3 criminal investigation in which Mr Picardo
 4 was potentially implicated, certainly had a
 5 personal and financial interest in the outcome
 6 of it by virtue of the Hassans' link. Those
 7 conversations and discussions were about
 8 how to prevent the RGP proceeding with the
 9 search warrant, how to challenge the RGP's
 10 decisions and at the same time how to
 11 remove the RGP Commissioner.
 12 There is a phrase in Irish society GUBU -
 13 grotesque, unbelievable, bizarre,
 14 unprecedented - and may I suggest that this is
 15 a GUBU situation here. It is grotesque,
 16 unbelievable, bizarre and we hope
 17 unprecedented but who is to say?
 18 We can see from the material we have got
 19 that Mr Picardo even appears to have gone as
 20 far as to proposing to the Attorney General
 21 that he exercise his power under the
 22 constitution to take over conduct of the
 23 warrants. Now, that can be seen in text
 24 messages between Mr Picardo and Mr
 25 Llamas. Could we go to B1418? There is a

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1 text message of 18 May 2020, again within
 2 that critical period, 36 minutes past midnight.
 3 You see: media omitted. We do not have the
 4 media but in the context, sir, we suggest that
 5 it is clear that this is a reference to section
 6 59(2)(b) of the Gibraltar Constitution, and
 7 perhaps your team could ask (because we had
 8 the extract from the HMCIF arrest report that
 9 we looked at earlier, that missing media
 10 provided) could it be confirmed by the
 11 Government teams that that is an extract
 12 from section 59(2)(b). It is clear from the
 13 context, you see: "Fabian Picardo to discuss",
 14 there is then an image sent and then Mr
 15 Llamas says (2)(b), and Mr Picardo says:
 16 "Exactly, in re a search warrant as a
 17 proceeding." Mr Llamas: "We need to check
 18 what 'such' means in that context." Do you
 19 see that?
 20 Section 59(2)(b) of the Constitution states
 21 that the Attorney General has power:
 22 "To take over and continue any such criminal
 23 proceedings that may have been instituted by
 24 any other person or authority."
 25 We suggest in context that it is clear that that

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1 is what Mr Picardo was referring to. Now, it
 2 is notable - I am told they do have it, I was
 3 not sure it was available, and we can put it on
 4 screen if you would like to see it, sir, so you
 5 can see what the section 59(2)(b) reference
 6 is.
 7 MR SANTOS: C6763. Sorry, I just want to
 8 make clear that we do have that document --
 9 THE CHAIRMAN: Okay, yes.
 10 MS GALLAGHER: 6763.
 11 MR SANTOS: 6763.
 12 MS GALLAGHER: If we could just scroll
 13 up. You see that:
 14 "The Attorney General shall have power in
 15 any case in which he considers it desirable so
 16 to do,"
 17 and then (b),
 18 "To take over and continue any such criminal
 19 proceedings that may have been instituted by
 20 any other person or authority."
 21 We note that in the exchange we have seen
 22 Mr Llamas did not raise any concerns about
 23 using his constitutional power to take over
 24 the proceedings, simply queries whether it is
 25 possible when it is suggested by the Chief

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1 Minister. It is of course Mr Llamas's
 2 evidence that he was not considering a nolle
 3 prosequi at this point. It is clear there was
 4 discussion of using similar powers, prompted
 5 in that exchange that we have seen by the
 6 Chief Minister.
 7 It is also notable when you look at the
 8 exchanges that we have that Mr Picardo's
 9 major concern here is very much the warrant,
 10 not Mr McGrail. You may think, sir, when
 11 you interrogate the evidence which we do
 12 have, the contemporaneous evidence, not the
 13 material put together many months and many
 14 years later, it is clear that the core focus is on
 15 that warrant, and essentially umbrage being
 16 taken at what is being done to Mr Levy, the
 17 most powerful lawyer in the most powerful
 18 firm in Gibraltar.
 19 It is perhaps, you may think, no surprise that
 20 Mr Picardo reacted as he did to the attempted
 21 execution of the search warrant - angrily, a
 22 description he accepts, and in total and robust
 23 defence of Mr Levy - given that he had, in
 24 his own words, a large number of previous
 25 discussions with Mr Levy about his status as

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1 a person of interest and repeatedly reassured
 2 him, that he was sure the investigation would
 3 exonerate Mr Levy, despite Mr Picardo not
 4 having seen the underlying evidence and
 5 despite the high office that he held.
 6 Now, that in itself, those discussions, is
 7 another way in which he interfered with the
 8 investigation. Given vital importance of
 9 constitutional separation of powers, given the
 10 statutory bounds to his role and given his
 11 obvious triple conflict of interest, which we
 12 have summarised briefly, and the fact that Mr
 13 Levy was a suspect in a criminal
 14 investigation plainly, we suggest, Mr Picardo
 15 should not have reassured Mr Levy in this
 16 way, rather should have said he could not
 17 comment given his role as Chief Minister.
 18 That is not unnatural, given a longstanding
 19 friendship, it is expected. The people of
 20 Gibraltar should expect better of their Chief
 21 Minister.
 22 He also should not have discussed the 12
 23 May search warrant with Mr Levy, a suspect
 24 in a criminal investigation, as he admits he
 25 frequently did.

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1 Extraordinarily, thinking back to that
 2 paragraph we had on screen right at the
 3 outset, even four years later Mr Picardo says
 4 these interactions were proper, natural and
 5 appropriate and that he has a right as a citizen
 6 to level criticism at the police. One of our
 7 gravest concerns here is that even after the
 8 dust has settled you may think, sir, that Mr
 9 Picardo still does not understand, still less
 10 adhere, to the concept of avoiding conflicts
 11 of interest or perceived conflicts of interest or
 12 the constitutional separation of functions, or
 13 the proper limits to his role.
 14 I see the time, sir. Might that be a
 15 convenient moment to take a break?
 16 THE CHAIRMAN: You are better to choose
 17 than me. If that suits you, that is what we
 18 will do.
 19 MS GALLAGHER: I have a little more to
 20 go on this topic before turning to the third
 21 theme in relation to the Chief Minister, but I
 22 think this is a convenient time.
 23 THE CHAIRMAN: Okay.
 24 MS GALLAGHER: Thank you.
 25 (Adjourned for a short time)

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1 MS GALLAGHER: Thank you, sir. Sir, I
 2 mentioned there were three internal themes
 3 about the Chief Minister. I am just finishing
 4 the second, we will then turn to the third and
 5 then hand over to Mr Wagner to pick up with
 6 the Attorney General's role.
 7 In sum, we submit that the evidence when
 8 you have considered it all in its totality may
 9 lead you to reach the conclusion that Mr
 10 Picardo's intervention contributed to the
 11 decision to treat Mr Levy more leniently than
 12 the other suspects by not interrogating his
 13 devices, not interviewing him under caution.
 14 At the very least, Mr Picardo's actions and
 15 the ensuing fate of Mr McGrail, you may
 16 think, may have sent a clear message to the
 17 investigating officers that further action
 18 against Mr Levy would not be tolerated. For
 19 officers, as you have heard so powerfully
 20 from Mr Gibbs yesterday, who may have
 21 been anxious about the prospect of taking on
 22 such a powerful figure - speaking truth to
 23 power is the phrase often used - you may
 24 take the view that these actions at a minimum
 25 would be likely to have a chilling effect and

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1 send a clear message that the powerful
 2 should be let alone, make it more difficult for
 3 police to do their jobs.
 4 Again going back to that point about Mr
 5 Picardo digging his heels in and being defiant
 6 even four years later, could we have on
 7 screen a paragraph which Mr Santos used in
 8 opening? It is A233 paragraph 5, and it is the
 9 final sentence. So this is the paragraph
 10 where Mr Picardo recalls he discussed with
 11 Mr Levy on a very large number of occasions
 12 - I am sorry, I said large number of
 13 occasions, the actual words are very large
 14 number of occasions - the fact that the RGP
 15 had suggested he might be a person of
 16 interest in the investigation. Do you see, sir,
 17 the final sentence? So after he says:
 18 "I am sure he would not have acted in a
 19 manner which was contrary to law. In fact
 20 this was also the conclusion reached by the
 21 police when they made the decisions about
 22 who to charge in consequence of their Op
 23 Delhi investigation."
 24 Again, we suggest you may take the view
 25 this shows a staggering lack of insight into

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<p>1 what happened on those critical days in May 2 2020, because there is an underlying 3 assumption in paragraph 5 that Mr Picardo's 4 actions did not have any impact on the 5 ultimate decisions and the ultimate outcome 6 of that process. You may take the view that 7 in fact the sentence beforehand was a self- 8 fulfilling prophecy: by the Chief Minister 9 being so sure from his very large number of 10 discussions with Mr Levy that Mr Levy 11 would not have acted in a manner which was 12 contrary to law, and the actions the Chief 13 Minister took may well have altered the 14 course of the investigation. There is no 15 acknowledgement of that whatsoever. 16 Returning to the events which unfolded 17 rapidly from the RGP's actions on 12 May in 18 those fateful 28 days, at the same time as 19 advising Mr Baglietto and Mr Levy on how 20 to challenge the search warrant, Mr Picardo 21 from the evidence we have seen appears to 22 have taken a series of steps to simultaneously 23 remove Mr McGrail from his post, and from 24 the evidence we have seen, which is not 25 complete, those decisions and actions and</p> <p style="text-align: center;">Page 73</p>	<p>1 measures which could be taken against Mr 2 McGrail, his own Commissioner of Police, 3 who was conducting the investigation into 4 Mr Baglietto's client, Mr Picardo contacted 5 the Acting Governor, Mr Pyle, providing a 6 list of reasons why he said he was beginning 7 to lose confidence in Mr McGrail. 8 Mr Wagner is going to deal in some more 9 detail with the position of the Governor and 10 the position of the Attorney General but at 11 this stage, just to put it in context, may we 12 flag two points about 13 and 14 May so we 13 do not fall into the trap of having a silo 14 approach ourselves. 15 Not long after this all happened on 12th, Mr 16 McGrail on 13 May told the Attorney 17 General that he intended to approach the 18 Governor to inform him of his concerns. The 19 Attorney General told him not to do so yet. 20 You may form the view, sir, that it is not a 21 coincidence that shortly thereafter the Chief 22 Minister messaged the Acting Governor 23 stating that he was starting to lose 24 confidence. 25 The meeting called by Mr Picardo at the</p> <p style="text-align: center;">Page 75</p>
<p>1 those steps appear to have been taken in 2 close consultation with Mr Levy's lawyer, Mr 3 Baglietto, potentially with Mr Levy himself 4 in the missing messages which we have 5 never received. Whatever the ultimate 6 outcome of the process, at the time he 7 remained a suspect. We say potentially with 8 Mr Levy himself - we are conscious Mr Levy 9 denies having discussed Mr McGrail's 10 position as Commissioner of Police or the 11 decision to invite him to retire with Mr 12 Picardo, but Mr Picardo says he met with Mr 13 Levy and Mr Baglietto at his home, it would 14 seem on 17 May, discussed with them the 15 fact that he believed Mr McGrail had lied to 16 him about the advice he had about the search 17 warrant, his subsequent complete loss of 18 confidence in him, he said, and again the 19 accounts from Mr Levy and Mr Picardo 20 appear to be in direct conflict and that may 21 be an issue that you will need to resolve 22 through evidence. 23 We do know that by 14 May, on the same 24 day that Mr Picardo was proposing to Mr 25 Baglietto, Mr Levy's lawyer, disciplinary</p> <p style="text-align: center;">Page 74</p>	<p>1 Governor's residence on 14 May is also a 2 critical moment, at which we understand Mr 3 Picardo persuaded Mr Pyle that they would 4 approach the GPA together to claim they had 5 both lost confidence and therefore present the 6 GPA with a fait accompli, forcing its hand to 7 use its statutory powers to dismiss Mr 8 McGrail. 9 Those events from 12th onwards, including 10 that exchange on 13th, Mr McGrail without 11 fear or favour indicating to the Attorney 12 General that he intended to approach the 13 Governor to raise his concerns about why 14 what was happening was deeply 15 inappropriate, being told by the Attorney 16 General not to do so yet, and that meeting Mr 17 Picardo at the Governor's residence on 14 18 May, they are all matters which we think 19 need to be looked at forensically and in some 20 detail. That is why we say that 28 day period 21 is so critical. But at this stage we submit all 22 of these actions were deeply constitutionally 23 inappropriate and well outside Mr Picardo's 24 functions under the legal framework in 25 Gibraltar. Put frankly, the high office that he</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 held and continued to hold did disqualify him 2 from taking these actions. 3 Then final point I wish to raise about the 4 Chief Minister, which is dealt with in detail 5 in our written submissions as the sixth key 6 theme, sir, is that you may take the view 7 when you have seen all the evidence and 8 heard all the evidence that Mr Picardo's real 9 reason for acting in the way that he did was 10 his anger about the warrant, his desire to 11 protect Mr Levy - possibly also himself, we 12 do not know. In his statements to this 13 inquiry, Mr Picardo states that his loss of 14 confidence was primarily about anything 15 other than the events surrounding the search 16 warrant. Our core submission is that there is 17 a fundamental mismatch between the picture 18 now presented in Mr Picardo's witness 19 evidence and the contemporaneous 20 documentation which you have, and the 21 absence of key documentation in relation to 22 his exchanges with Mr Levy is also, we 23 suggest, probative. 24 In the second GPA letter dated 22 May and 25 which we now know Mr Picardo secretly</p> <p style="text-align: center;">Page 77</p>	<p>1 very difficult to understand the mismatch 2 between documentation at the time when this 3 is top of the agenda and then the letter of 22 4 May which has these other points, 5 particularly when you marry it with that 6 boom exchange earlier where you see the 7 only way in which the HMICFRS report is 8 even raised is in the context of a discussion 9 with Mr Levy's team: "This could be material 10 that we could make use of." 11 Mr McGrail's lawyer's letter of 29 May 2020 12 in our submission raised legitimate legal 13 issues and ultimately led, rightly, to the GPA 14 process being cancelled. That letter should 15 have caused Mr Picardo and Mr Pyle to 16 pause for reflection. The fact that it caused 17 them to, they now say, further lose 18 confidence demonstrates how committed 19 they were to removing Mr McGrail and how 20 dismissive they were of legitimate concerns 21 of how they were going about it, and indeed 22 how much they sidestepped fundamental 23 principles of natural and constitutional 24 justice. We have now seen that issue raised 25 as issue 8 in the list of ten.</p> <p style="text-align: center;">Page 79</p>
<p>1 drafted for the GPA to send to Mr McGrail, it 2 states that the loss of confidence was about 3 two things: the HMICFRS report and the 4 incident at sea. Mr Wagner is going to take 5 you to that letter, I do not ask for it to be on 6 screen but the reference for anyone's note is 7 B1364, that is the second letter sent by Joey 8 Britto on behalf of the GPA. The absence of 9 any express mention of Op Delhi or the 10 search warrant in that letter speaks volumes, 11 not only because of the procedural points I 12 made earlier, that in truth what that meant is 13 that the real decision maker behind the 14 scenes had a motive which was never put to 15 Mr McGrail which Mr McGrail never had an 16 opportunity to answer, but also because the 17 absence of it in that letter when in fact the 18 contemporaneous documents show it was at 19 the forefront of the Chief Minister's mind 20 may lead to the conclusion, sir, when you 21 have considered all the evidence, that 22 perhaps it is missing because the Chief 23 Minister knew that it was not a reason which 24 could properly be set out in a letter such as 25 the GPA letter that he drafted. We find it</p> <p style="text-align: center;">Page 78</p>	<p>1 Mr McGrail does not say that the allegations 2 by Mr Picardo and Mr Pyle that they were 3 misled in relation to the incident at sea and 4 the search warrant respectively are 5 unimportant; he does say they are 6 unwarranted. He has given his detailed 7 account in response to those allegations in his 8 written evidence, an account which neither 9 Mr Picardo nor Mr Pyle requested from him, 10 despite the grave seriousness of the actions 11 they were taking to remove him from post. 12 He is grateful for the opportunity, sir, to 13 address those points now before you in a fair 14 process. 15 Mr Wagner will deal with the issues about 16 Mr Pyle shortly, but in respect of the Chief 17 Minister may I at this stage say this. We 18 suggest that the evidence in relation to the 19 interrelationship between Mr Pyle and Mr 20 Picardo at this key time may lead you to the 21 conclusion that Mr Picardo astutely raised 22 issues which were historic which he knew Mr 23 Pyle had a difficulty with, such as the airport 24 incident from 2017, recruiting a new RGP 25 Commissioner from outside of Gibraltar -</p> <p style="text-align: center;">Page 80</p>

<p>1 you will recall yesterday the submissions 2 from Mr Neish about the unimpeachable 3 GPA appointment process but the fact that of 4 the seven to two vote, one of the two was of 5 course Mr Pyle, who wanted the process to 6 be quite different and to allow for 7 recruitment of an officer from outside 8 Gibraltar. You may take the view that Mr 9 Picardo astutely raised these matters, 10 knowing it would likely encourage Mr Pyle 11 to join forces with him essentially to settle 12 old grudges. But that will be a matter for 13 you. 14 It is clear, just to take one example on those 15 issues, that the documentation now disclosed 16 to the Inquiry demonstrates that Mr Picardo's 17 concerns about Mr McGrail's and the RGP's 18 actions in the airport were totally contrary to 19 his recorded views at the time that the MOD 20 was wholly to blame. That email is worth 21 revisiting because the U-turn is so acute. It is 22 at B947, it is from Mr Picardo to Mr Yome, 23 the then Commissioner of Police, 3 March 24 2017, just after the airport incident. You will 25 recall that at that time of course Mr McGrail</p> <p style="text-align: center;">Page 81</p>	<p>1 he had the wrong view in 2017. But what he 2 now says in his witness evidence to you, sir, 3 since this inquiry was called in 2022 is quite 4 different. If we go to A186, Mr Picardo's 5 first Inquiry statement, paragraphs 21 and 22 6 - just for time reasons I will not go through 7 them in detail, but you will see the key point 8 is paragraphs 21 and 22, he says: puts Mr 9 McGrail at the centre, he led this 10 investigation, the operations in question, 11 "... became apparent to me that the manner 12 in which he led that investigation was 13 unnecessarily institutionally confrontational 14 in respect of the MOD," 15 that is the MOD to whom he referred as 16 clowns in uniform and idiots in his own 17 email of 3 March 2017 but he appears to 18 have taken issue now with Mr McGrail 19 having an unnecessarily institutionally 20 confrontational approach. Paragraph 22: 21 "I was clear in my view that while the MOD 22 had not handled the matter well either, Mr 23 McGrail had led the RGP into a dangerous, 24 difficult and damaging situation for Gibraltar 25 in terms of its relationship with the MOD</p> <p style="text-align: center;">Page 83</p>
<p>1 was not Commissioner, he was not at the 2 helm, but he was involved. 3 "Failing to respect our Constitution is not to 4 fail to respect just Gibraltar, it is to fail to 5 respect the UK Parliament and the same 6 monarch that these clowns in uniform have 7 sworn an oath to." 8 The clowns in uniform appear to be a 9 reference to the MOD. 10 "I can also tell you that Gibraltar will not be 11 home for the people in question for long and 12 we won't be blocking the tarmac for a 13 moment to delay the plane when the time 14 soon comes for them to wave goodbye to the 15 best place these idiots have ever had the good 16 fortune to live in their petty lives. Good 17 riddance and goodbye won't come soon 18 enough." 19 We said earlier right at the outset that it is 20 important to look at the contemporaneous 21 documents first. This was Mr Picardo's 22 position in 2017. At no point between 3 23 March 2017 and the events of May 2020, 24 over three years later, is there evidence of Mr 25 Picardo doing a U-turn, considering in fact</p> <p style="text-align: center;">Page 82</p>	<p>1 which would and subsequently did require a 2 lot of my time and effort to mitigate." 3 We often hear that phrase about people going 4 on a journey; Mr Picardo has certainly been 5 on what might be described as a journey 6 since 3 March 2017, from calling the MOD 7 clowns and idiots to now suggesting it was 8 Mr McGrail who was the real villain in the 9 piece. We suggest, sir, that you may take the 10 view that Mr Picardo's credibility is seriously 11 undermined when he so clearly changes his 12 opinion on events, historic events, to fit a 13 convenient narrative. There is no evidence 14 whatsoever in the voluminous bundles before 15 us of him criticising the RGP, Mr Yome, still 16 less Mr McGrail, about the airport incident 17 prior to 12 May 2020. That is why right at 18 the outset we said there is a clear line 19 between what happened before 12 May 2020 20 and what happened afterwards, and also why 21 I used the word smokescreen, because in 22 reality what Mr Picardo has now done, we 23 suggest, is rewrite history in relation to these 24 old matters. Again, the search warrant, with 25 its gravitational pull, pulls at everything.</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 Finally we turn to what Mr Picardo now says 2 was the sole reason for his loss of confidence 3 in Mr McGrail, or the primary reason for his 4 loss of confidence in Mr McGrail, that he felt 5 he had been lied to. It is of course your 6 primary task to ascertain the reasons and 7 circumstances by which Mr McGrail came to 8 leave his post, and when deciding what is a 9 reason we gratefully adopt the points made 10 by your counsel, by Counsel to the Inquiry, 11 in paragraph 6 of their written opening 12 submissions in relation to assessing the 13 reasons for a person's actions, which Mr 14 Santos returned to on Monday. This is 15 simply the point that a person may say 16 something was the reason for their actions in 17 circumstances where that: may be completely 18 true, no deception; may be completely untrue 19 because they are for some reason lying, full 20 deception; or it may be something in 21 between, partly the truth, this may have been 22 a reason but there were other reasons which 23 the person is concealing; or they may have 24 convinced themselves later, ex post facto, 25 that they did something for one reason</p> <p style="text-align: center;">Page 85</p>	<p>1 number of these points are raised in 2 paragraph 89 of Counsel to the Inquiry's 3 facts. 4 First, when Mr Picardo called Mr McGrail 5 and the Attorney General into his office on 6 12 May, whilst attempts were being made to 7 execute the warrants, everyone accepts he 8 was extremely angry from the start, the fact 9 of his anger is one of the most consistent 10 aspects of the evidence being mentioned by 11 Mr McGrail, Mr Pyle, indeed Mr Picardo 12 himself, who accepts that he used firm and 13 forthright language, that he spoke robustly, 14 accepts that he was both angry and seriously 15 concerned about the RGP's actions. We see 16 that from paragraphs 46 and 47 of Mr 17 Picardo's first affidavit. He then says this, 18 which is at A193, if we could have that on 19 screen, it is paragraph 51: 20 "I believe I told Mr McGrail as that meeting 21 ended that I was greatly disappointed by the 22 manner in which the RGP had acted and that 23 I believed they had acted improperly and 24 outside the law. I was very angry about this 25 turn of events and Mr McGrail's attitude in</p> <p style="text-align: center;">Page 87</p>
<p>1 whereas in reality they did it for another. 2 We have views on which category Mr 3 Picardo is likely to fit into and I will not in 4 opening go through that in detail, but I 5 anticipate these are issues that we will want 6 to explore and may need to address you in 7 more detail in closing. I will make some 8 brief points now. 9 (11.59) 10 Mr Picardo says Mr McGrail's alleged lie 11 was the true reason. But was it? I am just 12 going to make some selective example points 13 which show that that does not stand up and 14 may assist with giving an indication of some 15 matters which we hope will be explored in 16 evidence. Certainly by the time of the letter, 17 Mr Picardo sent to the GPA on 5 June, which 18 was over three weeks after the warrant had 19 been executed and over three weeks after that 20 first angry meeting had taken place, Mr 21 Picardo had settled on the allegation that Mr 22 McGrail lied to him as the primary reason for 23 losing confidence in him. We suggest there 24 is extensive contemporaneous evidence 25 which show that that is simply not correct. A</p> <p style="text-align: center;">Page 86</p>	<p>1 the meeting, used robust language throughout 2 the meeting, very likely laced with 3 expletives." 4 Now, the only contemporaneous note of that 5 meeting is the one written by Mr McGrail on 6 the evening of 12 May, slightly amended the 7 following day and emailed to himself to 8 protect his position because of his grave 9 concern of what was happening. We do not 10 need to turn it up, but it is at B74. Mr 11 Wagner is going to turn to that a little later, 12 but if I give you a reference now, it is B74. 13 It is worth recalling that note was drafted 14 well before anything had been said to Mr 15 McGrail about him being removed from post. 16 He was just trying to relate the extraordinary 17 events of the meeting, and Mr Wagner will 18 take you to that. 19 In summary, at the meeting on 12 May, 20 whilst the search warrant was being 21 executed, Mr Picardo, supported by Mr 22 Llamas, inappropriately and angrily berated 23 Mr McGrail for the RGP's actions, 24 expressing anger and dissatisfaction at the 25 fact that warrants had been executed against</p> <p style="text-align: center;">Page 88</p>

<p>1 Mr Levy, told the RGP they were managing 2 the investigation very wrongly, said he hoped 3 Mr McGrail was right and he was wrong. 4 There would be consequences if he was 5 found to be right. Also asked why the RGP 6 were not focusing on Chris Miles, a barrister, 7 rather than Mr Levy. Also Mr Picardo 8 expressed a critical view of the complainant 9 in the case, Mr Gaggero, expressed concern 10 that the actions carried serious implications 11 politically, given that the financial secretary 12 himself and others were all partners of 13 Hassans. Said that Vox, the right wing party 14 in Spain, would like to capitalise on the 15 issue. 16 We know that there is a relatively 17 contemporaneous note from 21 May from Mr 18 Pyle writing to his superiors at the FCDO 19 and that is at B1453, bottom of the page, so a 20 number of days later, 21 May where he says, 21 "The CM was visibly angry during our 22 meeting on Friday." Then later he says, 23 "Without doubt, the CM has the bit between 24 his teeth and wants the Commissioner 25 removed from his position as soon as</p> <p style="text-align: center;">Page 89</p>	<p>1 and an understanding develops, which is then 2 repeated in multiple places but not in fact 3 supported by the material. 4 Now, one more indication that Mr Picardo's 5 true concern was the warrant itself. He says 6 in his witness evidence that he made clear to 7 Mr McGrail that he considered the RGP had 8 not acted properly, was highly critical after 9 the event of Mr McGrail's decision to have 10 recourse to a search warrant instead of a 11 production order. We see that in Picardo's 12 statement 1, paragraphs 43 to 53. We do not 13 need to turn it up, but the reference is A191 14 to 4, and Picardo's statement 2, paragraph 15 11.2 at A225. 16 Of course, he was not highly critical after the 17 event, that phrase that he uses. It was not 18 after the event at all, it was during the event. 19 The RGP were still with Mr Levy whilst this 20 was all occurring. It may well be that Mr 21 Picardo had already spoken to Mr Levy on 22 the phone at this point as he told Mr McGrail 23 at the time that he had. We highlight it does 24 not appear to us that Mr Picardo is being 25 critical about executive action being taken</p> <p style="text-align: center;">Page 91</p>
<p>1 possible." 2 Now, it is obvious, indeed it is admitted by 3 Mr Picardo, that he expressed this anger well 4 before the alleged lie, well before he had the 5 text message exchange with Mr Llamas later 6 that day in which Mr Llamas told him that 7 the DPP had informed him he had strongly 8 advised against the warrant. Mr Picardo's 9 extreme anger was therefore quite obviously 10 caused by the warrant itself not the alleged 11 lie. Certainly not the alleged lie. He had the 12 bit between his teeth before that ever 13 happened. 14 We will in due course pick up that language 15 of "strongly advised against the warrant", 16 because that statement has an interesting 17 history and in fact on the detail there are 18 some serious concerns about that. I am not 19 going to deal with that, Sir, now but it is 20 something that will emerge through 21 evidence, but may we just put down a 22 placeholder, that that language of "strongly 23 advised against the warrant" is concerning, 24 pops up in multiple places and appears to be 25 one of those issues where a phrase is used</p> <p style="text-align: center;">Page 90</p>	<p>1 against Mr Levy, focus now seems to be that 2 it is a warrant not a production order. 3 You will also see in some of the 4 contemporaneous materials the Chief 5 Minister's initial WhatsApp to Mr Pyle on 14 6 May. He says he will alert Mr Pyle to a 7 particular matter "when we meet". That is 8 what he says in the WhatsApp on 14 May, 9 and he now explains, again we do not need it 10 on screen but for your note, in his first 11 witness statement, paragraph 68, that "That 12 particular matter was the issues of the 13 execution of the search warrant in respect of 14 Mr Levy and my views in respect thereof." 15 We also get that from the meeting between 16 Mr Pyle and the Chief Minister of 15 May 17 2020 where again the focus is upon the 18 search warrant: see Mr Pyle's statement 1, 19 paragraph 26, A255 to 6. See again 17 May 20 2020, Chief Minister's email to Mr Pyle 21 setting out his preliminary views where he 22 refers to the James Levy QC warrants, which 23 he stated "were the reasons why I've lost 24 confidence in the probity and integrity of the 25 Commissioner and referred to this as</p> <p style="text-align: center;">Page 92</p>

1 possibly the issue of deepest concern."
 2 So whether it is a repackaging, a
 3 smokescreen, a re-writing of history, or a
 4 situation in which he simply convinced
 5 himself that what he was thinking in 2020
 6 was something quite different we do not
 7 know, but either way, when you probe the
 8 evidence, we suggest it will be clear that that
 9 gravitational pull, the core focus throughout
 10 is the James Levy QC warrants, as described
 11 in that email of 17 May, and that that was the
 12 focus and the reason and the very reason that
 13 any of these events took place at all.
 14 So whatever he now says is his primary
 15 reason for wanting to remove Mr McGrail,
 16 we suggest the evidence will lead to the
 17 conclusion that the true overarching reason is
 18 in fact the fact that the RGP had taken
 19 executive action against Mr Levy in the Op
 20 Delhi investigation. The vast preponderance
 21 of evidence points in that direction, from Mr
 22 Picardo's rage, to the great many
 23 contemporaneous references of which I have
 24 just taken you to a small few, to his
 25 dissatisfaction about the warrant itself, to his

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1 engagement, some might say plotting, with
 2 Mr Levy's lawyer, possibly even Mr Levy
 3 himself, to remove Mr McGrail. They are
 4 key issues, we submit, which need to be
 5 looked at.
 6 The final point from me on what was going
 7 through the Chief Minister's mind at the time,
 8 it is plain that Mr Picardo was obviously very
 9 emotionally impacted by the search warrant
 10 taken against close friend and mentor. Now,
 11 how is he possibly to know whether, if he
 12 intervened, his intervention would be in the
 13 public interest or the private interest? You
 14 may reach the view, as we have, that he was
 15 hopelessly conflicted. It is no surprise that
 16 there are now multiple competing reasons or
 17 suggestions as to why he may have acted in
 18 the way that he did. Even he may not be able
 19 to say which ultimately prevailed.
 20 Some time may be given to the question of
 21 was the Chief Minister right in any event in
 22 his concerns about the decision to exercise a
 23 search warrant against the RGP and at this
 24 stage, and just say at a simple level, it was
 25 not for Mr Picardo to reach a judgment. Mr

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1 Picardo had not been privy to the underlying
 2 evidence. We heard yesterday about the 176
 3 word judgment. Mr Picardo had not seen
 4 that. There is no evidence he had seen it. He
 5 had not seen the various messages between
 6 Mr Levy and the alleged co-conspirators. He
 7 had not seen the emails attempted to be
 8 deleted which had forensically retrieved
 9 later. He had not seen messages from
 10 Tommy Cornelio, text messages between Mr
 11 Cornelio and Mr Perez. He did not know
 12 that co-conspirators appeared to have
 13 deliberately deleted emails. If we could look
 14 just on that point at B2957, paragraph 159,
 15 you will see reference to WaveTech's email
 16 accounts being closed, "If someone opens
 17 them with our names if they can get emails
 18 sent to us, we need to inform all our contacts
 19 that we no longer have these emails. I could
 20 be challenged as to why I cancelled mine.
 21 I'm okay if you delete everything and no-one
 22 can recover any previous emails sent to me."
 23 Do you see that? Now, given that co-
 24 conspirators had deliberately deleted emails,
 25 suspected co-conspirators, an issue to

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1 explore, we suggest, is whether it was open
 2 to the RGP to take the view, reasonably, that
 3 Mr Levy might do so too. There are plainly
 4 other relevant documents, including
 5 messages, between Mr Levy and Mr Cornelio
 6 which we cannot now refer to in public due
 7 to the terms of the Government's restriction
 8 notice, but these are issues which we will
 9 explore in evidence.
 10 In our written submissions, paragraph 96, we
 11 set out a number of options, amongst the
 12 many options, for understanding what
 13 happened in the meeting of 12 May, why Mr
 14 Picardo and Mr Llamas say they felt they had
 15 been misled. Any of these are possible, we
 16 say. It is unclear prior to the oral evidence
 17 which is to be preferred, and there may be a
 18 different answer entirely. One of them is,
 19 first and most seriously, a self-serving lie,
 20 whether Mr Picardo identified and exploited
 21 an obvious misunderstanding arising during
 22 the fractious and aggressive meeting he
 23 called with Mr McGrail on 12 May, whilst
 24 the search warrant was being executed. Of
 25 course, had this been the real and legitimate

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<p>1 reason, going back to the dog that did not 2 bark in the night, why did Mr Picardo not 3 refer to it explicitly in the second GPA letter 4 to Mr McGrail on 20 May, which he 5 substantially drafted? Yet another vanishing 6 reason, now referred to as being central, not 7 there. 8 Instead, if this were a self-serving lie, you 9 could take the view that Mr Picardo carefully 10 concealed the true reason for the actions 11 taken against Mr McGrail by avoiding 12 mentioning Op Delhi in any written 13 communications and which were going to see 14 the light of day. In any event, there is ample 15 of evidence, we suggest, that Mr Picardo was 16 concerned about other factors such as his 17 own position, Mr Levy's reputation and 18 Gibraltar's reputation as he saw it. You may 19 take the view it is impossible for Mr Picardo 20 to have separated out those issues from the 21 apparent alleged lie. 22 Another option is exaggeration. Mr McGrail 23 accurately told Mr Picardo and Mr Llamas 24 that the DPP had been advising the 25 investigating team throughout the course of</p> <p style="text-align: center;">Page 97</p>	<p>1 Mr McGrail from office by the true decision- 2 maker here, behind the scenes, 3 constitutionally and appropriately, without 4 regard to the rules of natural justice, the 5 Chief Minister. 6 Mr Wagner is going to pick up and now deal 7 with the role of the Attorney General, the 8 Governor and the remaining points. Thank 9 you. 10 MR WAGNER: Good afternoon. Thank 11 you very much to Ms Gallagher, I will now 12 pick up the baton. I will begin by focusing 13 on the Attorney General. 14 Section 59 of the constitution creates the role 15 and sets out the obligations. It is quite short. 16 The AG has various powers, particularly 17 under section 59(2) to institute, undertake, 18 take over, or discontinue proceedings. The 19 power under (b), taking over proceedings, 20 Ms Gallagher referred to the apparent 21 mention of that in Mr Picardo's messages 22 with the Attorney General. The power under 23 (c) to discontinue proceedings is, of course, 24 the power Mr Llamas later exercised to 25 discontinue the criminal charges against the</p> <p style="text-align: center;">Page 99</p>
<p>1 the investigation, that he was privy to the 2 evidence involving Mr Levy. He agreed with 3 his classification as a suspect. It is wrongly 4 interpreted by Mr Picardo and Mr Llamas as 5 Mr McGrail saying the DPP had advised 6 explicitly on the search warrant, and that is a 7 possibility. You may take the view it is 8 supported by the text message to Mr Picardo 9 on 12 May 2020, 15.43, which refers only to 10 an impression that the decision was 11 sanctioned by the DPP. It is also quite 12 possible, of course, that it is simply a 13 misunderstanding. Mr Picardo, Mr Llamas, 14 may not have had detailed knowledge or 15 expertise on the specifics of RGP processes, 16 misunderstood Mr McGrail to be saying the 17 DPP had advised on the search warrant when 18 he instead said the DPP advised on the 19 investigation generally and on his status as a 20 suspect. 21 But in any event, whatever the true reason, 22 we say it is quite clear that this matter now 23 put front and centre was not in fact front and 24 centre was not in fact front and centre on the 25 12th when the plan was hatched to remove</p> <p style="text-align: center;">Page 98</p>	<p>1 Op Delhi defendants. 2 Section 59(3) allows the Attorney General to 3 delegate according to his needs and section 4 59(5) provides that the powers conferred on 5 the Attorney General "shall not be subject to 6 the direction or control of any other person or 7 authority". That is very important and it 8 indicates that independence has to be at the 9 centre of what the Attorney General does. 10 Now, as in other British Overseas Territories, 11 the AG has traditionally been regarded as the 12 principal legal adviser to the Government, 13 and that means his role is dual, because he is 14 advising both the Government and the 15 Governor who is the head of the Government 16 and that can lead to certain conflicts and that 17 is in our written submissions at paragraph 75. 18 We have quoted from Hendry & Dickson's 19 textbook British Overseas Territories Law 20 where they point out that the Attorney 21 General may end up with conflicts and they 22 can be resolved by instructing outside 23 counsel, perhaps from his chambers. So that 24 is an overview of the Attorney General's role. 25 He has certain powers, particularly relating to</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 criminal proceedings and he has to act 2 independently and not be directed by anyone 3 else. 4 So what was Mr Llamas doing in relation to 5 the events that this Inquiry is investigating? 6 We say there is good contemporaneous 7 evidence about what he was doing and what 8 his motivations were. 9 First of all, if we could look at B74, please, 10 this is the note that Ms Gallagher referred to 11 earlier that Mr McGrail sent to himself. It is 12 an email he sent to himself as a way of 13 proving that this note was taken on the day of 14 12 May. This is obviously well before that 15 he was pushed out, it was well before the 16 GPA process, he was simply trying to write 17 down, you may consider, what was on his 18 mind and concerning him. He says there in 19 the second paragraph down: 20 "For quite some time I've been meeting with 21 Mr Llamas at his request to discuss matters 22 relating to this investigation. Mr Llamas has 23 a view that Caine Sanchez", that is the public 24 official in the picture, "in particular should be 25 dealt with internally via Civil Service</p> <p style="text-align: center;">Page 101</p>	<p>1 Llamas) has said to me that he is aware of 2 this and it is of concern to him from a 3 position of safeguarding the interests and 4 reputation of the Chief Minister and 5 Financial Secretary, both of whom, as indeed 6 the other partners will no doubt have not 7 been aware of the alleged illegal practises 8 employed", he says there by the suspects and 9 Heine Levy, "something which I also agree 10 with. He said this to me in the presence of 11 Superintendent Richardson and Crown 12 Counsel Lloyd DeVincenzi." 13 So that is the note from 12 May. Mr Llamas 14 does not quite deny that he said those things, 15 but he does try and explain it. 16 A second place we can look to find what Mr 17 Llamas was doing is the meetings that took 18 place following 12 May between Mr Llamas, 19 Mr McGrail and the Op Delhi investigating 20 team. These are very important and they are 21 also recorded because Mr McGrail was so 22 concerned about what was happening, that he 23 recorded the meetings and there are 24 transcripts which I will take you to. If I 25 could put up, please, just before we go to</p> <p style="text-align: center;">Page 103</p>
<p>1 disciplinary mechanisms. To this date 2 however, the AG has not been privy to the 3 evidence that the team has gathered against 4 Caine Sanchez or indeed the other suspects. 5 The said evidence has been discussed with 6 the DPP at great length who has advised 7 there is a criminal case for the Op Delhi 8 defendants", as they later became, "to answer 9 and there is a realistic prospect of conviction 10 if prosecuted or community misuse offences 11 and conspiracy to defraud offences. At most 12 of these meetings with the AG, particularly 13 the latter ones, I have been accompanied by 14 Superintendent Richardson. The views I 15 have expressed all along have been that the 16 alleged criminal behaviour of the parties 17 concerned is very serious. I have also 18 discussed the potential conflict and/or 19 embarrassing situation viz the Chief Minister 20 and the Financial Secretary that is Mr Mena, 21 who is also a partner at Hassans, and all the 22 other partners of Hassans being shareholders 23 of the company that is part owner of 36 24 North who it alleges will have benefitted 25 from the defrauding process. He (Mr</p> <p style="text-align: center;">Page 102</p>	<p>1 that, C6901, here is a text message exchange 2 that you were shown, Sir, on the first day by 3 Mr Santos, not in this format. This is 13 4 May 2020 in the evening, so the day after the 5 warrant, James Levy, "On the other matter I 6 feel I've been hung out to dry." Mr Levy 7 then says ten seconds later, "Certainly not by 8 you." Mr Llamas says, "Don't worry." 9 What, we might ask, did the Attorney 10 General mean when he told the criminal 11 suspect not to worry, on the day after the 12 police attempted to execute a warrant against 13 him? And what did Mr Levy mean by saying 14 he had been hung out to dry "certainly not by 15 you"? That can be explored in oral evidence. 16 We also note that Mr Llamas did not tell 17 police in the series of meetings he had that he 18 had been in direct contact with the criminal 19 suspect, who he had also in fact spoken to. 20 Then, on 13 May, again the same day, this is 21 earlier in the day, at around 12.30 to 12.45, 22 Mr Llamas appears to have met with Mr 23 Levy's son, Moshe Levy, who was a partner 24 at Hassans and Lewis Baglietto, who was 25 acting for Mr Levy. I will take you to</p> <p style="text-align: center;">Page 104</p>

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<p>1 evidence of that. 2 Mr Llamas has never mentioned the meeting 3 or accounted for it in his witness evidence. It 4 has only come to light recently because of 5 text messages Mr Llamas disclosed. 6 Mr Llamas then met with Mr McGrail and 7 the investigating team for the first time, 8 almost immediately afterwards. In fact, it is 9 surprising they did not bump into Mr 10 Baglietto and Mr Moshe Levy on the way in. 11 This is the gravitational pull-point again. 12 Once you see it is impossible to unsee, and it 13 may well explain the absence of Mr Llamas 14 mentioning to the police that he had been 15 meeting with the suspect's lawyer. 16 Now, what did Mr Llamas do in those 17 meetings. We propose that there are certain 18 conclusions which are inevitable from the 19 transcript. If we go to B224, please, the 20 proposition here is that during these meetings 21 Mr Llamas appears to have been advocating 22 the position of Mr Levy and substantially 23 trying to minimise the RGP's actions that 24 they were about to take. So, if we look at the 25 top of the page, we see there, Mr Llamas, "I</p> <p style="text-align: center;">Page 105</p>	<p>1 "Communication with the Chief Minister in 2 relation to any of the above." 3 Now, why do we say Mr Llamas was 4 interested in the Chief Minister? If we go to 5 B126 and the third entry from the bottom, 6 please, this is again the meeting of 13 May. 7 This is Mr Llamas, "In my view, it's just a 8 view, completely unjust, unjustifiable to me, 9 that this man should be ever appearing on a 10 formal document, erm, and I will not, if it's 11 not legitimate, I want that to disappear 12 immediately. My concern here is the 13 reputation of this jurisdiction and that passes 14 to the reputation of our Chief Minister, 15 especially in this moment in time and for that 16 I shall fight until I die." 17 Then, please, if we go to B228, at the very 18 bottom of the page, the Chief of Police, Mr 19 McGrail says, "I've seen you Michael, I've 20 seen you Michael, I respect you and I hope 21 all this passes and we can crack on with 22 normal life but I ..." if we go down, "... but 23 I've seen you in an awkward position, really 24 awkward with all of this, in quite a 25 compromised position for you and, and,</p> <p style="text-align: center;">Page 107</p>
<p>1 believe this is the big issue." He is talking 2 about the phone, Mr Levy's phone, which 3 they have, "So, I believe you have to provide 4 them the guarantee that no-one is touching it, 5 that there will be an interview and no-one is 6 going to touch it for at least seven days so 7 challenge me. That is it for now." 8 Then a second motivation we propose is 9 apparent we can find at B126. This is again 10 13 May meeting. If we can go a little bit 11 further down, you can see there towards the 12 bottom of the page it is on the screen, Mr 13 Llamas says, "I am still, and it's the only 14 reason why I am involved at this." SK, "This 15 is highly sensitive as point 9 here." 16 Now, what is point 9 that is the only reason 17 he is involved? Well, we propose this. If we 18 go to B5392, this is the letter that was given 19 to Mr Levy when the search warrant was 20 attempted to be executed entitled, "Voluntary 21 attendance for police interview under 22 caution." There are certain topic areas which 23 they sought to explore in a formal interview. 24 Of course, they never did explore it in a 25 formal interview. Number 9,</p> <p style="text-align: center;">Page 106</p>	<p>1 and..." Mr Llamas says, "Well, I know what 2 you mean but you can be sure that Fabian 3 and I will ...", and the Chief of Police 4 interrupts, "And I will respect." Mr Llamas 5 says, "Defend to the death, okay. If 6 tomorrow you come and tell me, 'Look what 7 we've found', I will break into tears. I am 8 sure that that will not exist anyway and I am 9 100 per cent certain, but that's talking about 10 Fabian Picardo, the office of the Chief 11 Minister, yah say Picardo, yay say Azopardi, 12 yay say Caruana or Hassans." The Chief of 13 Police says, "That needs protection, Mr 14 Llamas. I will protect them." 15 (12.29) 16 "Yeah, yeah, yeah." Mr Llamas, "Because 17 that is what happened always." 18 It is of course not the Attorney General's 19 function to defend the chief minister, 20 certainly not to the death, but he is supposed 21 to give independent and impartial advice and 22 he is prohibited by the Constitution from 23 being subjected to the direction or control of 24 any other person or authority. At the 25 meetings, you may consider, sir, that the</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

1 evidence shows Mr Llamas appears to have
 2 advocated from the point of view of James
 3 Levy and Hassans whom he had been in
 4 consultation with via Lewis Baglietto and
 5 Moshe Levy and urged officers in charge to
 6 treat Mr Levy as a witness not as a suspect.
 7 What was the impact of these interventions?
 8 Mr Gibbs highlighted yesterday that
 9 ultimately the warrant was not executed, Mr
 10 Levy's phone was returned without being
 11 examined and he was not interviewed under
 12 caution. Although Mr Levy was not
 13 ultimately charged, the investigating officers,
 14 Paul Richardson and Mark Wyan, raised
 15 concerns in an email from Mr Richardson
 16 which Mr Wyan agreed with insofar as he
 17 could knowing the facts and you can see that
 18 at B3446. It is an interesting email that I am
 19 sure will be shown to Mr Richardson but it is
 20 quite --- it is almost an emotional email. He
 21 seems quite upset by what had happened but
 22 just to pick out a couple of bits, Mr
 23 Richardson said, "The investigation may
 24 have resulted in a different outcome had the
 25 warrant been executed and Levy interviewed

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1 exchanges with Mr Levy and his hard fought
 2 and successful fight to persuade the RGP not
 3 to interrogate either Mr Levy's phone or Mr
 4 Levy himself. Of course, any messages
 5 which went between Mr Picardo and Mr
 6 Levy appear to have been lost to the
 7 historical record.
 8 The Attorney General also appears to have
 9 taken no action to prevent the triply
 10 conflicted chief minister from intervening in
 11 the Op Delhi investigation, despite how
 12 obviously inappropriate that was. You would
 13 think that as the principal legal adviser to the
 14 government, that would be the first thing he
 15 would have advised but he seems to have
 16 gone along with it. Questions that can be
 17 explored in the oral evidence really can be
 18 about what the Attorney General new about
 19 that conflict; did he know before 12 May that
 20 Mr Picardo had been in frequent discussions
 21 with Mr Levy, knowing that he was a person
 22 of interest in the Op Delhi investigation?
 23 Did the Attorney General know how closely
 24 connected Mr Picardo had been with the
 25 setting up of 36 North and that he owned a

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1 under caution. He considered that Levy gave
 2 partial explanations in his account but did not
 3 answer all of the issues that we sought to
 4 clarify," and he recalled, "The Attorney
 5 General advised that he would deal with the
 6 allegations of impropriety, explaining that
 7 that is what lawyers did and not to worry."
 8 We say that it is open for you to infer on the
 9 written evidence at least, sir, that the pressure
 10 applied by the Attorney General succeeded
 11 and Mr Levy did not even have to give an
 12 interview under caution and so was treated
 13 far more leniently than the other persons of
 14 interest who were ultimately, a number of
 15 them, charged and, for some reason, and this,
 16 we say, is a central question which needs
 17 answering, Mr Llamas' major concern when
 18 executive action was taken against Mr Levy,
 19 was to protect the chief minister. Did it
 20 follow from the intervention against Mr Levy
 21 that Mr Picardo was at risk and, if Mr
 22 Llamas' key motivation was defending the
 23 chief minister to the death, in what way did
 24 that relate to Mr Llamas' meeting with Mr
 25 Levy's lawyer and his son, his text

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1 part of the company? Did he not advise Mr
 2 Picardo how inappropriate his involvement
 3 was? As has been already very clearly said,
 4 three individuals, Perez, Cornelio and
 5 Sanchez, were later charged with a range of
 6 offences. The chief minister gave a written
 7 statement to the investigation which is at
 8 B1111.
 9 Now, this is a paragraph that will no doubt be
 10 shown to Mr Picardo but he said --- Mr
 11 Picardo said in answer to whether he gave
 12 permission for Tommy Cornelio to continue
 13 to access the NCIS system after Mr Cornelio
 14 told Blands that he would not --- and just to
 15 recall, Mr Levy --- Mr Cornelio wrote to
 16 Blands and said, "From now on I am out,"
 17 around the --- I think at the beginning of
 18 October 2018, and Mr Levy at the same time
 19 texted the chief minister and the only reason
 20 we have that text is because it was part of the
 21 criminal investigation. It has not been
 22 disclosed by the parties separately to this
 23 Inquiry, he texted him to say, "Don't worry,
 24 Tommy's still in the system."
 25 So Mr Picardo was asked the question, did he

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1 authorise that? He said, "I do not believe I
 2 ever gave any express authority for Tommy
 3 Cornelio to access the NCIS platform after he
 4 terminated his consultancy period with
 5 Bland." Just to be clear of the implications
 6 of that, if the allegation that Tommy Cornelio
 7 had sabotaged the NCIS system to benefit 36
 8 North was well founded, Mr Picardo in what
 9 we submit, sir, are careful words, does not
 10 deny he may have been the one who gave Mr
 11 Cornelio permission to access the system, at
 12 least perhaps not in an express way. He was
 13 not a neutral party. He was right in the
 14 centre of the prosecution, either as a witness
 15 or a person of interest. However --- and he
 16 was going to be a key witness in the trial.
 17 However, he was never to give evidence
 18 because, as we know now, the prosecution
 19 was discontinued and that decision came
 20 after the DPP wrote to Mr Llamas on 8
 21 March 2021, so if we can just put that up, it
 22 is C5871, Mr Santos did show some of this at
 23 5871, "Further to our meeting, I said I would
 24 set out some of the points being made by the
 25 Op Delhi defendants in their application to

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1 dismiss the prosecution," and one part that
 2 Mr Santos did not get to is that there is a bit
 3 of the email where the DPP said, "The
 4 prosecution had unearthed possible financial
 5 arrangements relating to civil servants that
 6 would, in the absence of cogent explanations,
 7 be wholly improper in the circumstances and
 8 also that the chief minister was likely to be
 9 called to give evidence." Of course the nolle
 10 prosequi was entered and the inquiry was
 11 announced two weeks later.
 12 So we submit that it is open to you, sir, to
 13 find on the documentary evidence currently
 14 available that, one, the Attorney General did
 15 not act with the required distance from the
 16 chief minister's private interests; two, he was
 17 too concerned to protect Gibraltar PLC and
 18 defend the chief minister to the death; three,
 19 he inappropriately gave assurances to the
 20 criminal suspect, Mr Levy, and, four, he
 21 inappropriately and privately met with the
 22 criminal suspect's lawyer, Mr Baglietto, and
 23 his son and was in direct touch with the
 24 criminal suspect and in effect presented their
 25 permission at meetings with the investigation

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1 team and Mr McGrail which resulted in the
 2 RGP backing off Mr Levy entirely and we
 3 say that that is, to use Ms Gallagher's phrase,
 4 somewhat astonishing at least. So that is the
 5 Attorney General and I now move on to the
 6 interim governor, Mr Pyle.
 7 Our core submission is that Mr Pyle did not
 8 uphold the constitutional separation of
 9 functions between the Crown, the executive
 10 and the police, though unlike our
 11 submissions about the chief minister and the
 12 Attorney General, we do not submit that Mr
 13 Pyle had any motives relating to the criminal
 14 investigation which puts him in somewhat of
 15 a different category from the others.
 16 Just to turn briefly to the governor's powers
 17 and duties, the governor is a creature of
 18 statute just like the chief minister, the
 19 Attorney General and the commissioner of
 20 police and his powers with regard to policing
 21 are found at section 47(1)(c) of the
 22 Constitution and in the Police Act. Section
 23 11 of the Police Act provides that the
 24 governor shall have overall and ultimate
 25 responsibility for (a) the integrity, probity

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1 and independence of policing in Gibraltar
 2 and (b) the policing aspects of national
 3 security including internal security. So
 4 integrity, probity and independence are his
 5 remit and we submit that from 14 May on the
 6 documentary evidence at least it would be
 7 open to you to find that he did not safeguard
 8 the integrity and independence of policing in
 9 Gibraltar. Most problematically, Mr Pyle
 10 appears to have been unable or unwilling to
 11 prevent the chief minister from stage
 12 managing the GPA process and, therefore,
 13 Mr McGrail's ousting, despite Mr Picardo's
 14 obvious egregious triple conflict of interest.
 15 It was also despite Mr Pyle's own concerns
 16 which he expressed to the FDCO that Mr
 17 Picardo was exercising a function relating to
 18 the police which was under the Constitution
 19 vested in the governor. Indeed Mr Picardo as
 20 chief minister had no relevant function at all
 21 in relation to the police. He was in charge of
 22 the finances and that is it and there is a good
 23 reason for that.
 24 If we can just go to --- no, not quite yet, Mr
 25 Pyle was aware very much of the

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<p>1 constitutional thin ice that he was skating on 2 at the time as is evident from some of the 3 emails that he sent to the Foreign and 4 Commonwealth Office. If we can go to 5 B1780, please, here we have Mr Pyle 6 updating his superiors on 22 May, so that is 7 important because by this time, events have 8 already reached a very significant moment 9 where the GPA has been instructed to 10 exercise its section 34 powers. At the fifth 11 bullet point he said, "The commissioner 12 believes this [that is the actions] is in part 13 driven by the ongoing investigation. The 14 high profile person referred to below is 15 James Levy!" Why the exclamation mark? 16 It might be asked of Mr Pyle in oral evidence 17 whether, given the very high standard of 18 information sharing which he now accuses 19 Mr McGrail of falling short of, he thought it 20 appropriate to wait over a week from 14 May 21 when he first became involved before telling 22 his superiors that it was James Levy, the 23 mentor, business partner and friend of Mr 24 Picardo who was the person of interest in the 25 relevant investigation.</p> <p style="text-align: center;">Page 117</p>	<p>1 available but in actual fact, the provision 2 itself sets out the procedure and there is a 3 sequence of steps that need to be taken in 4 order to exercise the power and that is 5 absolutely clear and unambiguous from the 6 provision itself. I know that Counsel to the 7 Inquiry agrees with this point in their 8 submissions that, first of all, the GPA must 9 decide on a preliminary basis it has concerns 10 that could lead to the triggering of section 34; 11 secondly, it must see representations from the 12 commissioner; thirdly, it must consider the 13 representations; fourthly, it must consult with 14 the governor and the chief minister; fifthly, it 15 must obtain agreement from either of them, it 16 need not go to both, and then and only then 17 must it call upon the commissioner to retire, 18 setting a particular date for that to happen 19 and once they call --- it is a slight misnomer 20 to say that they call on him to retire because 21 he has to retire; it is a dismissal in effect. 22 That process which is very clear from the 23 statute was not followed. We say that it is 24 open to you, sir, to find on the current state 25 of the evidence that the process was both</p> <p style="text-align: center;">Page 119</p>
<p>1 Then if we can go to B1784, this is an email 2 from the same day, mid-afternoon, this is 3 from Mr Pyle, "It is the James Levy angle as 4 well that is interesting. I am also a touch 5 nervous given that the chief minister has 6 firmly taken the lead on a competence that is 7 more towards us than them." I comment that 8 that is an understatement. "We have agreed 9 this approach which on balance is right. It 10 also raises issues about the GPA who should 11 have been monitoring the chief of police but 12 I can't see it ending well for anyone." 13 Perhaps one thing all of the court participants 14 and everyone in this room might be able to 15 agree is that Mr Pyle's email was 16 unfortunately prophetic. 17 I now come to the GPA, the Gibraltar police 18 authority. The GPA is required by law to be 19 independent from the government and the 20 governor. That is the point of the GPA. We 21 say that the GPA failed to safeguard its 22 constitutional independence and the integrity 23 of its section 34 process. The section 34 24 process --- I know it is the submission of the 25 GPA that there was no detailed procedure</p> <p style="text-align: center;">Page 118</p>	<p>1 shambolic and a sham; shambolic because it 2 failed to follow any aspect of section 34 and 3 a sham because it was directed by the chief 4 minister. The fact that the GPA meeting was 5 inquorate and there was no live note is 6 frankly the least of it. The GPA chair 7 allowed Mr Picardo to dictate and stage 8 manage the process to the extent of Mr 9 Picardo advising him on the sequencing and 10 other details and this is absolutely clear from 11 the messages between them on the day of the 12 GPA meeting, so if we go to 8208 this begins 13 a sequence of text messages that Mr Picardo 14 sets out in his witness statement between him 15 and Dr Britto, the chair of the GPA. "Fabian, 16 remember the notes you were going to send 17 me, either WhatsApp or email, I don't want 18 to get this wrong, please, thanks, meeting my 19 colleagues tomorrow 9.30, Joey." "Yep, 20 onto it already, thanks." If we can go down - 21 -- and, I am sorry, we are going to have to go 22 a little bit down every now and then. Dr 23 Britto, "Could I possibly see you this 24 afternoon when Ernest goes to see you at 25 four o'clock or around that time?" "Yes,</p> <p style="text-align: center;">Page 120</p>

30 (Pages 117 to 120)

<p>1 sure, see you there." "Thanks, see you at 2 four o'clock." Fabian, "It seems to say in 3 34.2 that he has to be given the opportunity 4 to make representations before the invitation 5 to retire? I need clarity on that point, please. 6 I don't want to get this wrong." Then if we 7 go further down, Fabian Picardo, "Yes, is 8 what you will in effect be doing. You come 9 back to us to seek our consent after the 10 representations have been received. I will 11 write the sequencing down for you as I see it, 12 if you wish. I am just going to finish a note 13 first." 14 So just to pause on that point, "You need to 15 take representations," he is saying, and what 16 do you do after that? Well, "The step is you 17 consider them, not here, you come to us, so 18 you get the representations and then you 19 come to us." Dr Britto, "In any case, I am 20 sending you the text of the draft letter. I 21 cannot give him after my meeting (?). 22 Grateful for your once over. Perhaps my 23 letter should say that you shall be invited to 24 retire unless you wish to make 25 representations as to why you should not</p> <p style="text-align: center;">Page 121</p>	<p>1 Fabian, "Please see the main points I felt 2 were most relevant to put in writing," and 3 then there is a bit of --- he has found a typo 4 Just a little bit further down, he will read it in 5 an hour, "Okay, fixed, this is a summary of 6 the main points but I suspect he'll want much 7 more, almost expecting something like a 8 charge sheet. See if you feel I can send him 9 this. Apart from everything I feel worse for 10 having to bother you so much, I apologise for 11 this." Mr Picardo, "Don't worry, I'm 12 checking it now." Mr Picardo, "I have added 13 a little more so that he knows the case he has 14 to meet," and that must be when he adds the 15 track changes which we will come to. Dr 16 Britto, "Thank you very much and, once 17 again, I really appreciate this." Mr Picardo, 18 "The least I can do." Then if we go further 19 down, there is a smiley face, "Must get it 20 right [this is Mr Picardo] he deserves to be 21 given the picture that he has to address." 22 "Indeed he has it verbally and now in 23 writing, thank you nonce again." 24 While we are thinking about those messages, 25 I pose the question, did Dr Britto maintain</p> <p style="text-align: center;">Page 123</p>
<p>1 within XXX days. Be patient with me, Mr 2 Picardo, lol, give me a few minutes as I'm 3 finishing something, sorry," with a sad face. 4 If we go further down, Mr Picardo has now 5 sent this by email, "see references to loss of 6 confidence by me and the governor, oh, so 7 you sent this already?" "Yes." "So this 8 would make more sense now," and maybe 9 there is an image there. "Yes, exactly I 10 would suggest that you provide seven days at 11 the end. If he considers more time is 12 required, he should write to you asking for 13 more time. This is too serious to let it ride, 14 best wishes Fabian." "Okay." Then if we go 15 further down, Dr Britto, "Can I see you today 16 before close of play. I've given him the 17 letter but he's asking for details in writing." 18 Just pausing there, there was an initial letter 19 sent by Dr Britto which said nothing. It 20 literally said --- well, it did not say nothing, it 21 said, "You are invited to retire," but with no 22 reasons. "I need to discuss ... he is talking 23 about getting a lawyer," et cetera, "I need to 24 discuss a couple of issues he raised, please." 25 "Sure, shall we meet at two?" "Thanks."</p> <p style="text-align: center;">Page 122</p>	<p>1 the independence of the GPA and the 2 integrity of the due GPA process? Was the 3 process fair? Did it comply with natural 4 justice? 5 If we can go to B1364, this is the letter that 6 was send on 22 May when Mr McGrail had 7 the temerity to ask for summaries as to why 8 he was being dismissed as commissioner and 9 the yellow bits are the bits that the chief 10 minister added. I just want to contextualise 11 that because in his witness statement, which I 12 will not go to, in paragraph 92, his first 13 witness statement, he says, "He had made 14 amendments designed to ensure that Mr 15 McGrail had greater information as to the 16 reasons why the governor and I had lost 17 confidence in him." However, what he adds 18 is more than that; for example, in the second 19 paragraph he speaks in the language --- 20 through the mouth of the authority, 21 "Additionally, the authority has agreed with 22 the matters raised by the governor and the 23 chief minister and have taken the view that 24 your position is untenable as the 25 commissioner given that you have lost the</p> <p style="text-align: center;">Page 124</p>

<p>1 confidence of both the governor and the chief 2 minister." That, in my submission, is 3 important because Mr Picardo is speaking in 4 the voice of the GPA secretly behind the 5 scenes saying that the authority has agreed 6 with the matters raised by the governor and 7 the chief minister. You heard Mr Neish, on 8 behalf of the GPA, make very clear yesterday 9 that they did not decide on the substantive 10 issues, they only decided on the fact that they 11 felt that the commissioner's position was 12 untenable following the loss of confidence. 13 If we can go further down, you see, just to 14 show you the extent of the amendments, that 15 efficiency --- if we can go down, and stop 16 there, the incident at sea, and if we go further 17 down, that is the yellow bit there, probity and 18 integrity, "This is very serious indeed. I 19 think you need to reflect carefully on this. 20 The situation we are in is that both the 21 governor and the chief minister respectively 22 have expressed this view. It is not one of 23 them which has expressed this view which 24 would be bad enough, but both of them," and 25 then if we go further down, "Additionally,</p> <p style="text-align: center;">Page 125</p>	<p>1 or at least what he appears to have had in his 2 mind because he is being advised by the 3 chief minister, "Yes, you need to give him an 4 opportunity and then you come back to us," 5 not, "You then have to consider it 6 independently and carefully and we can talk 7 to you and we will go in and give --- you can 8 hear from us and whoever else you need to 9 hear from." It was just, "Yes, get the 10 representations and then come back to us." 11 That, in my submission, is both a shambles 12 and a sham. 13 There is no power in the Constitution or the 14 Police Act for the chief minister and/or the 15 governor to remove the commissioner if they 16 lose confidence. The chief minister has no 17 relevant function in relation to the RGP 18 commissioner. He is kept at arm's length by 19 the constitutional set up and that is absolutely 20 --- it makes absolutely perfect sense and we 21 know from Mr Caruana's comments in 22 Parliament at the time that that was the point. 23 The GPA eventually did the right thing by 24 not acceding to the demands of Mr Picardo 25 and Mr Pyle but they did the right thing for</p> <p style="text-align: center;">Page 127</p>
<p>1 the authorities informed the Attorney General 2 has also expressed the same feelings." So the 3 Attorney General, the evidence will show, 4 was sent this letter - it is in the text messages 5 - to review and the chief minister says words 6 to the effect of, "I just want to check because 7 you are mentioned, Michael, that you 8 approve of this." So the Attorney General 9 himself is part of this sham process. 10 Then the bit at the bottom, which, in my 11 submission, is legally hopeless given the 12 process, it says, "For those reasons we are 13 calling upon you to retire on the interests of 14 effectiveness, probity, integrity, efficiency," 15 et cetera, "but before doing so, we are giving 16 you an opportunity as provided to make 17 representations." In my submission, that is 18 not the process because they have called 19 upon him to retire before he gets the 20 opportunity to make submissions and you 21 can --- and if the GPA is going to submit that 22 it was just bad --- it was just muddled 23 language but they were clearly asking him 24 before they made a final decision, you can 25 actually see what Dr Britto had in his mind,</p> <p style="text-align: center;">Page 126</p>	<p>1 the wrong reasons, the wrong reasons being 2 that they felt there was a procedural error in 3 their determination whereas they should have 4 said, "We are not going to be strong armed in 5 this way, if you have a concern bring it to us 6 and we will consider independently, as is our 7 role, based on evidence, based on full 8 representations from everybody concerned 9 whether in the interests of efficiency, probity, 10 integrity and independence we are going to 11 take the draconian step of asking, requiring 12 the commissioner to retire." 13 If you go to B1829 this is back in the emails 14 between Mr Pyle and his superiors, and go a 15 little bit further down --- I may have the 16 wrong page. No, there it is, thank you. It is 17 option 2, this seems to be advice that the 18 governor at the time is getting from his 19 advisers and it says this in the middle of the 20 page, "Although I may exercise the 21 governor's power under section 13(f) as 22 distinct from the removal procedure under 23 section 34(1), where the GPA has to secure 24 the governor's or the chief minister's 25 approval to call for the commissioner to</p> <p style="text-align: center;">Page 128</p>

<p>1 retire, the exercise of that power, 2 nevertheless, risks being liable to challenge 3 for the reasons set out in paragraph 47 of the 4 commissioner's lawyer's 29 May letter to the 5 GPA, namely, it's not a mechanism for the 6 governor to simply use when he disagrees 7 with the authority or when he disagrees with 8 an action by the police commissioner and nor 9 is it a power which should be pre-emptively 10 threatened in order to lean on the authority to 11 trigger section 34." If I can just boil that 12 down simply, a public authority cannot be in 13 default for refusing to act contrary to its 14 statutory powers. Even if the GPA was 15 arguably in default, the GPA's advice is that 16 he did not have enough members to reach a 17 decision and to obtain new members it would 18 require nominations from the governor and 19 because the governor at that time was Mr 20 Pyle, the GPA reasoned that any 21 appointments made by him, who later 22 became decision makers in Mr McGrail's 23 case, would be vulnerable on allegations of 24 apparent bias or even real bias. 25 You might consider, sir, whether there is a</p> <p style="text-align: center;">Page 129</p>	<p>1 would exercise his section 13 powers and 2 then after the weekend on the 9th, Mr 3 McGrail very reluctantly resigned and Sir 4 David Steel was arriving two days later. 5 Under section 29 of the Gibraltar 6 Constitution, the interim governor or acting 7 governor was prevented from exercising any 8 functions of the governor after he has been 9 notified that the permanent governor vacancy 10 is about to be filled. Now, Mr Santos and Ms 11 Hope say in their submissions that it is not 12 clear when that would exactly kick in but, in 13 my submission, it kicks in on notification. 14 As soon as the --- and that is clear from the 15 statutory provision that once --- that it is not 16 that the governor is about to arrive or is to 17 arrive imminently, it is that he has or she has 18 notified the acting governor that he is 19 imminently to arrive. 20 One might say that if it is in a year's time 21 there might be a question of whether --- 22 obviously the statute would not expect there 23 to be a governor with no functions for that 24 whole year but it would not be imminently, 25 but, surely, a few days later counts as</p> <p style="text-align: center;">Page 131</p>
<p>1 simple answer to that conundrum that was 2 not considered at the time and that is that Mr 3 Pyle was about to leave office in two weeks' 4 time and everybody knew that. Everybody 5 knew that Sir David Steel would be arriving 6 afresh with a fresh perspective and no 7 existing relationship with the commissioner. 8 Indeed, the GPA might have considered that 9 the Gordian knot which they said they could 10 not cut, which was the double loss of 11 confidence, would at least in part be solved 12 in two weeks' time. But, anyway, that is, in 13 my submission, really beside the point 14 because the process was so shambolic and a 15 sham. 16 Following the GPA's withdrawal, Mr Pyle 17 rushed to force Mr McGrail to retire or resign 18 before the new governor, Sir David Steel, 19 was due to arrive in Gibraltar on 11 June, so 20 just to get the dates right, the GPA process 21 concluded around the end of May, the 22 governor I think on the 6th called Mr McGrail 23 into his office and said --- depending on what 24 exactly said, but it seems to be everybody 25 agrees that he was going to --- he said he</p> <p style="text-align: center;">Page 130</p>	<p>1 imminently and, in my submission, the 2 governor, not that he realised it, was acting 3 without authority. I note the time but if I 4 may go on for about another five minutes, 5 sir, as we started five minutes late ---- 6 THE CHAIRMAN: Yes, another five 7 minutes only. 8 MR WAGNER: And I apologise to 9 everybody for keeping them from their lunch. 10 THE CHAIRMAN: Yes, Sir Peter Caruana 11 can have another five minutes if he wants. 12 MR WAGNER: Thank you, and of course 13 we would agree to that. I just want to raise 14 briefly --- I should say, firstly, that we have 15 not addressed a number of the other issues 16 which we say are very much subsidiary in 17 our oral submissions; however, in the final 18 few pages of our written submissions they 19 are addressed individually and in detail and 20 particularly things like the Alcaldesa claims, 21 the airport incident and we say that they are 22 so absent from the contemporaneous record 23 that they are, as Ms Gallagher said, 24 irrelevant. I do want to say just a few things 25 on the incident at sea which perhaps Mr</p> <p style="text-align: center;">Page 132</p>

1 McGrail will give very detailed evidence on
 2 and I just make this point about Mr Pyle and
 3 Mr Pyle's criticism of Mr McGrail. In a
 4 nutshell, it will be Mr McGrail's position that
 5 he was dealing, in the first few hours and
 6 days after 8 March or on 8 March and after,
 7 with a very dynamic and difficult situation
 8 and he had been informed that he was to feed
 9 into the --- he was to brief up to the Attorney
 10 General who would then brief up to others
 11 and that was his assumption anyway. Of
 12 course he was trying to keep everybody
 13 informed all at the same time and, as you
 14 might expect that was not completely straight
 15 forward. Mr Pyle's criticism appears to be
 16 that he was briefing up without the full
 17 information. However, we say that the email
 18 on the morning of 9 March that he sent to his
 19 superiors which said that the incident may
 20 have taken place at least 6 nautical miles
 21 outside of Gibraltar territorial waters, we say
 22 that that absolutely cuts across everything he
 23 says because he was able to brief up the
 24 information that everybody else had. His
 25 complaint seems to be that he cannot

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1 The job offers were made privately in at least
 2 one case prior to the allegations being
 3 formally reported and in at least one case
 4 prior to the allegations being considered by
 5 the complainants' employer. They do not
 6 accord with any published government
 7 policy, the job offers appear to have been
 8 made without any interviews or consideration
 9 of an individual's CV or even a vacancy
 10 becoming available in the relevant public
 11 authority. The job offers are not sanctioned
 12 by any law and although the government has
 13 made repeated reference to whistle blower
 14 protections there is no law in Gibraltar or
 15 anywhere as far as we know for whistle
 16 blowers that requires or authorises that
 17 people making allegations are offered
 18 government jobs if their position becomes
 19 untenable. That is certainly the case in the
 20 Employment Act which was amended in
 21 2012 to add provisions for whistle blowers to
 22 protect them. The protection is only that they
 23 can go to the employment tribunal and
 24 receive a financial remedy. There is no
 25 alternative job provision, there is not even a

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1 remember being told that directly by Mr
 2 McGrail. That is really it in a nutshell. I did
 3 not want to leave without saying that.
 4 I just want to spend my last three minutes on
 5 the witness inducement allegations and we
 6 know that this is still to be fully investigated
 7 and that evidence has been required from the
 8 key players and they have refused to give it.
 9 That is of serious concern to our client. The
 10 basic facts as we understand them are these.
 11 A number of job offers were made to the
 12 Royal Gibraltar Police personnel who had
 13 raised with this Inquiry allegations against
 14 Mr Ian McGrail and the RGP. The job offers
 15 were made in agreements signed by the chief
 16 minister who was a core participant in the
 17 Inquiry with the assistance of the Gibraltar
 18 Police Federation, another participant, and
 19 Michael Chrome, the chief minister's then
 20 private secretary. The job offers were made
 21 in a document which set out the terms
 22 including relevant government department,
 23 the salary and the grade which would be
 24 given to the individual if their position in the
 25 RGP became untenable, whatever the means.

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1 remedy for reinstatement as far as we can
 2 find by the employment tribunal.
 3 We understand there to be at least 14 RGP
 4 officers who were availed of the safety net
 5 and from Mr McGrail's criminal trial when
 6 he was acquitted in June 2023 it was said in
 7 open court that five or six of those
 8 individuals who had actually been transferred
 9 out of the RGP had been promised jobs. We
 10 say that this is of extreme concern to Mr
 11 McGrail, it poses a real risk to the integrity
 12 of the evidence being given in this Inquiry
 13 because we say that there is a concern that
 14 the job offers may amount to inducements to
 15 give evidence against Mr McGrail; indeed all
 16 of the 19 statements appear to be of that
 17 category and there have of course been recent
 18 criminal charges against three RGP officers
 19 relating to fabricated evidence in a judicial
 20 review. We just say this, that it would be
 21 unfair to Mr McGrail if any report is
 22 published with reference to any of the
 23 evidence in those statements --- and a
 24 number of them have been admitted into
 25 evidence, at least in part and at least one will

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<p>1 be giving oral evidence, it will be unfair to 2 Mr McGrail, and just simply will not be a 3 fair process, if the Inquiry does not get to the 4 bottom of what happened and we, therefore, 5 request --- we are, first of all, appreciative 6 that the Inquiry has agreed that this issue 7 needs to be investigated but we do request 8 that the Inquiry take further steps to obtain 9 evidence, including considering making 10 orders under the new section 21 of the 11 Inquiries Act 2024. 12 My final sentence is that Mr McGrail called 13 for this Inquiry to lift the cloud over him and, 14 more importantly, expose the machinations 15 of the individuals at the centre of the events 16 that you are considering for the good of 17 Gibraltar. It is said that sunlight is the best 18 disinfectant though it might be said, 19 regretfully, that the Inquiry is now partly in 20 the shade of the Government's last minute 21 restriction notice. Nonetheless, we hope that 22 this Inquiry will shine a clarifying light on 23 what happened in those 28 days between 12 24 May and 9 June 2020. 25 THE CHAIRMAN: Yes, thank you very</p> <p style="text-align: center;">Page 137</p>	<p>1 SIR PETER CARUANA: Just the time that 2 has overrun. 3 THE CHAIRMAN: Yes, all right, ten past 4 two. 5 (13.10) 6 (Luncheon adjournment) 7 (14.10) 8 THE CHAIRMAN: Yes, Sir Peter. 9 SIR PETER CARUANA: Thank you, sir. 10 Sir, as I think is now known, I appear with 11 my learned friends Mr Allan and Mr Dumas 12 for the Government parties, who are the 13 Government itself, the Chief Minister, the 14 Attorney General and the then Governor, Mr 15 Nick Pyle. Sir, there has been a considerable 16 amount of comment - indeed, of public, 17 controversial comment, about the 18 introduction of the Inquiries Act 2024, and its 19 application to this Inquiry given that it had 20 already been in progress for some time under 21 the old Act. The Government is entirely 22 satisfied that there is no principled objection 23 to bringing local legislation into line with the 24 UK's public inquiries legislation, and indeed 25 to apply it to this inquiry. Both to modernise</p> <p style="text-align: center;">Page 139</p>
<p>1 much. 2 MR SANTOS: Just before we stop for 3 lunch, slightly more mundanely I remind CPs 4 that I did ask for them to engage and agree at 5 least a batting order in respect of 6 Superintendent Richardson so can I please 7 ask for someone at least on behalf of the CPs 8 to email the team and give us ---- 9 THE CHAIRMAN: You can discuss it over 10 lunch. 11 MR SANTOS: Yes, I would ask for an email 12 from somebody to tell us where they have 13 got to and what the opposing views are. 14 THE CHAIRMAN: Okay. 15 MR SANTOS: Thank you. 16 THE CHAIRMAN: Would it cause 17 difficulty if we started at two o'clock as 18 planned? 19 SIR PETER CARUANA: If it was okay 20 with you, sir, a little bit longer would leave 21 me the hour that I was expecting to 22 assimilate some of my learned friend's points 23 into my own address but it is for you. 24 THE CHAIRMAN: Yes, how long do you 25 want?</p> <p style="text-align: center;">Page 138</p>	<p>1 the legislation, for whatever benefit that (a 2 judgment for you, sir) may accrue to the 3 inquiry, but also to arm Gibraltar ministers 4 with the same power and the same ability to 5 protect the public interest of Gibraltar as they 6 see it, to the same extent and in the same way 7 as UK ministers may do in the UK, in the 8 UK's public interest, as UK ministers see it. 9 So it cannot be correct, sir, that when a vital 10 public interest of the United Kingdom is 11 thought by UK ministers to exist they can 12 protect that UK public interest even by 13 overriding an inquiry chairman, but that 14 Gibraltar ministers cannot do the same to 15 protect Gibraltar's public interests. That 16 would condemn Gibraltar to suffer the 17 consequences, however serious, important 18 and long lasting they may be to its public 19 interests, from which it is not thought 20 inappropriate that UK ministers should be at 21 liberty to protect the United Kingdom in 22 equivalent circumstances. That view is not 23 accepted by the government. The proper test 24 therefore is not whether the government has 25 given itself a power that is in itself</p> <p style="text-align: center;">Page 140</p>

<p>1 unremarkable (I say "unremarkable" because 2 it is the very same power that UK ministers 3 have); the proper test for those who want to 4 use this issue for public comment - the 5 proper test is whether the power given is then 6 used for a proper purpose (a purpose for 7 which it was given) or whether it is abused 8 (used for an abusive purpose), which would 9 make it an unlawful exercise of a statutory 10 power. That is the test, sir, and that is the 11 Government's position. So as everyone now 12 knows, the government has immediately used 13 its newly-gained power to protect the public 14 interest by making a Restriction Notice 15 relating to a small and very limited number 16 of references to the National Security 17 Centralised Intelligence System in 18 documents which are before the Inquiry. 19 And, the Government acknowledges that 20 there may be practical inconvenience to the 21 Inquiry, and indeed there may have been 22 practical inconvenience to core participants 23 and to their legal representatives, and the 24 Government of course regrets that. But, no 25 curtailment of the Inquiry's ability to</p> <p style="text-align: center;">Page 141</p>	<p>1 to ensure that witnesses are in the same 2 protected position in other respects as they 3 were under the old Act. So, sir, the terms of 4 reference this Inquiry has been committed to 5 and called by the Government itself, and not 6 with the reluctance that has been alleged by 7 Mr McGrail, although everyone knows that 8 there was, for the reasons given, in the post- 9 Covid circumstances the delay in actually 10 getting the Inquiry going. So, it has been 11 called by the Government to shine a light on 12 itself and conduct of which it stood accused 13 by Mr McGrail, and in a positive response to 14 Mr McGrail's own call, in circumstances 15 where the Government had absolutely no 16 obligation, legal or of any other kind, to have 17 agreed to do so, so that you sir, armed with 18 the considerable powers that you have, can 19 investigate these matters independently and 20 fully. And, hence the width of the terms of 21 references that the Government scripted, 22 which would enable you to do precisely that. 23 Now, my Lord - I was wondering how long it 24 would take me to fall into that pitfall - sir, 25 this is not an inquiry about corruption in</p> <p style="text-align: center;">Page 143</p>
<p>1 investigate the issues under inquiry have 2 taken place, and the public interest as the 3 Government sees it has compelled the 4 Government to take this step, in the 5 knowledge that it would be severely 6 criticised for doing so. So, my Lord, in that 7 vein you requested the Attorney General to 8 give an undertaking of the sort that is not 9 unusual in the United Kingdom, to overcome 10 the right that the UK legislation gives in the 11 UK, and now the new Gibraltar legislation 12 gives in Gibraltar, to a witness not to 13 incriminate him or herself which might then 14 lead them to say: well, I am refusing the 15 Chairman's question, or I am refusing to 16 answer a question from one of the other 17 lawyers, because it might incriminate me. 18 The Attorney General has given undertakings 19 to ensure that that cannot be done by the 20 witness, thereby ensuring that the 21 introduction of the new Act will not in any 22 way muzzle or curtail, or enable witnesses to 23 be evasive when they could not have been 24 evasive before under the old act. And also, in 25 the opposite vein, has given an undertaking</p> <p style="text-align: center;">Page 142</p>	<p>1 Gibraltar. That is how some have sought to 2 spin it, on the basis only of their bald and 3 unproven allegations. Mr Chairman, you 4 will make whatever factual findings you 5 make when you have heard all the evidence, 6 but it is the Government's position that to 7 have spun this as being an inquiry about 8 corruption in Gibraltar, caring relatively little 9 (not to say, nothing) for the damage that it 10 may have done to Gibraltar, notwithstanding 11 that no facts have been found and that no 12 decisions have been reached, is something 13 that the Government deprecates. It is also a 14 curious notion of the rule of law, and indeed 15 of the application of the principles of natural 16 justice that some people seem to have 17 recourse to with consummate ease when it is 18 in their favour. It has not gone unnoticed, sir, 19 that for all the background music, locally, 20 internationally, in submissions to you, sir, 21 written and orally in this Inquiry, the word 22 corruption has not been heard on the lips of 23 either of my two learned friends this 24 morning. And, it just seems odd that that 25 mantra has been applied to Gibraltar, to this</p> <p style="text-align: center;">Page 144</p>

<p>1 Inquiry, only apparently to be abandoned on 2 day one of the hearing. Because, now this 3 has become inappropriate behaviour. Well, if 4 inappropriate behaviour, sir, is what is in 5 issue here, it is a really great shame that that 6 language was not selected in the first place, 7 and we could have all saved ourselves a 8 considerable amount of grief. So, the width I 9 have spoken about - you, sir, have identified 10 a number of issues which you have said you 11 would investigate, to the extent that you 12 consider it necessary and appropriate to 13 address the issues under Inquiry. So, sir, if I 14 may say so, you have rightly said that the 15 facts of each of these issues should be 16 investigated and ascertained only to the 17 extent necessary and appropriate to address 18 the matter under inquiry, which is as we all 19 know the reasons and circumstances leading 20 to Mr McGrail's premature decision to take 21 early retirement, either (you have ruled) 22 because they led to a loss of confidence in 23 Mr McGrail or for some other reason (I think 24 that is how you have expressed it). And I 25 submit to you, sir, that this has two</p> <p style="text-align: center;">Page 145</p>	<p>1 levels of emotion or passion, we express 2 ourselves in more or less temperate terms, 3 and we each have more or less temperate 4 natures. Some differences between people in 5 respect of those matters simply reflect 6 cultural (indeed, sometimes geographical) 7 considerations. I think it is not to stereotype 8 either northern or southern Europeans to say 9 that southern Europeans tend to be more 10 expressive and more emotional than northern 11 Europeans. We each respond to situations in 12 different ways; we each have our own 13 personal style and our own nature, but these 14 things are not an issue for this Inquiry except 15 to the extent that I have said (relevance to the 16 issue under inquiry). So, sir, how did Mr 17 McGrail's retirement come about? Why and 18 how did Mr McGrail's retirement actually 19 come about? To be clear: the Governor and 20 the Chief Minister had lost confidence in Mr 21 McGrail in May 2020 (albeit for different 22 reasons), wanted him removed from office, 23 and sought to bring that about. Of that, there 24 can be no doubt. It is not the position of the 25 Chief Minister or Mr Pyle that Mr McGrail</p> <p style="text-align: center;">Page 147</p>
<p>1 immediate and practical consequences (your 2 definition of the things that you would look 3 at and the extent to which you would look at 4 them, to the extent that they are relevant). 5 First, that it rightly recognises that the 6 Inquiry (and here I do agree with Ms 7 Gallagher) is not an inquiry of and into any of 8 the issues in themselves, so the Inquiry will 9 be concerned to look into them only insofar 10 as you, sir, consider that they are relevant (or 11 an aspect of them may be relevant) to Mr 12 McGrail's retirement or the Inquiry's terms of 13 reference (both the same thing). Second, it 14 rightly recognises that this Inquiry is not 15 concerned to assess or make findings about 16 the propriety, or suitability, or 17 appropriateness; not to characterise, or to 18 pass judgment over the conduct, actions or 19 decisions, or the language chosen to be used 20 by any person, except of course to the extent 21 that you, sir, consider that that may constitute 22 a reason or circumstance leading to Mr 23 McGrail's retirement. We each have our own 24 manner of expression; we express ourselves 25 in different ways. We each have different</p> <p style="text-align: center;">Page 146</p>	<p>1 retired in June 2020 because he positively 2 wished to stop being the Commissioner of 3 Police at that time. The Governor and the 4 Chief Minister, I would respectfully submit 5 to you, were subjectively and even legally 6 entitled to lose confidence in the 7 Commissioner of Police (you will express a 8 view, on the basis of the facts that you find, 9 whether that was a genuine loss of 10 confidence), to express it, and to act 11 accordingly; and, they both did so. And, to 12 that agreed end they set out to the Gibraltar 13 Police Authority's Chairman Mr Britto their 14 reasons for losing confidence in Mr McGrail, 15 and they did that at the meeting of 18 May 16 convened by the then Governor, Mr Pyle. 17 They invited the Gibraltar Police Authority to 18 consider whether there were genuine grounds 19 to exercise the statutory power to call upon 20 Mr McGrail to retire. The Governor made 21 clear to the GPA chairman the strength of his 22 own feelings on the subject, and I pause 23 there. When the Governor expressed to Mr 24 Britto the strength of his own feelings, was 25 he being manipulated by the Chief Minister?</p> <p style="text-align: center;">Page 148</p>

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<p>1 Was the Chief Minister the puppetmaster 2 pulling on the puppet's strings? And, what 3 would you have to find as a fact about Mr 4 Pyle, whom my learned friends in their 5 skeleton arguments now say they do not say 6 is lying, when he says this: his own feelings 7 on the subject telling him that should the 8 GPA determine that a call to retire was not 9 appropriate he would consider using the 10 powers available to him under section 11 13(1)(f) of the Police Act to call for the 12 resignation of Mr McGrail. And, that as 13 things stood he would need strong and 14 persuasive arguments not to do so. Is he 15 being manipulated? Is he lying? Or, is he 16 telling the truth when he says this on oath? 17 The meeting was followed up by the note 18 drafted by the Chief Minister (at B1452, I 19 think it has been on the screen already) that 20 made it clear that it was for the GPA to 21 consider the matter and make its own 22 decision, it says the GPA... I have lost my 23 reference to it. No, I have it, sorry: B1452. I 24 beg your pardon, I may have read out the 25 wrong reference.</p> <p style="text-align: center;">Page 149</p>	<p>1 of the Governor). It (the GPA) decided to 2 invite Mr McGrail to retire, and it did so for 3 two stated reasons, and the minutes are at 4 B1973. And, those two reasons were: as Mr 5 McGrail had lost the confidence of both the 6 Governor and the Chief Minister he would 7 find it very difficult to continue to work with 8 the Government and the Governor, and 9 secondly the seriousness of the incident at 10 sea on 8 March. So, it is not entirely correct 11 to suggest that the GPA did not make a 12 judgment other than simply to accept the loss 13 of confidence reasons. 14 (14.30) 15 What I think my learned friend Mr Neish 16 said yesterday is that they had not drilled 17 down into the reasons for the loss of 18 confidence by the Governor, so that was the 19 untenable position. The position is untenable 20 because you have lost these two important 21 people's confidence and therefore your 22 position has become untenable. But the 23 second reason was the seriousness of the 24 incident at sea which they thought was more 25 serious than the other incident that had been</p> <p style="text-align: center;">Page 151</p>
<p>1 THE CHAIRMAN: This is the Chief 2 Minister's note? 3 SIR PETER CARUANA: Yes. 4 THE CHAIRMAN: Of the meeting? 5 SIR PETER CARUANA: Yes. So, he says - 6 thank you, sir, "The GPA are therefore being 7 invited by the Governor"... It is on page 8 B1449, the second paragraph at the top. 9 Thank you. "The GPA are therefore being 10 invited by the Governor and the Chief 11 Minister together to consider whether they 12 believe that all or any", note it is a 13 disjunctive and not a conjunctive list, "of the 14 following five have been impacted", a matter 15 for them. And, then turning to the last page 16 at B1452, the fourth paragraph from the 17 bottom, two lines, "It is now a matter for the" 18 GPA, the Police Authority, "to decide how to 19 act, and to decide that they want to engage 20 the section 34(1) power." So the GPA, sir, 21 then held an emergency meeting on 21 May 22 2020 to consider the matter. It read the 23 memo that we have just looked at, of the 24 Chairman's meeting with the Governor and 25 the Chief Minister at the Convent (the office</p> <p style="text-align: center;">Page 150</p>	<p>1 put up to them. I respectfully agree with my 2 learned friend and colleague Mr Neish that 3 the question of loss of confidence goes 4 directly and immediately to the efficiency 5 and effectiveness of policing in Gibraltar. 6 The decision by the Police Authority was 7 communicated to Mr McGrail on 22 May by 8 Mr Britto(?) at a meeting at Mr McGrail's 9 office at the police station. He handed him a 10 letter communicating that decision, and we 11 have seen it. My learned friend Mr Wagner 12 had it on the screen this morning, the first 13 iteration and the second iteration to the 14 drafting of which the Chief Minister had 15 contributed. 16 On receipt of the first letter, Mr McGrail 17 rightly complained that it gave insufficient 18 detail, so Mr Britto himself asked the Chief 19 Minister's help in drafting letters, and it is 20 important, sir, to note - and this is not the 21 Chief Minister seeking a role in this matter in 22 order to do some of the things that have been 23 stated and implied - the Chief Minister 24 responded to a request from the chairman of 25 the GPA to assist him and the WhatsApp</p> <p style="text-align: center;">Page 152</p>

<p>1 exchange by which that is done has already 2 been referred to by my learned friend this 3 morning; it is at B 1436. I think my learned 4 friend took us this morning to the exchanges 5 there where Mr Britto was himself asking for 6 the Chief Minister - in respect of the first 7 letter he had said "Give it a once over", and 8 in the case of the second letter he had asked 9 to meet with him.</p> <p>10 I am going to come back to the letters, sir, in 11 a moment in the context of their drafting, but 12 I want first to make one important point in 13 the context of the innuendo which is - I 14 mean, innuendo and unsubstantiated and un- 15 evidenced assertions is the common theme 16 that underpins Mr McGrail's case as 17 presented to you hitherto. The important 18 point and the short point here is that by the 19 time the Chief Minister came to contribute to 20 the drafting of the second letter, the GPA, as 21 appears by the minute, had already made its 22 decision. The Chief Minister's assistance, at 23 the request of the Chairman, with the drafting 24 of these letters - I think he actually did some 25 work on both - in no way impacted or</p> <p style="text-align: center;">Page 153</p>	<p>1 Interim Governor and the Chief Minister 2 stated that it was a matter for the GPA, 3 having been appraised of these concerns, 4 whether in its discretion it wanted to invoke 5 the powers vested in it pursuant to section 34 6 of the Police Act." At paragraph 14: "The 7 Interim Governor stated that should the GPA 8 be minded to call upon Mr McGrail to retire, 9 both should be deemed to have been 10 consulted and agreed." Then at paragraph 11 15: " The Interim Governor and the Chief 12 Minister pointed out that if the GPA were to 13 consider inviting Mr McGrail to retire, the 14 first step would be to allow Mr McGrail to 15 make representation if he wished to do so." 16 This is what Mr Britto says was the attitude 17 and approach of the Governor and the Chief 18 Minister to them in terms of a non-mandated 19 decision. However much the Governor may 20 have made it clear his strength of feelings of 21 what he would consider doing if they took a 22 different view to that, and we have to debate 23 in a while the appropriateness of that. 24 So the first entity, sir, to exercise a statutory 25 power, to seek to bring about Mr McGrail's</p> <p style="text-align: center;">Page 155</p>
<p>1 influenced, still less directed or guided, all 2 the various epithets that have been used to 3 describe it, the decision of the GPA which 4 had been taken in a boardroom in the absence 5 of the Chief Minister, solely by the board, as 6 reflected in the minutes and communicated 7 by Mr Britto to Mr McGrail.</p> <p>8 So this conflation of interventions and 9 timetables and chronologies to attempt to 10 sustain the proposition that the Chief 11 Minister's involvement in the drafting, 12 whatever else you may wish to think about 13 that, sir, but what I do not think you are 14 entitled to conclude from it is that it is 15 evidence of any degree of manipulation or 16 making or guiding of the decision itself 17 which had already by then been made.</p> <p>18 So the facts that I have just described, that 19 this was the GPA's decision with no guidance 20 or instruction, etc., etc., is made clear by Mr 21 Britto himself at paragraphs 13 to 15 of his 22 first affidavit which is A 322, and the Chief 23 Minister had made it clear to them that it was 24 their decision and theirs to make, which is 25 how it happened. At paragraph 13: "The</p> <p style="text-align: center;">Page 154</p>	<p>1 retirement as Commissioner was therefore 2 the Gibraltar Police Authority. It made its 3 decision independently for the reasons just 4 cited, namely the incident at sea and the fact 5 that both Governor and Chief Minister had 6 lost confidence in Mr McGrail. But as we 7 know, sir, the decision making process 8 turned out to be flawed. It was flawed on the 9 basis of typically astute legal advice from my 10 learned friend Mr Neish because the GPA 11 had failed to allow Mr McGrail the 12 opportunity to make representations before 13 exercising its power under section 34 to 14 invite him to retire, as that section requires. 15 On legal advice the GPA therefore rightly 16 decided to withdraw the invitation. By letter 17 of 5 June to the Governor, which Mr Triay 18 will find at B 1487 if he wants to put it up on 19 the screen, the GPA Chairman informed the 20 Governor as follows: "We have taken 21 independent legal advice and have been 22 advised that the process that we have adopted 23 under section 34 of the Police Act is 24 fundamentally flawed and should be 25 withdrawn. However, we are advised that</p> <p style="text-align: center;">Page 156</p>

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<p>1 the complaints by you and the Chief Minister 2 remain live and have to be determined. We 3 have also been advised that the Authority as 4 presently constituted is vulnerable to 5 challenge on the grounds of bias. The 6 Authority considers that as present 7 constituted it is unable to process the 8 complaints without being vulnerable to legal 9 challenge and it is not therefore prepared to 10 do so." Obviously the bias was that all its 11 members were tainted by the fact that they 12 had already, without hearing representations, 13 decided that his position was untenable and 14 decided to call him to retire, so they were not 15 in a good place to pretend to make that 16 decision anew and independently. 17 Before I go to the question of what effect that 18 has on the default issue, I just want to go 19 back very momentarily to the drafting of the 20 letters to the email at B 1437, because one of 21 the things that my learned friend said this 22 morning, whether perhaps, having told you 23 first that he had played such an instrumental 24 part in the drafting of it, the absence of 25 Operation Delhi from the second 22 May</p> <p style="text-align: center;">Page 157</p>	<p>1 it was an improper reason, is actually 2 language that has been put in by Mr Britto. 3 That is how he considered that that point 4 should be articulated. 5 If we can have on screen B 1437, the draft of 6 the letter that we just had on screen, in other 7 words the stuff that was not in yellow - if 8 you go to 1533 - Mr Britto - sorry, B 1437; I 9 am told I have given - thank you. At 1533 I 10 was talking about the time. I do beg your 11 pardon. At 1533 Mr Britto says: "Fabian, 12 please see main points I felt were the most 13 relevant to put in writing." So this is not the 14 Chief Minister deciding to exclude the - 15 what was the phrase? - the vanishing reason. 16 If the reason vanished - well, it did not 17 actually vanish because it is alluded to in Mr 18 Britto's own language - but such vanishing 19 or such insufficient presence as there might 20 have been was not down to the Chief 21 Minister. This is what the Chairman of the 22 GPA decided, felt were the most relevant to 23 put in writing. 24 Sir, I just say that to put into context, because 25 I do say, and this is a theme that we will be</p> <p style="text-align: center;">Page 159</p>
<p>1 letter, the second one that is, speaks volumes, 2 they say. Perhaps it is missing, again 3 throwing another speculative innuendo to the 4 wind, perhaps missing because the Chief 5 Minister knew it would not be a proper 6 reason. Well, there is a leap of logic. 7 Perhaps we might all be better informed by 8 having consideration, having regard to the 9 fact that the Chief Minister did not, in fact, 10 draft the original version of the letter; it was 11 drafted by Mr Britto. In Mr Britto's first line 12 in relation to probity and integrity at B 1365 13 there is the reference. The yellow is what the 14 Chief Minister added. What is not in yellow 15 is what Mr Britto drafted. "It was 16 communicated to me that both the Governor 17 and the Chief Minister felt that their dealings 18 with you have left them with the sense that 19 you are lacking in both probity and integrity. 20 The maritime incident is one case in point" - 21 obviously one case in point of that. Now, 22 that language, apparently obfuscatory as my 23 learned friends think it is because it is the 24 Chief Minister excluding it because he is 25 effectively admitting, according to them, that</p> <p style="text-align: center;">Page 158</p>	<p>1 developing as this Inquiry proceeds and 2 indeed in cross-examination and in closing, 3 that much of the case that is put has this 4 theme of the mischaracterisation of titbits of 5 evidence taken in isolation from their proper 6 context. 7 In terms of the bias, I had just finished telling 8 you, sir, that the Police Authority had written 9 to the Governor on 5 June saying that they 10 had effectively checkmated themselves and 11 that they could not and would not act. Now, 12 this resulted - and this is key to the question 13 of default - in a situation whereby the 14 Gibraltar Police Authority had decided that 15 Mr McGrail's position had become untenable 16 because he had lost the confidence of the 17 Chief Minister and the Governor and could 18 no longer work with them - by the way, an 19 assessment that Mr McGrail himself has 20 made - and should be invited to retire but 21 could not and would not act to do so for 22 technical reasons that they had rendered 23 themselves effectively not functus officio but 24 legally unable to act effectively. That 25 plainly, sir, I submit to you, constitutes a</p> <p style="text-align: center;">Page 160</p>

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<p>1 default. They had decided that he should go 2 but had put themselves in a position where 3 they did not have the wherewithal to 4 implement their own assessment. Mr Pyle 5 took legal advice from the Attorney General, 6 who advised him that reconstituting the 7 Authority was not a practical option because, 8 for the reasons that you have heard, of the 9 involvement of Mr Pyle and indeed the Chief 10 Minister in approving the list. All the 11 members of the PSA bar the Chairman, 12 ironically, have to be from a list of people 13 approved by the Governor and the Chief 14 Minister. That was the advice that he got and 15 therefore it was that people would be just as 16 critical of a decision made by a body so 17 reconstituted as they would rightly be about 18 the same old body making or trying to make 19 the decisions anew. 20 I would submit to you, sir - I mean, this is 21 not a court of law and I do not know to what 22 extent you will want to be actually making 23 statutory interpretive decisions, it is a matter 24 for you, I do not know what view you have 25 formed of that - but I would submit that the</p> <p style="text-align: center;">Page 161</p>	<p>1 they have taken the view - Mr McGrail 2 himself has given evidence that his position 3 had become untenable. If the Police 4 Authority had themselves come to exactly 5 the same conclusion, what is it - I mean, I 6 acknowledge the procedural flaw obviously - 7 but what is it that could have been said in 8 representations? How could the Police 9 Authority have come to a different 10 conclusion given that the loss of confidence 11 was the invariable piece of the process 12 regardless of whether the Police Authority's 13 procedure was undertaken anew. 14 The Government parties for themselves 15 therefore reject the RGP's and now Mr 16 McGrail's also view that a default has not 17 occurred and that therefore the Governor's 18 powers under section 13(f) had not been 19 engaged, as also they strongly disagree with 20 the RGP's assessment of the roles and power 21 of the Governor under the Constitution and 22 the Police Act. The Governor, sir, is not a 23 bystander. Section 13.1(f) says that he may 24 suspend or call for the resignation in 25 circumstances of default. The Chief Minister</p> <p style="text-align: center;">Page 163</p>
<p>1 default applies to the authority as then 2 constituted as a matter of law. Has the 3 Authority, as at that moment constituted, as a 4 legal body, defaulted or has it - not 5 differently constituted in the future but has it, 6 as currently existing in law defaulted? So a 7 default, if it exists at a given moment on the 8 part of a body as constituted at that moment, 9 does not cease to be a default because the 10 body could be reconstituted, which appears 11 to be the basis of my learned friend Mr 12 Wagner's submission to you this morning. 13 Therefore, sir, it engages directly the 14 provisions of section 13 of the Act, because 15 the Police Authority had placed itself in a 16 position where "it could not discharge or 17 perform a responsibility imposed on it." 18 What was the responsibility imposed on it in 19 this case? Simply to implement a decision or 20 an assessment or to - my learned friend says 21 that you cannot be in default by failure to 22 implement an unlawful decision or even 23 putting themselves in the position where they 24 could not procedurally recommence with the 25 process to do what they had already done. If</p> <p style="text-align: center;">Page 162</p>	<p>1 is not just the money man. He has lots of 2 functions under the Act, none obviously 3 which allows him to interfere with the 4 operation and independence of the police, 5 that for sure, but to describe the Chief 6 Minister's role under the Act, which by the 7 way include having to consent, as one of two 8 possible consentors, to the Authority's own 9 exercise of its own powers is, with respect to 10 my other learned and valued friend Mr Cruz, 11 an oversimplistic characterisation of the 12 Chief Minister's role. 13 We will make detailed submissions 14 depending on how you decide as this Inquiry 15 goes forward how you want to deal with the 16 question of statutory interpretations and legal 17 interpretations. We intended to do it in 18 closing but as far as we are concerned we 19 should all do it together, but if, sir, it would 20 be helpful to you that those submissions were 21 made sooner than closing submissions, for 22 our part we would be content to do that. 23 As the Government parties equally 24 respectfully consider incorrect the view 25 expressed by my learned friend Mr Wagner</p> <p style="text-align: center;">Page 164</p>

<p>1 this morning that the Governor Mr Pyle had 2 no powers because of the new Governor's 3 imminent arrival, because of the provisions 4 of section 22.3. If Mr Wager were right, 5 there would be an interregnum for an 6 extended period of time which is 7 constitutionally simply not possible. 8 The starting point is section 19 of the 9 Constitution, which says that there shall be a 10 Governor. It is not an option under the 11 Constitution of Gibraltar for there not to be a 12 Governor for any period of time, however 13 brief it might be. 14 The next relevant provision is section 21 15 which says that every person appointed to the 16 office of Governor shall, before entering 17 upon that office, take and subscribe the oath 18 of allegiance for the due execution of the 19 office in the form set out in the schedule to 20 the Constitution. In other words a Governor, 21 however much he may have been designated, 22 appointed and designated, chosen, even if he 23 had the Royal Warrant in his back pocket, is 24 not the Governor because he cannot exercise 25 the powers of Governor until he has sworn</p> <p style="text-align: center;">Page 165</p>	<p>1 for my silence but there is a lot going on and 2 I thought I'd leave you in the hands of our 3 very capable team [meaning in London]. 4 This should bring you up to speed with the 5 issue of the Commissioner. Happy to chat at 6 any time should you wish." David's response 7 was not: "I notify you that I am about to 8 resume or about to assume my position, do 9 not do anything." It was, at page 1813: 10 "Dear Nick, Thank you. This matter has 11 been the reason that I too have not been 12 troubling you, as I know that you have much 13 on your plate at the moment. I discussed the 14 whole issue with [redacted name of person] 15 in the Foreign Office this morning as well as 16 with the Permanent Undersecretary. Both 17 think you are doing a cracking job in difficult 18 circumstances. I just hope that the actions 19 you are taking will address the issue. Take 20 good care and an extra pair of hands of help. 21 You are flying out next Wednesday." Now, 22 this does not mean that what was going on 23 was Sir David Steel's own judgments or 24 decisions, and I use this only insofar as it 25 dispels the suggestion that the provisions of</p> <p style="text-align: center;">Page 167</p>
<p>1 the oath under the Constitution, and that he 2 does when he arrives at a ceremony that he 3 does in Parliament and he gets sworn in by 4 the Chief Justice in the presence of the whole 5 House. 6 Then we have this provision in section 22(3) 7 upon which he relies, that: "Any such person 8 as aforesaid - that is to say anybody acting as 9 Governor whilst the office was vacant - shall 10 not continue to perform the functions of that 11 office of the office of Governor after the 12 Governor or some other person having a 13 prior right to perform he functions of that 14 office - which is not our case - has notified 15 him that he is about to assume or resume 16 those functions." Well, Sir David Steel had 17 not notified him that he was about to assume 18 or resume those functions, and indeed, far 19 from doing so, had sent him emails or an 20 email acknowledging that he understood 21 what Mr Pyle was doing. At B 1811 you will 22 see there an email which starts with one from 23 Mr Pyle to - blanked out but it was we know 24 to the FCO - and Nick Pyle says to "Dear 25 David", who is Sir David Steel: "Apologies</p> <p style="text-align: center;">Page 166</p>	<p>1 section 22(3) of the Constitution, even if they 2 meant what my learned friend submits that 3 they mean, which in itself is not accepted by 4 the Government parties, it would not in terms 5 have been engaged (A) by the natural 6 meaning of the words themselves, but (B) by 7 the fact that this email demonstrates that we 8 were not in the scenario of a communication 9 to desist because I am about to assume. 10 Just before I move on, I should say 11 something very briefly about something else 12 that my learned friend Mr Cruz said, and I 13 think Mr Wagner effectively said the same 14 thing this morning, that the operational 15 independence of the police in law 16 enforcement is an essential pillar of the rule 17 of law. I do not think there is anybody in this 18 room, and there is certainly nobody amongst 19 the Government parties, that would disagree 20 with that. But operational independence in 21 law enforcement is one thing, and police 22 accountability to the other powers of the 23 State is a quite different thing and equally an 24 essential pillar of the rule of law, because if 25 that balance is not struck between the</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 difference between operational independence 2 in law enforcement on the one hand and the 3 accountability of the police to other powers 4 of State on the other, what you have is a 5 police state, which is not what we are and not 6 what any of us want to be. 7 Having reached this point of the flaw and the 8 Governor and the engagement of section 13 9 as far as the Government parties are 10 concerned, only the Governor had the power 11 to bring about Mr McGrail's removal. 12 Following the failure for procedural reasons, 13 only the Governor had the legal power to call 14 for Mr McGrail's resignation. Of course, this 15 is an insuperable obstacle to the case theory 16 of Mr McGrail. How can we argue that if the 17 Chief Minister has no power and only the 18 Governor has power and we do not think that 19 he is lying, how do we overcome this 20 obstacle? That is resolved by the equally 21 speculative bald assertion that Mr Pyle was 22 simply being manipulated as a puppet on 23 strings by the Chief Minister, who was 24 orchestrating the whole thing effectively 25 exercising the powers of Governor, the</p> <p style="text-align: center;">Page 169</p>	<p>1 allowed himself to be manipulated." 2 Sir, I just do not see how juxtaposing the 3 words "lying" and "manipulating" avails my 4 learned friends. Because if he was being 5 manipulated to do things that were not really 6 what he thought - if he says that: "The Chief 7 Minister did not put pressure on me" that is 8 not consistent with manipulation, so he is not 9 telling the truth. When he says what I 10 mentioned to you earlier about: "I explained 11 to the Chairman of the GPA the strength of 12 my personal feelings," that is not 13 manipulation. Expressing the strength of 14 your personal feelings is either true or untrue, 15 but it is not manipulation, and they do not 16 say that he is lying. 17 So if he is not lying then Mr Pyle's evidence 18 stands un rebutted as to these key elements of 19 this. Because of course the point is to train 20 the guns on the Chief Minister, and the 21 dilemma is: how do we train the guns on the 22 Chief Minister when the power that was 23 going to be threatened which brought about 24 the retirement was actually a power held only 25 by the Governor and which the Chief</p> <p style="text-align: center;">Page 171</p>
<p>1 judgments of the Governor, and not the 2 Governor himself who, by the way, is not 3 lying even though he says the contrary on 4 oath. I would submit to you, sir, that that is 5 simply asking you to find too much in order 6 to come to the conclusions that Mr McGrail 7 wants you to come. 8 (15.00) 9 It is also Mr Picardo, the Chief Minister's 10 evidence and indeed the Governor has made 11 it clear that the decision to invoke or consider 12 invoking his powers was entirely his own and 13 that at no time was he put under any pressure 14 to do so by anyone else, including the Chief 15 Minister. He says that at paragraph 27.1 of 16 his first witness statement at page A257. So 17 again, is he lying or is he not lying? They 18 cannot have it both ways. They say that he is 19 not lying - indeed, Mr McGrail in his written 20 opening for this hearing, they say at 21 paragraph 13 the case is that he has been 22 manipulated rather than lying, so at 23 paragraph 13 they say: 24 "We do not say that Mr Pyle MP is lying but 25 we do say that MP was manipulated and</p> <p style="text-align: center;">Page 170</p>	<p>1 Minister did not have and could not bring 2 about? This word manipulation is the leap 3 that my learned friends make to breach that 4 void. 5 In saying that the Chief Minister did not have 6 the power and only the Government had it, 7 this does not mean that the Chief Minister 8 did not want Mr McGrail to be removed from 9 office. He most certainly did, having lost 10 confidence in him primarily and most 11 immediately because he considered that Mr 12 McGrail had lied to him. So therefore Mr 13 Picardo, the Chief Minister, was in full 14 agreement with the Governor later using, if 15 he had had to, his powers, his section 13(f) 16 power to either suspend or call for the 17 resignation. It is important to remember that 18 if the Governor calls for a Commissioner's 19 resignation he has to resign. This is not an 20 invitation. The Act says that if you are called 21 upon to resign, you must. 22 But in any event Mr McGrail chose to retire, 23 and I do not want to be facile when I say that. 24 I understand the next questions. For the 25 purpose of initiating the process of</p> <p style="text-align: center;">Page 172</p>

<p>1 consideration by him of using his powers 2 under section 13(f) to suspend or remove, the 3 Governor Mr Pyle called Mr McGrail to a 4 meeting with him on 5 June. At that meeting 5 Mr McGrail handed Mr Pyle an email that 6 his lawyers had already sent to the GPA's 7 lawyers applying for early retirement. So he 8 had applied for early retirement before the 9 Governor commenced the process of 10 considering whether he would exercise his 11 section 13(1) powers. 12 So although undoubtedly there had been an 13 unsuccessful attempt by the GPA on the basis 14 of - they call them complaints, more 15 accurately perhaps expressions of loss of 16 confidence by the Governor and the Chief 17 Minister - and equally undoubtedly the 18 Governor had previously communicated to 19 the Chairman, Mr Britto, that he would 20 consider using his powers if the GPA came 21 to a different view, he called Mr McGrail to a 22 meeting to initiate that process. 23 So what does all this mean, sir? Mr McGrail 24 was in fact not removed from office by the 25 Governor or anyone else. You will want to</p> <p style="text-align: center;">Page 173</p>	<p>1 the confidence of both the Governor and the 2 Chief Minister, his position had become 3 untenable, and that was the principal ground 4 on which the GPA had itself called for him to 5 retire. 6 He, Mr McGrail, believed that had he not 7 sought early retirement there was a very real 8 risk that the Governor would call publicly for 9 his resignation under section 13(1)(f) and Mr 10 McGrail was concerned that if the Governor 11 sacked him as opposed to him retiring, he 12 may lose his pension. This is indisputable. 13 This is evident from Mr McGrail's own often 14 repeated stated case. So at all of - I will give 15 you a long list of references but I just read 16 out what he says because he says the same in 17 all four documents. This sequence of events 18 was hugely stressful for Mr McGrail and his 19 family. He was also concerned that if he was 20 forced to resign as opposed to retire, this 21 would put his pension rights at risk. He says 22 that at paragraph 13 of his preliminary 23 hearings one submissions, at paragraph 27 of 24 the submissions after that on 20 July, at 25 paragraph 25 of his written submissions of 9</p> <p style="text-align: center;">Page 175</p>
<p>1 consider, I understand, what brought about 2 this situation because I starting off by 3 conceding that he had not retired because he 4 wanted to stop being Commissioner, but as a 5 matter of process - and this is important to 6 the natural justice arguments that you have 7 heard, sir - Mr McGrail was actually not 8 removed from office by anyone; he chose to 9 retire, not in the voluntary sense or at least 10 not in the undressed sense, for the reasons I 11 will just go through very quickly in a 12 moment. The point is that there was no 13 statutory process that led to his removal from 14 office to which to have applied the natural 15 justice principle. If somebody comes and 16 says: "I want to retire. May I or may I not?" 17 that is not a process that requires the 18 application of any rules of natural justice, at 19 least not that I am aware. 20 So why did Mr McGrail choose to retire?, is 21 obviously the next question that you have to 22 consider. So the real reasons, the 23 Government party says, is that he sought 24 early retirement because he knew that, 25 having been told by Mr Britto that he had lost</p> <p style="text-align: center;">Page 174</p>	<p>1 September for preliminary hearing two, at 2 paragraph 17 of the factual statement of 3 position filed on 20 September 2022 in the 4 context of PH2 - it goes on and on - at 5 paragraph 23 of the opening written 6 statements he says: 7 "IM reluctantly agreed to retire early rather 8 than being forced to resign and therefore, in 9 addition to the huge reputational damage he 10 would suffer, potentially putting his pension 11 at risk." 12 At A42, in case you want to have anything 13 on the screen, at paragraph 100M of Mr 14 McGrail's first witness statement at page 15 A42: 16 "Either I remained in post and was 17 potentially suspended or called to resign, 18 which according to the letter was what was 19 on offer, and lose all my pension rights and 20 years of service, or apply for early retirement 21 which may safeguard some of my interests." 22 Then at A44, paragraph 108: 23 "I had completed 36 years of service and did 24 not want to put in jeopardy my pension 25 entitlements."</p> <p style="text-align: center;">Page 176</p>

44 (Pages 173 to 176)

<p>1 But Mr McGrail did not ask anyone whether 2 that would be the case. In fact this was not 3 correct. Instead, he opted to retire before 4 even speaking with the Governor, for 5 example to ask him what his pension 6 consequences might be, and then focused on 7 negotiating his retirement terms. As we 8 know from his evidence, what Mr Pyle had 9 intended to do on the Monday morning was 10 to use his section 13 powers to suspend Mr 11 McGrail pending the arrival of the new 12 Governor if it had been the case that Mr 13 McGrail had not proceeded with his offer or 14 with his request to retire. 15 But the reasons asserted by him to the GPA 16 were not all of those that I have just read out. 17 The reasons asserted by him to the GPA in 18 his lawyer's email dated 5 June when he 19 asked to retire, he gave two reasons - this is 20 in the email himself. He had been unfairly 21 treated in the flawed process, by the GPA, 22 and improper pressure had been put upon 23 him to alter the course of a live criminal 24 investigation. I do not know whether this is a 25 vanishing reason or not. But, sir, not</p> <p style="text-align: center;">Page 177</p>	<p>1 my learned and valued friends Charles 2 Gomez, had written to the GPA saying that 3 he should be allowed to continue as 4 Commissioner of Police. He told the GPA in 5 the 29 May letter that the just result was for 6 them to allow him to "remain in post". 7 Absolutely nothing relevant had happened in 8 the Operation Delhi investigation between 29 9 May and 5 June to explain or justify the 10 change from those two stated positions, in 22 11 and 29 May, to the "I am going because of 12 the unfair flawed process and the improper 13 pressure placed on a live criminal 14 investigation". 15 All the alleged wrongful interference had 16 happened by then already and so Mr McGrail 17 plainly did not think, when he said to the 18 senior management team that he was going to 19 engage with the GPA to resist and said to the 20 GPA that the fair thing was he should be 21 allowed to stay, he plainly then did not think 22 (and nothing happened later to change this, 23 that I am about to say) he plainly did not 24 think that any supposed interference in the 25 investigation was an obstacle to his ability to</p> <p style="text-align: center;">Page 179</p>
<p>1 included amongst the reasons is any concern 2 about his pension. The improper pressure 3 had been put upon him to alter the course of 4 a live criminal investigation, obviously a 5 reference to the Operation Delhi allegations 6 that he has been making. Neither of these 7 reasons, sir, is in the Government party's 8 view plausible or true. 9 According to Chief Superintendent then, now 10 Assistant Commissioner, Yeats, on the 11 afternoon of 22 May, that is to say just short 12 of two weeks before, the day that Mr Britto 13 had come to New Mole House Police Station 14 to give him the letter in which the GPA 15 invited him to retire, Mr McGrail had 16 convened the entire RGP senior management 17 team at his office and told them - and this is 18 at page A640 if you want it on the screen, 19 this is from Assistant Commissioner Yeats's 20 first witness statement at paragraph 43 - that 21 he was engaging with the GPA "to resist him 22 having to retire". To resist him, this was his 23 purpose. On 22 May his purpose was to 24 resist having to retire. 25 On 29 May Mr McGrail's own lawyers, also</p> <p style="text-align: center;">Page 178</p>	<p>1 carrying on as Commissioner of Police nor a 2 reason for not wishing to carry on as 3 Commissioner of Police. Plainly he did wish 4 to carry on as Commissioner of Police 5 despite those things that he alleges, the 6 supposed interference and the unfair 7 procedural treatment. 8 The only thing that had changed, sir, was that 9 he feared for his pension, and he feared for 10 his pension in consequence of the Governor's 11 erroneous reference to resignation and not 12 retirement in his letter of 6 June, which 13 perhaps we could see at B1502. This is what 14 caused Mr McGrail's volte face on wanting 15 to stay as Commissioner of Police 16 notwithstanding the criminal investigation. 17 Mr McGrail had offered to retire, not to 18 resign, and that is evident from the first 19 paragraph of the letter in which Mr Pyle 20 writes to Mr McGrail: 21 "Dear Commissioner," 22 bla bla bla, the last line of the first sentence, 23 which states: 24 "Our client feels he must apply for early 25 retirement from the Royal Gibraltar Police,"</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 and then in the last paragraph, the 2 penultimate line of this last substantive 3 paragraph: 4 "And if so, so before I review all the papers I 5 have on this matter in advance of a meeting 6 on Monday can you please confirm to me by 7 no later than midday tomorrow whether that 8 is indeed your decision, and if so whether 9 you will be tendering your letter of 10 resignation." 11 Manifest error because the Commissioner 12 had not offered to resign, he had offered to 13 retire, and that was an error on the part of the 14 Governor that explains Mr McGrail's 15 apparent concern for his pension and all of a 16 sudden view that he had been so badly 17 interfered with in his investigation of 18 Operation Delhi, which by the way according 19 to him was not carried out by him but by Mr 20 Richardson and Mr Wyan, that he had to 21 retire principally for that reason. 22 If Mr McGrail, I invite your Lordship to 23 suggest, given the courage that he has shown 24 hitherto in this matter, had genuinely thought 25 that the required statutory independence of</p> <p style="text-align: center;">Page 181</p>	<p>1 flawed process, why he retired. 2 My learned friend levels, not criticism but 3 extracts from the Blair and Cressida Dick's 4 experiences what we heard her say this 5 morning. It is at least some consolation that 6 Gibraltar is not alone in seeing of 7 Commissioners of Police, that the great 8 Metropolis is known to incur in the same 9 things, not once but twice, in the space of 10 successive Commissioners of Police. But 11 anyway, be that as it may. 12 The point is not about improper or improper 13 process - of course everybody understands 14 that there has to be a proper process. The 15 point is that when a political power to which 16 you are accountable expresses loss of 17 confidence in you, you go. Then if you want, 18 you challenge the decision, either as a 19 constructive dismissal or as the unlawful 20 exercise of a power, but you go. This is what 21 the Commissioner himself did, because the 22 reason was not the improper interference 23 with the Police's independence, which as I 24 say Commissioner would have been bound to 25 stay to see off and not leave the problem to</p> <p style="text-align: center;">Page 183</p>
<p>1 his office and of the RGP as an independent 2 crime investigator was being improperly 3 interfered with, his duty was and he would 4 have regarded his duty as the holder of such 5 an office, would have been to stay and 6 defend it and see off assaults to the RGP's 7 essential operational independence by 8 resisting any unjustified pressure, not by 9 going off to save his pension. I level no 10 criticism at him from a personal perspective 11 of at all costs not wanting to lose your 12 pension, but that is a matter that he could 13 have resolved by different means, as indeed 14 was the case. Similarly, sir, the proper 15 reaction of a Commissioner of Police to a 16 supposed improper attempt to interfere in the 17 administration of justice, which is what 18 improper interference in a police 19 investigation is, is not to seek early 20 retirement but rather to enforce laws that 21 resist precisely in relation to that unlawful 22 conduct. 23 So, sir, it is the Government party's 24 submission that those were not the real 25 reasons alleged, improper interference or the</p> <p style="text-align: center;">Page 182</p>	<p>1 his successor. 2 So Mr McGrail himself has ... Just very 3 quickly, my learned friend Mr Dumas is 4 hurrying me along, understandably. 5 THE CHAIRMAN: We also need a break 6 some time in the afternoon. 7 SIR PETER CARUANA: Yes, sir. Simply 8 to say that at A42 Mr McGrail had himself 9 acknowledged this untenability of position 10 point at paragraph 101: 11 "The other part of me was saying that my 12 time was up as it was going to be impossible 13 to work with these officials ever again. In 14 my view my position was untenable, but not 15 for the reasons they claimed. I suppose that 16 by that point the loss of confidence was a 17 mutual issue between them and I." 18 Sir, that is the inescapable reality of where 19 we stand. There are parts of my written 20 submissions, which I will not go to again, 21 about loss of confidence being a subjective 22 thing, we agree with CTI on that, and that the 23 issue, sir, is not the sufficiency or adequacy 24 of the reason why Mr Pyle and Mr Picardo 25 lost - in other words, it is not: is this a</p> <p style="text-align: center;">Page 184</p>

<p>1 sufficient reason to lose confidence in 2 someone? That would be tantamount to 3 saying that the test is objective and not 4 subjective, and we would respectfully submit 5 that that would not be correct. 6 So we would recommend to you, sir, for your 7 consideration the following approach. How 8 and why did Mr McGrail retire? To what 9 extent was a loss of confidence in Mr 10 McGrail and by whom (a) a reason, or (b) a 11 circumstance leading to his retirement? 12 Thirdly, to the extent that a person's loss of 13 confidence in Mr McGrail played a role in 14 that, as a reason or circumstance, did that 15 person genuinely lose confidence in Mr 16 McGrail for that reason, and I think that, yes, 17 the CTI did say, and we agree, that that does 18 not turn on whether it is a well founded 19 reason or not. So, for example, somebody 20 could have a genuinely held belief, even 21 though their factual understanding of the 22 underlying facts in fact are not correct. 23 Coming then to the - and I would like to start 24 with issue ... 25 Sorry, sir, were you inviting me to pause</p> <p style="text-align: center;">Page 185</p>	<p>1 was not the case as the DPP himself has 2 confirmed and as is clear from the evidence. 3 So Mr Picardo told the GPA six days later in 4 his meeting on 18 May the Commissioner 5 had expressly misled him, which left him 6 unable to believe the Commissioner. My 7 learned friend Mr Santos has read out 8 paragraphs 48 to 55 of the Chief Minister's 9 first witness statement, I will not go back to 10 that, but in his second affidavit Mr Picardo 11 said - it is at A227 if we want it on screen at 12 paragraph 15, page A227: 13 "At paragraph 147 Mr McGrail says that he 14 did not tell me ..." 15 Oh, I beg your pardon, sir. There we are. 16 "Mr McGrail says that he did not tell me that 17 the Operation Delhi investigation team had 18 executed a search warrant on the advice of 19 the DPP and that what he was referring to 20 was the status of suspect for Mr Levy had 21 been the subject of consultation and 22 agreement with the DPP, who had advised 23 the team generally of the investigation 24 throughout. 25 "Also in paragraph 33 of Mr McGrail's first</p> <p style="text-align: center;">Page 187</p>
<p>1 now? I think Mr Allan seems to think -- 2 THE CHAIRMAN: (Inaudible) -- 3 SIR PETER CARUANA: I beg your pardon, 4 yes. 5 THE CHAIRMAN: ... some time 6 convenient to you. 7 SIR PETER CARUANA: This is now 8 convenient. 9 THE CHAIRMAN: Okay, fine. 10 (Adjourned for a short time) 11 SIR PETER CARUANA: Moving on to 12 issue 5, sir, contrary to Mr McGrail's case 13 theory, the reasons for the Chief Minister's 14 loss of confidence in him, to the extent that 15 that is relevant to the reasons why he retired - 16 itself a matter for you to consider - was not 17 because he had obtained a search warrant 18 against his very good friend, mentor, political 19 supporter and personal friend James Levy, all 20 of which things he undoubtedly is, but 21 because the Chief Minister believed that Mr 22 McGrail had lied to him when stating to him 23 in his office in relation to the execution of the 24 warrant that he was acting on the advice of 25 the Director of Public Prosecutions, which</p> <p style="text-align: center;">Page 186</p>	<p>1 witness statement he reduces the statement 2 made by him to me in relation to the DPP's 3 advice on the James Levy search warrant to 4 'all the grounds to deal with James Levy had 5 been consulted with the DPP', in other words 6 he is denying that he said to me in terms that 7 he had ever said to Michael Llamas, the 8 Attorney General, that the DPP had advised 9 that a search warrant should be used against 10 James. This is simply untrue. He most 11 certainly told us both that the DPP had 12 advised him that a search warrant could and 13 should be used against Mr Levy. In fact this 14 was central to my loss of confidence in Mr 15 McGrail. 16 "I consider that Mr McGrail is now seeking 17 to wriggle off the hook of his lie by 18 suggesting it was a misunderstanding. There 19 is no room for misunderstanding as Mr 20 McGrail clearly told me, in the presence of 21 Mr Llamas, that the search warrant for Mr 22 Levy had been issued on the advice of the 23 DPP. He is changing his version only now 24 that he has seen that the DPP does not make 25 out the lie he told me."</p> <p style="text-align: center;">Page 188</p>

47 (Pages 185 to 188)

<p>1 So what did Mr McGrail say to the Chief 2 Minister and the Attorney General? The 3 Chief Minister and the Attorney General are 4 both, and I say both because at ML1 at page 5 A281, paragraphs 43 and 44 - I think these 6 may have been read out already by CTI: 7 "Mr McGrail sought to defend his decision 8 by making two comments. First he said he 9 had taken advice from the Attorney General. 10 I could not believe," 11 et cetera et cetera, Then he said: 12 "When I refuted this," 13 44, this is Mr Llamas speaking, 14 "When I refuted this Mr McGrail then said 15 that he had been taking advice from the DPP 16 and the DPP had advised him that RGP 17 should proceed by way of search warrant. 18 The Chief Minister and I told Mr McGrail 19 that we found it very difficult to believe that 20 he would have received such advice from the 21 DPP." 22 So that is why I say both the Chief Minister 23 and the Attorney General are clear that Mr 24 McGrail said in terms that he had been 25 advised by the DPP in the matter of obtaining</p> <p style="text-align: center;">Page 189</p>	<p>1 said it it could only have been intended to 2 mean that he had received the DPP's advice 3 on the question of the search warrant. That is 4 not the Government's case, the Government's 5 case is that he said it explicitly, but even on 6 his case, in the context of the conversations 7 that he was having, the natural thought 8 conveyed to the listeners would have been: 9 "He advised me on what we are discussing." 10 Why would he, in the context of a discussion 11 about search warrant yes, or production order 12 no, why would he say: "Oh, by the way, the 13 DPP advised me that he was a suspect or the 14 DPP advised me on the charges"? It does not 15 arise for logical interposition in those 16 circumstances. 17 So the alleged interference, sir, is that both 18 the Chief Minister and the Attorney General 19 interfered in a live investigation. We say that 20 this is not the reason why he retired, for 21 reasons that I have explained before. But in 22 any event, much as he may implausibly now 23 argue that that was his reason for retirement, 24 no such interference took place. Nothing, 25 however odd some of the things that we have</p> <p style="text-align: center;">Page 191</p>
<p>1 a search warrant. 2 For his part, Mr McGrail says, as we have 3 heard, that he was advised, he advised him 4 that the warrant had been signed by a judge, 5 was satisfied - this is at A10, paragraph 33: 6 "I advised him that the warrant had been 7 signed by a judge who was satisfied with the 8 information which had been laid before him 9 and that all the grounds to deal with JL had 10 been consulted with the DPP." 11 So that is the conflict of accounts. One way 12 that you could, if you found it helpful to you, 13 resolve that conflict of accounts is in this 14 way. If the row was about whether it was 15 right or wrong to go for a search warrant as 16 opposed to obtaining a production order, 17 which is common to both sides as to what the 18 row was about, and in the context of such a 19 row and such a discussion Mr McGrail said: 20 "Well, we were advised on all matters by the 21 DPP," in the context of a conversation about 22 search warrant yes or search warrant no, 23 what is the natural obvious inference that 24 anybody - so even on Mr McGrail's own case 25 of what he said, in the context in which he</p> <p style="text-align: center;">Page 190</p>	<p>1 heard this morning, and the Chief Minister 2 and the Attorney General will both come to 3 give evidence and my learned friends can 4 cross-examine them to their hearts' content, 5 as can CTI. 6 (15.41) 7 But I submit to you, Sir, that no such 8 interference took place, nothing that amounts 9 to interference with a police investigation 10 was done by either the Chief Minister or the 11 Attorney General. So, the allegation is that 12 this supposed interference was done to 13 "change the course of the investigation" and 14 the Attorney General's position, neither the 15 Chief Minister nor the Attorney General 16 interfered with the live investigation to 17 change the course of its investigation, still 18 less to halt it. 19 My learned friend this morning cited Lord 20 Denning in the Blackburn case, "Don't 21 prosecute him or her." Neither the Chief 22 Minister nor the Attorney General, nor the 23 DPP who was a principal participant, perhaps 24 more so than the Attorney General, in the 25 meetings of May that he was present at, none</p> <p style="text-align: center;">Page 192</p>

<p>1 of them have said or suggested non- 2 prosecution of Mr Levy. So, Mr McGrail's 3 case remains built on the surmise of his bald 4 assertion that that is what they were doing 5 and that that was interference with the 6 investigation. 7 Comment, advice that a receiver is free to 8 accept or reject, is not interference to alter 9 the course of. Nor can comment or advice or 10 criticism be equated with interference for the 11 purpose of simply saying if you criticise me, 12 if you dare say, as Mr McGrail does, his first 13 alleged act of interference, is simply what the 14 Chief Minister said in his response to the 15 WhatsApp in which the Commissioner of 16 Police informed the Chief Minister, why is it, 17 Sir, that the Commissioner of Police, the 18 guardian of the independence of the police in 19 Gibraltar can send a WhatsApp to a minister, 20 the Chief Minister, informing him of 21 executive action the police are taking against 22 a suspect, but not be appropriate for the 23 recipient of such communications simply to 24 say, "Dear Ian, thank you for the courtesy of 25 your information. I think it is a bad</p> <p style="text-align: center;">Page 193</p>	<p>1 latest unsubstantiated allegation. Now it is 2 Mr McGrail's case, it was not at the 3 beginning of this process, now it is Mr 4 McGrail's case that the Chief Minister has 5 directed Mr Llamas, subsequently changed, 6 that was on 21 March, changed recently -- 7 THE CHAIRMAN: Hang, that is a late 8 allegation because of late disclosure. 9 SIR PETER CARUANA: Sir? 10 THE CHAIRMAN: That is a late allegation 11 made because of late disclosure. 12 SIR PETER CARUANA: I see. In any 13 event, now altered -- thank you Sir -- to "may 14 have", "may have influenced". 15 Our position, Sir, is that none of these none 16 of these things, even if they had happened, 17 would constitute interference with the 18 investigation. I have covered already the bad 19 decision. This is wholly fanciful to suggest 20 that simply saying "Thank you for your 21 courtesy, but I think that is a bad decision", 22 that that is somehow interfering with the 23 investigation. How is that altering it -- the 24 police had done what they pleased. They had 25 already applied for the warrant. Indeed, Mr</p> <p style="text-align: center;">Page 195</p>
<p>1 decision." That is the first alleged act of 2 interference, as you will see in a moment, or, 3 Sir, it is interfering with the independence of 4 the police to simply say that they have made 5 a bad decision. I do not think even judges 6 enjoy that sort of ... there was a time when 7 you criticised judges and courts at pain of 8 contempt. I do not think they enjoy quite 9 that. Why the Commissioner of Police in 10 Gibraltar thinks that he should be free from 11 comment or criticism of the decision is not 12 something that at least I associate with any 13 assault on the rule of law. 14 So, the alleged interferences are by 15 expressing a negative opinion about the 16 RGP's action, which I have just spoken 17 about, by berating Mr McGrail angrily and 18 intemperately, which may have happened, on 19 12 May in relation to the warrant against Mr 20 Levy, by communicating with Mr Levy and 21 his lawyer, Mr Baglietto, and a recent 22 allegation, recently added, 21 March opening 23 submissions, by directing the Attorney 24 General, Michael Llamas to discontinue the 25 prosecution. This is the latest, this is the</p> <p style="text-align: center;">Page 194</p>	<p>1 McGrail was saying to him in this message, 2 "My officers are executing the warrant as we 3 speak." So the allegation now is that that is 4 untruthful because in fact "was executing" is 5 not the same as "has executed". He was in 6 the process of executing and that is 7 supposedly an all-important distinction about 8 whether it was interference or not. Well, I 9 will come to that in a moment. The berating, 10 my learned friend Ms Gallagher said this 11 morning that the Chief Minister was already 12 angry before the lie. He was angry about the 13 warrant and not the lie, she said. Well, 14 indeed he was angry about the warrant for 15 reasons that he explains and he will explain 16 when he comes to give oral evidence here 17 later in this proceeding. 18 So, he was angry about the warrant, but he 19 lost confidence because of the lie. Of course, 20 the RGP executed the warrant or executed 21 the warrant as they had decided to execute 22 the warrant, because the warrant actually in 23 the end was not executed. It was an 24 executive action on 12 May was taken as per 25 the RGP's plan. We know from Mr</p> <p style="text-align: center;">Page 196</p>

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<p>1 Richardson that the RGP, and indeed it is in 2 evidence, that the RGP had a plan as to how 3 they would execute this warrant, they would 4 only produce it if necessary, and that is 5 exactly what they did and the person who, 6 according to Mr Richardson, made it, caused 7 the warrant not to be executed, was not the 8 Chief Minister, it was Mr Levy who, 9 according to Mr Richardson's own evidence 10 persuaded him, Mr Richardson, not to 11 execute the warrant because he would give 12 the device voluntarily. So, it was Mr 13 Richardson, not some interference by the 14 Chief Minister from No.6 Convent Place, 15 that resulted in the warrant not being 16 executed, and resulted in only, I think the 17 word he used is "rudimentary" search of Mr 18 Levy's office, only Mr Richardson agreed to 19 that. That was, in the sense, part of the 20 written plan that is in evidence, but whether 21 it was or it was not it matters not. On Mr 22 Richardson's own evidence that is why the 23 warrant was not executed on that day. 24 Nothing to do with the berating or the 25 criticising or the commenting on the</p> <p style="text-align: center;">Page 197</p>	<p>1 political and professional relationship with 2 him, but because of his standing in the 3 community and the effect on Gibraltar's 4 international reputation as a finance centre of 5 the ill-considered taking of such decisions in 6 respect of leading professionals in our 7 finance centre and Gibraltar's foremost law 8 firm." 9 Now, why should not the Chief Minister or 10 the Chief Minister's chauffeur for that matter, 11 express a view to that effect? What is this? 12 What is sacred about the RGP or the 13 Metropolitan Police or any police force that 14 you cannot express the view, critical of a 15 decision that they make, not least when you 16 do not have the power to stop them from 17 doing it if they want to do it? If criticism of 18 the police in the context of a criminal 19 investigation is to be thought to constitute 20 interference in it, the police simply becomes 21 an unaccountable law unto themselves, and 22 this degree of protection, as I said before, 23 probably no longer exists in the case of 24 anybody in a position of operational 25 independence.</p> <p style="text-align: center;">Page 199</p>
<p>1 decision. 2 I am afraid that the Chief Minister disagrees 3 and will disagree with her when she cross- 4 examines him about whether he is entitled to 5 level criticism and to comment at the actions 6 of the RGP. He does not accept that as Chief 7 Minister he is not entitled to level criticism 8 because he does not regard the levelling of 9 criticism as an assault on the operational 10 independence of the police, namely their 11 right to investigate whom they please as they 12 please, regardless of the Chief Minister's 13 opinion of whether they go this route or that 14 route in terms of search warrant or 15 production order. 16 At paragraph 10 at A234, he said: 17 "I was and remain very concerned that the 18 police should fail to give proper 19 consideration to the teste for obtaining a 20 search warrant as opposed to a production 21 order in respect of any individual. That 22 concern is magnified in respect of Mr Levy, 23 as it would be in respect of anyone in his 24 position. Not because of my long-standing, 25 continuing and much valued personal,</p> <p style="text-align: center;">Page 198</p>	<p>1 Nothing obliged Mr McGrail, even if he had 2 been the operational decision maker, which 3 by his own evidence he was not, but even if 4 Mr McGrail had been, this is a man who felt 5 he had to retire because he was being 6 personally interfered with, he was not 7 making the operational decisions in this case, 8 but nothing obliged Mr McGrail to pay heed 9 to the Chief Minister's opinion. Indeed, Mr 10 McGrail has, in my view rightly boasted, that 11 he did not do so. So, in Mr Gomez's letter of 12 29 May 2020 (the Gomez letter) at paragraph 13 35, B21, it is said that it was unsuccessfully, 14 we might add, and then in his own fifth 15 affidavit at paragraph 119 at page A167, "I 16 was clearly not relenting to that pressure." 17 Well indeed, that is by itself an 18 acknowledgement I think, Sir, that that 19 coupled with the fact that he was not 20 operational decision maker anyway, I think I 21 would respectfully suggest to you for your 22 consideration, is sufficient to dispose of that 23 part, the berating part, to be improper 24 interference with that part of the police's 25 function which ought to be independent,</p> <p style="text-align: center;">Page 200</p>

<p>1 namely their law enforcement investigatory 2 function. 3 It is the Government parties and the Chief 4 Minister's position in particular that the 5 allegation of improper or any interference by 6 him simply is fanciful or without foundation. 7 It simply did not happen. I am speaking to it, 8 it did not happen under any of the four heads, 9 but I am speaking now about the berating 10 head. 11 By communicating with Mr Levy and his 12 lawyer, Mr Baglietto, the Chief Minister 13 asserts that he is free and entitled to 14 communicate as he pleased with Mr 15 Baglietto and Mr Levy. That he did so 16 frequently and that CTI has already read out 17 the paragraphs 8 to 18 of the Chief Minister's 18 fourth affidavit, which I will not go to again. 19 He says in his third affidavit at paragraph 17, 20 "Finally I wish to say that I do not share Mr 21 McGrail's exaggerated and self-serving view 22 and descriptions of my having spoken and 23 expressed my views to Mr Levy on the day 24 of the search, or I do not consider that it was 25 inappropriate behaviour. To the contrary, I</p> <p style="text-align: center;">Page 201</p>	<p>1 Commissioner of Police? But it cannot be 2 his Commissioner of Police when it suits and 3 then have no functions in respect of policing 4 when it does not. Because if it is not his 5 Commissioner of Police and he has no 6 policing functions that might smack of 7 interference. After all, if he had the function 8 of being able to direct the police and 9 interfered in giving a direction to the police 10 for an unlawful purpose, that would certainly 11 be objectionable. But why should it be that 12 he is not free to comment, simply because he 13 is the Chief Minister. Well, let us be clear, 14 the most senior policy decision maker in a 15 democracy cannot be of the view, which he 16 might want to convert into legislation if it 17 took his fancy, 18 that action taken by the police has been 19 wrongly executed in a way which brings 20 damage to the macro-economic interests of 21 the community for whose future socio- 22 economic interests he is mostly immediately 23 responsible. Why should that be the case? 24 Why is it the case or is it not the case that 25 ministers in England habitually criticise the</p> <p style="text-align: center;">Page 203</p>
<p>1 believe and continue to believe", for which 2 my learned friend has criticised him still 3 further, the fact that he continues to believe 4 it, "that it was entirely proper, natural and 5 appropriate, not least given my very close 6 friendship and relationship within the high 7 office that I held and continue to hold does 8 not disqualify me from doing so. Still less 9 does it require me to engage in an unnatural 10 omission to do so to avoid the speculative 11 and reckless suspicions of Mr McGrail or 12 anyone else." 13 My learned friends have reminded you this 14 morning, Sir, that the Chief Minister has no 15 constitutional or legal functions in respect of 16 the police. That of course did not stop them 17 from then adding, because it suits them, that 18 why would he comment, "It is interference in 19 the operational independence of the police 20 for the Chief Minister to have criticised or 21 engaged even in this behaviour that we are 22 considering now, in respect of his 23 Commissioner of Police", were the words 24 used by my learned friend. Well, is it his 25 Commissioner of Police or is it not his</p> <p style="text-align: center;">Page 202</p>	<p>1 police, habitually and indeed my 2 understanding of it, from what I read in the 3 press, and perhaps I should not be saying this 4 from the Bar, so to speak, is that they are 5 being criticised for over criticising the police 6 at this point in time? It just happens 7 continually. Police forces do not rush to 8 accuse us of political interference simply 9 because their conduct is being criticised 10 when those who criticise their conduct have 11 got no right to alter that conduct, however 12 much they may criticise it. 13 So the relevant point to the Inquiry we say is 14 that it did not constitute interference in the 15 investigation itself because the 16 communications related to a possible legal 17 challenge by Mr Leigh to the lawfulness of 18 the police's action. People might want to 19 form a view about whether it is appropriate 20 for anybody on the establishment side of life, 21 the Chief Minister or any other minister, to 22 publicly criticise some other part of the 23 public service, people might have different 24 views on that but is it --- is engaging in 25 conversation to whatever end, to whatever</p> <p style="text-align: center;">Page 204</p>

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<p>1 end, about somebody's intention to challenge 2 the lawfulness of action by the police, is that 3 --- even if you, sir, were to come to the 4 conclusion that it is inappropriate, how is that 5 inappropriateness interference with the 6 investigation being carried out by the police? 7 It cannot be more interference than the 8 person who brings the challenge and I do not 9 think anybody argues that bringing a 10 challenge in a court of law to the acts of the 11 police constitutes interference with whatever 12 investigation the challenge relates to. It is a 13 complete non sequitur, it is just a conflation 14 of allegations designed to sound, as they do, 15 inappropriate for the purpose of the issue 16 under enquiry in this Inquiry and they are not 17 relevant to the issues under the enquiry 18 because it was not --- well, the government 19 party's case is that the interference did not 20 happen at all but if that conduct, which is not 21 denied by the Chief Minister, happened, it is 22 not interference with a live investigation 23 which is the thrust --- indeed it is the 24 mainstay of the reason why we are discussing 25 this at all.</p> <p style="text-align: center;">Page 205</p>	<p>1 view that it did not want to be --- to have the 2 information shared with it confidentially, I 3 would invite you, sir, nevertheless, not to 4 strip of all forensic value the fact that that 5 offer has been made and remains open and 6 much as it does not --- much as I understand 7 why you do not want to receive it, the offer 8 still stands and, Mr Chairman, you might 9 want to ask yourself whether somebody, such 10 as an Attorney General, would be as foolish 11 as to continue to make an offer to you which, 12 if you accept it at any moment of your 13 choice, would reveal what he stands accused 14 of by Mr McGrail, namely, that he entered 15 the nolle to protect Mr Levy and all his 16 partners and friends in this omnipotent law 17 firm that according to my learned friend, Mr 18 Gibbs, governs Gibraltar. Well, a lot of 19 people have been sitting on very confidential 20 information as to the real reasons and none of 21 them have seen fit to question --- whether 22 they share the assessment or not is another 23 matter but the reasons have been explicitly 24 shared with people and they know it does not 25 relate to this.</p> <p style="text-align: center;">Page 207</p>
<p>1 So to add to the sense of broadbrush 2 impropriety, it is now said that the model 3 which you have clarified for me, for which, 4 thank you, sir, let me say that the Chief 5 Minister's position would be that he has and 6 is --- that he had no role in the nolle that was 7 eventually entered by the Attorney General 8 and that the nolle that the Attorney General 9 entered was entered by him for reasons that 10 are not connected to the matters under 11 enquiry in this Inquiry. It was not entered for 12 any reason that is to do with the behaviour or 13 protection of the Chief Minister or Mr Levy 14 or anyone else. Those reasons, by the way, 15 sir, have been shared confidentially with a 16 number of third parties, including the 17 complainant in relation to the investigation of 18 the Operation Kram, the leader of the 19 opposition, Mr Azopardi, the then leader of 20 Together Gibraltar and then Member of 21 Parliament but leader of her own party in it, 22 Marlene Hassan Nahon and he has offered to 23 share it confidentially with you, sir, and 24 whilst the Inquiry is entitled to and the 25 government respects that it has taken the</p> <p style="text-align: center;">Page 206</p>	<p>1 The allegation of interference by the 2 Attorney General, Mr Llamas, did not 3 participate in the making of the decision by 4 the governor and the Chief Minister that they 5 had lost confidence in Mr McGrail. Let us 6 not forget that that is what we are 7 investigating here, the reasons for Mr 8 McGrail's retirement. Mr Llamas who 9 stands accused of all the things that he stands 10 accused did not take part in that decision 11 making process. His role was limited 12 eventually to advising the governor on the 13 default issue and that Mr McGrail, 14 nevertheless, has attempted to construct this 15 conspiracy in respect of this issue involving 16 Mr Llamas is, therefore, completely without 17 foundation and untrue and indeed on the few 18 occasions that Mr Llamas has engaged in 19 relation to Operation Delhi, the investigation 20 was principally at the request of Mr McGrail 21 himself or the Director of Public 22 Prosecutions, Mr Rocca, and when he did so, 23 it was on the basis of information or concerns 24 brought to him by the DPP or, alternatively, 25 with Mr Rocca's concurrence and when we</p> <p style="text-align: center;">Page 208</p>

<p>1 come to look, sir, at the transcripts of the 2 secret recordings which the government 3 parties consider to be reprehensible conduct 4 on the part of Mr McGrail, a matter which 5 we will have to return to later, sir, of the 6 meetings between himself, the Attorney 7 General and the Director of Public 8 Prosecutions as well as other police officers 9 and the Solicitor General, is --- when we go 10 through those transcripts as this oral hearing 11 unfolds, I think I shall be able to persuade 12 you, sir, that on a proper objective rounded 13 interpretation of these meetings in May, 13, 14 15 and 20th, it is not arguable what motives 15 are being attributed to the Attorney General 16 and his conduct. Indeed, you will see, sir, 17 that much of the participation was led by the 18 Director of Public Prosecution who is subject 19 to no criticism at all by Mr McGrail, none, so 20 in those circumstances the Attorney General 21 is, nevertheless, included in this 22 extraordinary conspiracy that Mr McGrail 23 has constructed. 24 So Mr Llamas' evidence is that at a meeting 25 on 13 May 2015 at the invitation of Mr</p> <p style="text-align: center;">Page 209</p>	<p>1 from my recollection, amicable discussion, 2 we reached what was for me was a very clear 3 understanding between us, namely, that the 4 RGP would not take any further action until 5 they had (1) clarified the question of the 6 ownership of the NCIS platform and (2) 7 rationalised the charges which the DPP had 8 told me was extremely possible to do and (3) 9 whereupon Mr McGrail would meet with me 10 and the DPP before taking any further steps. 11 It was clear beyond peradventure that 12 nothing other than what we had agreed to 13 would happen until we met. There was 14 nothing in what I said or in the manner in 15 which I said it that Mr McGrail or Mr 16 Richardson or anybody else in the RGP could 17 reasonably or properly have interpreted it as 18 interference or pressure to stop the 19 investigation or change its course or 20 approach or anything other than an entirely 21 appropriate advice and assistance in the 22 context of the specific issues and nor did Mr 23 McGrail suggest otherwise to me." 24 So skipping over the material that has already 25 been covered by my learned friend in his</p> <p style="text-align: center;">Page 211</p>
<p>1 McGrail himself to be briefed, that is the 2 meeting of no wrongdoing, and that is a year 3 before the May 2020 meeting, that was the 4 first meeting, and according to the Attorney 5 General, Mr Llamas then had no involvement 6 whatsoever with the investigation until April 7 2020, nearly a year later. 8 In April 2020 he was contacted by Mr Rocca, 9 the Director of Public Prosecutions, who 10 wished to brief him and share some concerns 11 that Mr Rocca had about the very large 12 number of proposed charges and other issues 13 including the relevance of the ownership 14 issue and on the back of that conversation 15 with Mr Rocca, Mr Llamas then met on 7 16 April 2020 with Mr McGrail and Mr 17 Richardson of the RGP to discuss the issues 18 of concern that had been raised with him by 19 the DPP and that is the meeting at which the 20 agreement, which subsequently became the 21 reason why the Attorney General felt 22 betrayed by the commissioner of police, then 23 Commissioner McGrail, was struck and Mr 24 Llamas says, and this is paragraph 32 of his 25 witness statement at A278, "After a long and,</p> <p style="text-align: center;">Page 210</p>	<p>1 opening, I will deal with that in cross- 2 examination to save time. Then he goes on 3 to say that there was no further engagement 4 with Mr McGrail and Mr Llamas in relation 5 to the Delhi operation until --- this is me 6 speaking now, until 12 May, so basically his 7 evidence is, "He first briefed me in May 8 2019, I then had no involvement with the 9 investigation until he invited me to a meeting 10 with the Chief Minister, the financial 11 secretary and the minister for justice, and a 12 whole stack of other people to say, 'Look, we 13 are conducting this investigation' and brief 14 them all about it." So he had no further 15 involvement until 12 May, the now fateful 16 meeting when Mr Llamas was told by Mr 17 McGrail by WhatsApp what was happening, 18 that search warrants were in the process of 19 being executed against Mr Levy. He was 20 also present later when the Chief Minister --- 21 well, we know that, when he met with the 22 Chief Minister and nothing of what Mr 23 Llamas said at that meeting could possibly be 24 thought, sir, to constitute interference proper 25 or improper.</p> <p style="text-align: center;">Page 212</p>

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<p>1 Sir, you will have seen in the year and a bit 2 of submissions how Mr McGrail and his 3 legal team have sought to include the 4 Attorney General in the berating. The 5 Attorney General did not berate Mr McGrail 6 in that meeting. He did not elevate his voice, 7 he did not participate in whatever barrage of 8 inappropriate anger the Chief Minister was 9 deploying at him. He had two interventions; 10 one was to say, "I have not advised you," and 11 the other was to say, "I am surprised that the 12 DPP could have given you that advice," and 13 that was his role in that meeting and it is 14 simply not right or fair on Mr Llamas that Mr 15 McGrail, with yet another stroke of a very 16 broad and imprecise brush, should simply 17 lump in the Attorney General in the berating 18 allegations when that is clearly not what 19 happened. Mr Llamas had two further 20 meetings with Mr McGrail, they were all 21 principally in relation to advice on the 22 handling by the RGP of the legal dispute 23 with Mr Levy and that, sir, is a very 24 important focus. We will be spending, to the 25 extent that you indulge us all (and then we</p> <p style="text-align: center;">Page 213</p>	<p>1 RGP. They nevertheless both expressed the 2 view that they thought it had been the wrong 3 decision. They were entitled to think that 4 and to express it. It does not constitute 5 improper interference or interference at all. 6 The DPP confirmed charging advice in 7 relation to Mr Levy, that the DPP had 8 previously given the RGP. The Attorney 9 General had not even seen the charging 10 advice and was not aware of the evidence 11 available. He simply went along with the 12 views and assessments of the DPP. No 13 attempt was made to discourage the RGP 14 from interviewing Mr Levy. On the contrary, 15 it was acknowledged that it was necessary 16 and desirable to do so. Advice was given to 17 Mr McGrail, which he was free to take or 18 reject, about the pros and cons of 19 interviewing Mr Levy (1) under caution or 20 (2) voluntarily. That advice was accepted by 21 the RGP without obligation to do so. Both 22 had acknowledged that it was their 23 operational decision how they proceeded. In 24 any event, sir, giving advice which, as I have 25 just said, the receiver is free to accept or</p> <p style="text-align: center;">Page 215</p>
<p>1 will all be dealing with closing), with the 2 content of these transcripts, their proper 3 interpretation, their proper reading and what 4 it means in terms of what the meetings were 5 for and the nature of them and who said what 6 and what the natural meaning of what they 7 said is. The purpose of the meetings was in 8 relation to the advice that the DPP and the 9 Attorney General were giving on the 10 handling of the RGP of the legal dispute, of 11 their legal dispute, with Mr Levy about the 12 execution of a warrant and the seizure of his - 13 -- well, seizure, he handed over I think he 14 argued in his correspondence, in terrorem, I 15 think is the phrase that he is alleged --- or 16 that Mr Baglietto on his behalf is alleged to 17 have --- that he used, not alleged, used in one 18 of the letters. 19 (16.11) 20 At these meetings, as I have said, there was 21 this discussion. Both the Attorney General 22 Mr Llamas and the DPP acknowledged that 23 the decision to obtain a search warrant rather 24 than a production order against Mr Levy had 25 been an operational matter entirely for the</p> <p style="text-align: center;">Page 214</p>	<p>1 reject, cannot be said to constitute improper 2 interference or interference of any sort, and 3 the transcripts will show that they were 4 entirely collaborative discussions between 5 senior policy men and law officers and the 6 RGP's own evidence is that the RGP 7 investigators often engage in discussions 8 with law officers. The most senior law 9 officer in the land is the Attorney General. 10 They were entirely collaborative discussions 11 between senior policy men and law officers 12 jointly discussing and seeking proper actions 13 to (1) deal with the legal challenges from 14 Hassans in relation to the search warrant and 15 device, the telephone, the allegation that it 16 had been unlawfully obtained, to advance 17 and secure the prosecution case against those 18 defendants in respect of whom the DPP 19 thought that there was sufficient evidence to 20 proceed, he did not think that there was 21 sufficient evidence to proceed against Mr 22 Levy, enabling the RGP to obtain evidence 23 from Mr Levy in support of the prosecution 24 of the others whilst leaving the RGP free to 25 pursue investigation of Mr Levy by whatever</p> <p style="text-align: center;">Page 216</p>

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<p>1 means they may operationally decide is the 2 way that they wanted to proceed after they 3 had tried to obtain whatever evidence they 4 could from Mr Levy. At no stage was it 5 dictated to them that they could not at the 6 mutually agreed tactically convenient point 7 arrest Mr Levy, interview him under caution 8 or whatever else. They agreed a plan of 9 action between them, and that will come out 10 very clearly from the transcripts of the three 11 meetings. No pressure of any kind was put 12 on Mr McGrail or the RGP by Mr Llamas 13 and there was no improper involvement or 14 discussion with Mr McGrail about the 15 criminal investigation. Furthermore - well, I 16 had better skip that because otherwise I am 17 going to run out of time to do one or two 18 things that I must do. 19 The allegation, sir, of corruption which has - 20 I do not know; gone or not gone - but in any 21 case Mr McGrail and his legal team have 22 persistently made these allegations that he 23 was forced out of office because, as I have 24 said before, he executed the search warrant to 25 protect not just his friend Mr Levy but to</p> <p style="text-align: center;">Page 217</p>	<p>1 Chief Minister could do. Mr McGrail well 2 knew that there was nothing that the Chief 3 Minister could do to him or against him. 4 So insofar as concerns the Chief Minister, sir, 5 Mr Picardo, as I have said, did not intervene 6 or interfere in the police investigation in any 7 way, to which the word "interference" as 8 relevant to this Inquiry could reasonably be 9 applied and certainly did not direct the 10 Attorney General to enter the nolle. The 11 allegation that he may have been motivated 12 by his and his friend's partner's interests in 36 13 North Limited is roundly contradicted and 14 disproved by the fact that his behaviour and 15 that of his Government was, in fact, to the 16 very opposite effect. When Bland Limited 17 brought its concerns about what it thought 18 was happening to the Chief Minister, the 19 Chief Minister did not say: "Go away, I have 20 a corrupt interest in this company and this 21 was all part of a plan for me to get my --" He 22 says No. What did he do? He gave 23 instructions that the contract was to remain 24 with Blands. And when his also friend and 25 also partner in this omnipotent law firm that</p> <p style="text-align: center;">Page 219</p>
<p>1 protect his own financial interests because he 2 had an indirect three per cent shareholding of 3 a sabbatical partner of Hassans, as indeed 4 was the financial secretary. Sir, this is 5 untrue. It is a wild and irresponsible 6 allegation, unsupported by evidence, and is 7 based only, as I have said, on innuendo, 8 speculation and Mr McGrail's own case 9 theory. 10 I would at this time advance only the 11 following points in relation to that. Firstly, 12 that no one forced him out of office, and if 13 anybody forced him out of office - quote 14 unquote - actually he did not have to in the 15 end because he did not have to have recourse 16 to his power under section 13, it was the 17 Governor and not the allegedly corrupt 18 demotivated Chief Minister. The Governor 19 did not lose confidence in Mr McGrail 20 because of Operation Delhi or because the 21 RGP had obtained a search warrant against 22 Mr Levy. Mr McGrail decided to retire 23 because of what he feared the Governor 24 would do, not because the Chief Minister 25 was angry or because of anything that the</p> <p style="text-align: center;">Page 218</p>	<p>1 governs Gibraltar was approached by Blands 2 and said: Look, Mr Caine is withholding 3 payments from me under the contract. Mr 4 Mena the financial secretary did not say: Oh, 5 great, the apple is closer to falling from the 6 tree into my grubby hands. No. What he did 7 was to overrule Mr Caine, one of the three 8 former Delhi defendants, and directed him to 9 restore the payments to Blands. These are 10 not the actions of people who are corruptly 11 trying to enrich themselves by collaborating 12 in the transfer of that very contract from 13 Blands to their own company, a small detail 14 that is not addressed by my learned friends 15 when they are articulating their corruption 16 allegations. 17 Sir, moving swiftly to the incident at sea. I 18 wonder if you are minded to give me any 19 short latitude at all in time? 20 THE CHAIRMAN: Yes, I am not going to 21 cut you off. 22 SIR PETER CARUANA: I will move much 23 more swiftly and I am close to the end, and I 24 am not going to deal with all the loss of 25 confidence issues in recognition of the fact</p> <p style="text-align: center;">Page 220</p>

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<p>1 that there are some important ones and some 2 less important ones. 3 THE CHAIRMAN: The guillotine is not 4 going to fall at half past four. 5 SIR PETER CARUANA: Thank you very 6 much, sir. Insofar as concerns Mr Pyle, Mr 7 Pyle describes these matters as "without a 8 doubt the most serious incident that was the 9 tipping point from my growing concerns, 10 changing to recognising that things could not 11 go on as they were and that change was 12 needed, arose in relation to this incident, 13 which set in motion a chain of events that led 14 to lose confidence in the abilities of the 15 Commissioner to effectively lead his police 16 force and indeed led me to lose confidence in 17 his probity." Sir, I should have said that that 18 was A 251 - I should give the references 19 first; I beg Mr Triay's pardon - paragraph 20 25.1. He does not need to put it up; it is just 21 a description of his position. There it is; 22 thank you. 23 As well as the seriousness of the incident 24 itself, Mr Pyle considers that Mr McGrail 25 intentionally misled him by evasiveness and</p> <p style="text-align: center;">Page 221</p>	<p>1 will take it in each. Since he read that in full 2 I will not take you to it again. Mr Pyle has 3 said that he had, at best, been misled, words 4 need to be interpreted, over issues that were 5 the Governor's direct responsibility. This 6 was about where the incident had taken 7 place. 8 In short, Mr McGrail had intentionally failed 9 to provide to Mr Pyle the best evidence 10 available to him, and this, sir, is moderately 11 clear from the following material. At B 12 1680. This is an email. In the section of the 13 email headed "Gold update at 07.50" - if you 14 could scroll down to the next page, I think, it 15 is on page 2 half way down the heading 16 "Gold update at 07.50." Do you see it, sir, 17 just the heading? Then it runs onto the next 18 page at the top of the page there. It says: 19 "Ian Underlay(?), Gib Port Authority, reports 20 that he was advised of an incident in 21 Alcaidesa by ... control. Uncertain whether 22 this is the same incident as the collision." 23 Alcaidesa is the beach beyond the 24 neighbouring town of La Linea and there is 25 nobody in Gibraltar, let alone a police</p> <p style="text-align: center;">Page 223</p>
<p>1 lack of candour in an important matter. This 2 was the intentional omission to provide the 3 Governor with the best available information 4 or intelligence available to Mr McGrail, 5 which he was providing to others who did 6 not have constitutional responsibility. It may 7 have had a political interest, were entitled to 8 receive it, the Chief Minister, but not the 9 person with the constitutional responsibility 10 for external affairs in that sense, the legalistic 11 sense, in Gibraltar. In relation to a matter 12 which I say so very specifically touches on 13 that, and for which Mr McGrail is 14 accountable to the Governor, and it is no 15 secret or coincidence that amongst the senior 16 officials that meet regularly - I do not know 17 if it is monthly any more; it used to be - with 18 the Governor is the Commissioner of Police, 19 but I do not know what the practice is now. 20 Certainly I recall it being the practice in my 21 time. 22 How did the misleading occur? On Monday 23 CTI took you to Mr Pyle's evidence in 24 respect of this matter which is at A 251 25 paragraph 25 and paragraph 19 of MP2 - we</p> <p style="text-align: center;">Page 222</p>	<p>1 officer, that does not know that that is 2 necessarily deep into Spanish territorial 3 waters. 4 Now, this shows that they were already 5 receiving information that the collision may 6 have been in Spanish water. I suppose it is 7 possible, highly improbable, but certainly 8 possible that there were two major incidents 9 in the same location on the same dead of 10 night. You, sir, can draw your own 11 inferences from that. We also know from 12 Superintendent, then DCI, John Field at A 13 801, which is his first statement, at paragraph 14 36, that at 09.40 - this is on the morning of 15 the collision; the collision had happened at 16 three or four in the morning, I think - "I 17 received a report from Inspector Paul 18 Chipolina who had obtained the coordinates 19 through his contact in the Spanish Guardia 20 Civil. They were [and the coordinates are 21 given] approximately 6.54 miles east of 22 Playa Santa Eulalia." Santa Eulalia is the 23 beach immediately adjacent to the 24 neighbouring town in Spain. There is 25 nobody in Gibraltar who does not understand</p> <p style="text-align: center;">Page 224</p>

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<p>1 that that is outside of British territorial waters 2 and inside Spanish territorial waters. 3 Mr Field then plotted the coordinates on a 4 map and subsequently made his way to the 5 Commissioner of Police's street(?). It would 6 have been obvious to anyone at that point, 7 however much it may have needed 8 confirmation, that the best intelligence 9 available, albeit subject to whatever degree 10 of verification somebody wanted to subject 11 it, that very probably this was where the 12 collision had happened. I do not suppose the 13 Spanish Guardia Civil invent coordinates that 14 they then share with other national law 15 enforcement agencies. Mr Field, as I say, 16 plotted them. 17 (16.27) 18 Then if I could take you, sir, to B1319, row 19 125 and 126, that is the source material for 20 what Mr Chipolina then reports. This is the 21 timeline annexed to Mr McGrail's section 15 22 report and it is 8 March, 9.05: 23 "Call received by DI Chipolina by 24 Commandante Pacheco Polo, Guardia Civil, 25 stating that according to the COS radar</p> <p style="text-align: center;">Page 225</p>	<p>1 Nothing is sent to the man with constitutional 2 responsibility for dealing with the fallout in 3 UK responsibility for external affairs terms, 4 of a possible incident with Spain. Nothing is 5 sent to Mr Pyle. Mr McGrail thus tells the 6 Chief Minister within minute of receiving the 7 information but remarkably fails to inform 8 Mr Pyle. Mr Pyle is one of the people who 9 the police's own earlier plan had identified as 10 one of those people he should keep informed. 11 And he did not, despite Mr Pyle later 12 pressing him for this very information. 13 At 10.10 there was a meeting between the 14 Attorney General, the Commissioner of 15 Police, Mr Richardson and Mr Field at New 16 Mole House Police Station where Mr 17 McGrail briefs Mr Llamas, the Attorney 18 General, and provides him with the 19 information that he had about the location of 20 the incident. 21 At 11.40, following receipt of a briefing from 22 the Commissioner of Police, the Attorney 23 General attempted to Whatsapp the Chief 24 Minister, though he inadvertently sent it to 25 Mr McGrail instead - I think Mr McGrail</p> <p style="text-align: center;">Page 227</p>
<p>1 tracing," 2 so, sir, not somebody on the beach observing, 3 "of the incident the approximate coordinates 4 of the collision were," 5 and he gives them there, 6 "approximately ... (inaudible) ... stated that 7 this data was subject to confirmation by 8 technical extraction from their SIBE," 9 whatever that might be. 10 "DCI Field contacted and informed of this," 11 and that is what we have seen. Then at 9.40 12 DCI Field advises that collision occurred, 13 again gives the coordinates and again the 14 information that we have seen. That was at 15 9.35 in the morning and 9.40 in the morning. 16 Within nine minutes Mr McGrail was sharing 17 that information with the Chief Minister, at 18 page B87, 09.49 IM sends to the Chief - to 19 FP, Fabian Picardo, the Whatsapp that you 20 can see there, at 09.45, Ian McGrail to CM: 21 "The information suggests that the collision 22 took place outside BGTW approximately six 23 nautical miles east," 24 et cetera, et cetera, the information that he 25 had shared.</p> <p style="text-align: center;">Page 226</p>	<p>1 thought it had just been sent to him in copy - 2 saying: 3 "Been at New Mole House for the last hour," 4 sorry, this is at B1345, I am sorry, 11.40: 5 "Been at New Mole House for the last hour 6 or so. The press release will not say where 7 the incident occurred but it is virtually certain 8 it was outside British waters eastern side of 9 the opposite runway. It also seems that part 10 of the chase was within British waters." 11 That virtual certainty came from B1345. 12 That is the information that we have just 13 seen, no need to go ... So that virtual 14 certainty was in consequence of the 15 coordinates information that the 16 Commissioner of Police already possessed 17 and which he failed to make any attempt to 18 communicate to the Governor. Instead, he 19 continued to shelter for two more days 20 behind the mantra of "still trying to clarify 21 the exact position". 22 With respect, the issue is not whether the 23 coordinates or whether the exact position had 24 been confirmed, the issue is the failure to 25 provide the best available information. It is</p> <p style="text-align: center;">Page 228</p>

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<p>1 clear that Mr McGrail failed to provide the 2 Governor with the best available information, 3 despite the fact that he was providing it to the 4 Chief Minister and the Attorney General. 5 That is the sense that Mr Pyle had that he 6 was being misled. Nor does it matter or is it 7 the point that Mr Pyle may, through other 8 sources, have found some of the information 9 available to generate a suspicion that there 10 might be a problem and it might have been in 11 Spanish waters. That also is not the point. 12 The point is that Mr McGrail did not do it. 13 This is evidenced by the Whatsapp at B703, 14 the Whatsapp exchange between the 15 Commissioner of Police and the Attorney 16 General on 11 March at 19.09. 17 "He, Nick," 18 that is Mr McGrail to Michael Llamas. 19 "He, Nick," 20 Pyle, the Governor, 21 "is asking for confirmation of where collision 22 took place as London are keen to know. I 23 have informed him along the same lines that 24 you advised CM, i.e. that it is highly 25 probable that it happened outside British</p> <p style="text-align: center;">Page 229</p>	<p>1 do not say: "Well, I assumed somebody else 2 had passed it on to you." The statement "I 3 assumed that somebody else had passed it to 4 you" is confirmation, if any more were 5 needed, that he was aware that he had not 6 done so. 7 It is not forensically relevant to you, sir, I 8 would submit, that the Attorney General was 9 also the legal adviser of the Chief Minister. 10 Did that lead Mr McGrail to assume that the 11 Attorney General would pass the information 12 to the Chief Minister? No. He passed the 13 information directly to the Chief Minister 14 himself, without relying on the grapevine of 15 the Office of the Attorney General. Plainly 16 that shows that Mr McGrail was treating the 17 Chief Minister and the Governor very 18 differently, exactly as Mr Pyle suspected and 19 was later able to have confirmed to him when 20 he saw it in black and white when he saw the 21 copy of Mr McGrail's section 15 of the 22 Police Act report to the Chief Minister. 23 Even if Mr McGrail had thought that the AG 24 was passing information on, it is not an 25 excuse. It does not justify Mr McGrail from</p> <p style="text-align: center;">Page 231</p>
<p>1 Territorial Waters." 2 That is at 7.00 on 11 March, three days later 3 almost. This shows that the Commissioner 4 of Police was aware that he had not told Nick 5 Pyle previously. How do you make sense of 6 that communication otherwise? As Mr Pyle 7 says at A263, his second affidavit at 8 paragraph 17: 9 "Why would I have been asking if, as IM is 10 now saying, I already knew that? And 11 secondly, why would IM say that to me if he 12 thought that I already knew it and that the 13 position at the time was that all Gibraltar 14 parties were merely awaiting confirmation by 15 the Guardia Civil of the coordinates?" 16 So I think, sir, it is pretty clear that Mr 17 McGrail had valuable best information - not 18 confirmed, but best information which he 19 singularly failed to pass on to Mr Pyle. By 20 asserting, as he does, that he assumed that the 21 Attorney General, because he was the 22 Governor's legal adviser, would have been 23 passing the information on, effectively he is 24 admitting that he did not. After all, if I think 25 I have passed information on to somebody I</p> <p style="text-align: center;">Page 230</p>	<p>1 failing himself to discharge his obligation, 2 which was himself to account to the 3 Governor directly with that information as he 4 was doing. Not least because he cannot be 5 sure that the Attorney General was passing 6 on information, and his duty is to be sure that 7 the Governor is receiving the information, 8 not to assume that it is because the man to 9 whom you are saying it is, in a very limited 10 sense, the legal adviser to the Governor. He 11 is not the Governor's legal adviser qua 12 solicitor in a legal dispute in which, if you 13 convey information to a party's solicitor you 14 are conveying it to the party. That is not the 15 relationship between the Attorney General 16 and his office and the office of Governor. 17 In so far as concerns the Chief Minister on 18 this matter, his issue primarily centred 19 around the lack of the provision in timely 20 fashion of information concerning the Cueta 21 and Gibraltar claims against the RGP arising 22 from this incident. By his own evidence, Mr 23 McGrail cannot recall when he received 24 letters from Mr Fischel - I would have 25 thought there would be a record of that, but</p> <p style="text-align: center;">Page 232</p>

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<p>1 never mind - informing that they would be 2 making a civil claim against the RGP for 3 damages, but he does recall discussing it with 4 the AG and the DPP possibly on 22 April. 5 You may want to think in a curious position: 6 "I cannot remember when I received the 7 letter but I do recall discussing it, not on 20th 8 but possibly on 22 April. That is almost a 9 month before the Chief Minister finds out 10 about the possible claims. 11 Moving on briskly, and this is the last matter. 12 The airfield incident. Mr Pyle's concerns 13 over the behaviour and judgment of Mr 14 McGrail in a leadership role in the RGP 15 started with the airfield incident on 8 16 February 2017 and in particular to Mr 17 McGrail's role in the aftermath of it, at a time 18 that Mr McGrail was Head of Crimes 19 Division and Mr Yome was the 20 Commissioner of Police, in other words 21 mainly the aftermath. It is acknowledged 22 that in respect of the events on 8 February 23 itself, in other words the blocking of the 24 runway about which we were all so proud, 25 the decisions were made by Commissioner</p> <p style="text-align: center;">Page 233</p>	<p>1 Some of the actions and behaviour of the 2 RGP in that respect were described to Mr 3 Pyle by senior MOD people as a cross 4 between The Sweeney and Life on Mars and 5 extremely and unnecessarily discourteous. 6 Now, looking around this room it seems to 7 me that there are people in it that may be too 8 young to remember what The Sweeney is or 9 was. It is a 1970s British television series 10 about an unethical police officer - I am just 11 quoting from their own strapline - unethical 12 police officer who used unorthodox methods 13 to pursue criminals. 14 If we could turn up, sir, Mr McGrail's report 15 to the Police Complaints Board about this, it 16 is at A733, so perhaps A732 perhaps the best 17 just so everyone can see what the document 18 is. Can you scroll a bit further up? So this is 19 Mr McGrail writing to Mr Carreras, or the 20 Police Complaints Board, because three of 21 the MOD people, I think whose homes and 22 cars were intervened, made complaints. 23 Over the page, under the heading: "Events of 24 1 March," and I think it is worth - I know that 25 everybody is equal in the eyes of the law and</p> <p style="text-align: center;">Page 235</p>
<p>1 Yome and not by Mr McGrail. Mr Pyle's 2 concern related to the behaviour of the RGP 3 and in particular the conduct of the arrests of 4 the three very senior - I am not sure it is true 5 to say that they were all the most senior, I do 6 not know where the Provost Marshall stands 7 in the hierarchy but ... 8 THE CHAIRMAN: He was a Squadron 9 Leader. 10 SIR PETER CARUANA: Ah, he was a 11 Squadron Leader, there you are, sir, thank 12 you. Of these very - but the other two could 13 not be more senior. Mr McGrail led the 14 RGP's criminal investigation into the conduct 15 of the three senior MOD officials and 16 prepared the operational plan for their arrest. 17 We will see something about that in a 18 moment. Although Commissioner Yome 19 sanctioned the search warrants, he says that 20 Mr McGrail prepared the operational plan for 21 and conducted the execution of the search 22 warrants in which Commissioner Yome says 23 he was not involved. That is at paragraph 29 24 of his first witness statement at A1346 - it is 25 not necessary to put it on the screen.</p> <p style="text-align: center;">Page 234</p>	<p>1 all of that and rule of law and all of that, but 2 several, just in the interests of the economy 3 of time, halfway down the first paragraph 4 they are starting with "consequently". So 5 they had decided to arrest, an executive 6 decision had been made, and then it starts: 7 "Consequently plans were initiated: (1) to 8 secure evidence to support our suspicions 9 that they had attempted and conspired to 10 pervert the course of justice and had also 11 obstructed police in the execution of duty; 12 and (2) to arrest the said three military 13 officials and pursue a criminal investigation 14 under the code name Operation Apache." 15 Then: 16 "In brief, a plan was devised which entailed 17 searching the offices of Colonel Green, the 18 premises of the ... under the control of 19 Squadron Leader Collins at Gun Wharf and 20 the offices of Wing Commander Hutchison at 21 RAF Gibraltar, as indeed the western hangar. 22 The arrests of these officials was also 23 factored into the plan. Members of the 24 Crime and Protective Services were split into 25 three groups, each headed by a senior</p> <p style="text-align: center;">Page 236</p>

<p>1 ranking police officer. Chief Inspector 2 Perez, then an inspector, and his team were 3 assigned to deal with Wing Commander 4 Hutchison and RAF Gibraltar. 5 Superintendent Tunbridge and his team were 6 detailed to the JPSU, and I led a team that 7 was to tackle the tower. Given the high 8 profile exposure," 9 we need not read that paragraph. Let us go to 10 the paragraph starting towards the bottom of 11 the page: 12 "The strike was planned to occur 13 simultaneously on 1 March once we had 14 established that Squadron Leader Collins was 15 airborne on a return flight from the UK to 16 Gibraltar. A simultaneous strike is a 17 recognised police tactic when tackling more 18 than one location which are subject of the 19 same operation. The purpose of this is 20 obvious: to try and ensure the rounding up of 21 suspects and evidence and mitigate risk of 22 the disposal or attempted disposal of 23 evidence or indeed the absconding of the 24 suspects or the warning of each other of the 25 police actions."</p> <p style="text-align: center;">Page 237</p>	<p>1 the RGP officers, he says, giving each other 2 high fives outside the tower as his Chief of 3 Staff was being placed under arrest. The 4 Provost Marshall, Chris Collins, was arrested 5 in the baggage collection area of Gibraltar 6 airport, after having disembarked from a 7 flight from the UK. We know that from Mr 8 Walliker at A1387. Colonel Green, the Chief 9 of Staff, was arrested in front of his superior, 10 the Commander of British Forces Gibraltar, 11 Commodore Mike Walliker, and RAF 12 Station Commander Hutchison was arrested 13 in front of her team at RAF Gibraltar Station 14 Headquarters. 15 (16.46) 16 This, despite the fact that according to 17 Commodore Walliker, the Commander 18 British Forces, he had previously spoken 19 personally to both CoP Yome and then 20 Superintendent McGrail although he denies 21 this, in the days leading up to the arrests and 22 confirmed that all three were happy to report 23 to New Mole House given that it was an open 24 secret that the RGP were conducting these 25 investigations and planning these arrests.</p> <p style="text-align: center;">Page 239</p>
<p>1 Over the page: 2 "At 013.25," 3 the third paragraph down, 4 "whilst maintaining open communications 5 with the two other strike teams, I gave the 6 go-ahead to proceed to enter the premises 7 covered by the search warrants. In my case, 8 once inside the tower courtyard I detailed 9 some officers to cover the offices of the 10 Chief of Staff Colonel Green, whilst I made 11 my presence known at the office of the 12 Commander of British Forces." 13 The next paragraph: 14 "Together with CBF we walked over to 15 Colonel Green's office where upon entry and 16 explained to the Colonel the reasons for the 17 RGP's presence there, I arrested Colonel 18 Green on suspicion of: (1) attempting to 19 pervert the course of justice; conspiracy to 20 pervert the course of justice; and obstructing 21 justice. I showed him the search warrant for 22 his office, which was then executed." 23 Sir, it is entirely a matter for you, and we 24 know also that according to his evidence 25 Commodore Walliker personally witnessed</p> <p style="text-align: center;">Page 238</p>	<p>1 This open secret is somewhere in the 2 evidence and I do not have a note of it now, I 3 think the Governor had told Commodore 4 Walliker that the RGP were moving towards 5 arrest. The handling of the aftermath by Mr 6 McGrail exacerbated the relationship 7 between the Gibraltar and the Minister of 8 Defence to near crisis point." 9 Mr Chairman, you will decide, only you will 10 decide what you wish to make of this 11 conduct, in the context of Mr Pyle's assertion 12 that it was the early start of his concerns 13 about Mr McGrail and his approach to 14 policing. You will consider Mr McGrail's 15 account of his simultaneous strike and ask 16 yourself how it might have been different if 17 the operation had not been to arrest the most 18 senior uniformed officers in the military in 19 Gibraltar, but to arrest some organised crime 20 gang, simultaneous strikes by strike teams, 21 each led by a senior officer, to move 22 simultaneously to ensure rounding up of 23 suspects, that they did not abscond, where 24 they might be going exactly is not 25 immediately obvious, and to make sure that</p> <p style="text-align: center;">Page 240</p>

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<p>1 they did not destroy evidence. Well, I do not 2 know whether there is a standard operating 3 procedure that has to be applied in all cases, 4 but if there is, it seems to me entirely 5 inappropriate, however justified the decision 6 might have been to execute the arrests and 7 submit to process in the first place. 8 For his part, the Chief Minister states at 9 A186, it is important to deal with this given 10 my learned friend's comments this morning 11 about this, at 186, paragraph 21: 12 "It became apparent to me that the manner in 13 which Mr McGrail had led that investigation 14 was unnecessarily institutionally 15 confrontational in respect of the MoD. 16 Whilst I believed that the policing objectives 17 were meritorious, and I gave the RGP my full 18 public support in that respect, that objective 19 could and should have been more quickly 20 effectively and easily achieved via a more 21 collaborative and conventional route. I was 22 clear in my view that whilst the MoD had not 23 handled the matter well either, Mr McGrail 24 had led the RGP into a dangerous, difficult 25 and damaging situation for Gibraltar in terms</p> <p style="text-align: center;">Page 241</p>	<p>1 believe that the manner in which then 2 Commissioner McGrail organised strikes and 3 the intervention was consistent with the 4 Chief Minister's caution, even as he was 5 delivering fulsome praise, that the matter 6 should not be exacerbated. 7 I think it is important to put the language 8 used by the Chief Minister, however 9 inappropriate you may conclude it is or not, 10 or different people may come to different 11 conclusions about clowns and there was one 12 other epithet (I cannot remember now what it 13 is) clowns and idiots, it is not a case of 14 rewriting history, Sir. Could we go to B948 15 please. 16 THE CHAIRMAN: This is a very long five 17 minutes. 18 SIR PETER CARUANA: I beg your pardon, 19 Sir, I am finishing. This is my last point. I 20 am grateful for your extended indulgence. 21 THE CHAIRMAN: No, no, carry on. 22 SIR PETER CARUANA: So that is an email 23 that had been sent by Commissioner Yome to 24 the Attorney General and copied to the Chief 25 Minister. "Michael, good afternoon", I am</p> <p style="text-align: center;">Page 243</p>
<p>1 of its relationship with the MoD, which 2 would and subsequently did require a lot of 3 my time and effort to mitigate." 4 So whilst the Chief Minister had given 5 fulsome praise, and this is not the only 6 example of it, as my learned friend has 7 rightly pointed out, there is a lot of evidence 8 that the Chief Minister was completely 9 behind, both publicly and privately, the 10 determination of the police to assert their 11 jurisdiction and submit to legal process 12 people that they thought deserved to be 13 submitted to legal process, including not 14 allowing them to get away with misleading 15 and obstructing the RGP. He also said on the 16 very day of the incident, that the 17 investigation ... that "we must not exacerbate 18 matters". So he said that "Whilst it was 19 important to not allow people to get away 20 with misleading and obstructing, we must not 21 exacerbate the situation. We must not 22 exacerbate matters, but we cannot allow 23 people to get away with having misled the 24 RGP or having instructed you." 25 It is for you to consider, Sir, whether you</p> <p style="text-align: center;">Page 242</p>	<p>1 not going to read it, but if you go three inches 2 down the page (or four) there is a paragraph 3 that starts "We have heard from close 4 Gibraltar sources who are in CBS 5 command briefings and must be treated in the 6 strictest confidence, that this position has not 7 been promulgated to MoD personnel", in 8 other words the acknowledgement, all the 9 mea culpa and acknowledgement of 10 jurisdictional inferiority and superiority or 11 the primacy of the RGP. "On the contrary, 12 they are behaving with a very bravado 13 attitude, still claiming that they had 14 jurisdiction and that the Naval Provost will 15 have full jurisdiction on MoD land. The 16 attitude stems from the top when it is said 17 that CBF entered the meeting and jokingly 18 said, 'Any police here?' sticking his head 19 through the door and then went on to 20 chuckle, chuckle. All this is getting back to 21 our officers and tells me that they have not 22 taken the seriousness of the matter in the way 23 they should as a professional body they claim 24 to be." 25 That in our submission the email that the</p> <p style="text-align: center;">Page 244</p>

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<p>1 Chief Minister, if you scroll to the top of the 2 page, that is the idiots and clowns, yes, 3 "these clowns in uniform", et cetera, et cetera 4 and then all the rest of it, idiots. I am not 5 quite sure what the relevance of all of that 6 was, but anyway, we will each have our 7 views about whether it is appropriate 8 terminology. What it is not is rewriting 9 history. Because what the Chief Minister 10 was plainly doing was reacting in his own 11 style to what he regarded as MoD 12 provocation at that time of the RGP. It 13 shows the Chief Minister dealing with each 14 situation that he had in front of him as it 15 arises and he used that language in reacting 16 to what was mockery by the MoD at the 17 highest level in violation and in mockery of 18 Gibraltar's interests in its jurisdictional 19 wrangle, now resolved happily in favour of 20 Gibraltar on this question. 21 Sir, I will not trespass further on your already 22 generous largess. I will deal with other 23 matters in another way and I am grateful for 24 your extended attention. 25 THE CHAIRMAN: Very well, thank you</p> <p style="text-align: center;">Page 245</p>	<p>1 (Adjourned until 10 am, Thursday, 11 April 2 3 4 5 6 7 8 9 10 2024) 11 12 13 14 15 16 17 18 3 (16.57) 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 247</p>
<p>1 very much indeed. Is the order of 2 examination tomorrow sorted out? No? 3 MR SANTOS: In short no. 4 SIR PETER CARUANA(?): My view, I do 5 not know what my learned friend's -- 6 THE CHAIRMAN: I will tell you what, if 7 you cannot sort it out between you, make 8 short submissions in writing and I will 9 resolve the issue. 10 MS GALLAGHER: Sorry just very briefly, 11 just to be clear, we were all prepared to 12 discuss it at lunchtime. We were conscious 13 that my learned friend was preparing his 14 submissions for this afternoon and we 15 agreed, at the Bar, that it would not be 16 appropriate to discuss at lunchtime without 17 Sir Peter. Just to explain, there is no mystery 18 to it. We all agreed to wait until after court 19 today, precisely because my learned friend 20 had this afternoon for his oral submissions. I 21 hope that assists. 22 THE CHAIRMAN: Very sensible. Now he 23 has finished, now you can sort it out. 24 MS GALLAGHER: Thank you. 25 THE CHAIRMAN: Thank you.</p> <p style="text-align: center;">Page 246</p>	

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