

<p>1 (Friday, 3 May 2024) 2 (10.00) 3 MR SANTOS: Good morning, Sir. Our first 4 witness is Dr Joey Britto, Chairman of the 5 GPA. 6 JOSEPH BRITTO sworn, 7 Questioned by MR SANTOS 8 Q. Good morning, Dr Britto. 9 <b>A. Good morning, sir.</b> 10 Q. There should be a bundle in front of you 11 marked "Witness statements". Can we go 12 through each one of the statements. It should 13 be your first statement, first of all. Can you 14 please confirm that that is your first 15 statement, and your signature is on the final 16 page, please? 17 <b>A. Yes, it is.</b> 18 Q. Thank you, and can you look behind the 19 second tab, your second statement and your 20 signature, please? 21 <b>A. Yes, it is.</b> 22 Q. Now, the same for your third, please. 23 <b>A. Yes, it is.</b> 24 Q. Thank you, and your fourth. 25 <b>A. Yes, it is.</b></p> <p style="text-align: center;">Page 1</p>	<p>1 <b>essentially, that my name had been put across</b> 2 <b>to Sir Edward Davis, and would I be</b> 3 <b>interested in being the Chair. At that time, I</b> 4 <b>told him, "Look, I'll have to think about it</b> 5 <b>and find out more about what the role</b> 6 <b>entails", and eventually I said "yes". It's a</b> 7 <b>three-year appointment, so I'll do it."</b> 8 Q. What are the GPA's roles and 9 responsibilities? 10 <b>A. Well, essentially to have oversight of the</b> 11 <b>police as best as we can. The two main areas</b> 12 <b>of work are producing the annual policing</b> 13 <b>plan, which takes up quite a bit of time</b> 14 <b>because it involves consultation with the</b> 15 <b>Commissioner, consultation with the Chief</b> 16 <b>Minister, and consultation with the Governor,</b> 17 <b>and then the annual report, which thanks to</b> 18 <b>the RGP's data keeping, they help us quite a</b> 19 <b>bit in producing statistics and all that kind of</b> 20 <b>thing, but those are the two main highlights</b> 21 <b>of the year. There's quite a bit to do since Mr</b> 22 <b>Ullger took over. There's much more to do</b> 23 <b>because of the number of policies being</b> 24 <b>generated as a result of the HMIC, that last</b> 25 <b>HMIC - well, getting through the HMIC</b></p> <p style="text-align: center;">Page 3</p>
<p>1 Q. Thank you, and your fifth, please. 2 <b>A. Yes.</b> 3 Q. Thank you, and are the contents of those 4 statements true to the best of your 5 knowledge, information and belief? 6 <b>A. They are.</b> 7 Q. Thank you. Dr Britto, can you please tell 8 us about your professional background prior 9 to joining the GPA? 10 <b>A. Yes. I am a teacher. I started in the boys'</b> 11 <b>school in 1983, and from then I moved</b> 12 <b>schools in the 1990s - I can't remember the</b> 13 <b>exact year - and then over to the Department</b> 14 <b>of Education as education advisor. Then I</b> 15 <b>became senior education advisor, and</b> 16 <b>eventually Director of Education, and I</b> 17 <b>retired in 2016 from that education, but</b> 18 <b>because there was - well, the Chief Secretary</b> 19 <b>was also a teacher and asked me to go over</b> 20 <b>with him to assist him, particularly in things</b> 21 <b>to do with education. That was Mr Gomez,</b> 22 <b>at the time.</b> 23 Q. Then you joined the GPA as Chairman? 24 <b>A. I was called by the then Deputy</b> 25 <b>Governor, Mr Pyle, to see if - well to tell me,</b></p> <p style="text-align: center;">Page 2</p>	<p>1 <b>recommendations, and one of the</b> 2 <b>requirements of the Act is that we approve</b> 3 <b>any policy that the police may care to</b> 4 <b>implement. So, that also takes up quite a bit</b> 5 <b>of time. The other branch is overseeing the</b> 6 <b>complaints, or the Police Complaints Board,</b> 7 <b>which really is at arm's length, because they</b> 8 <b>are a completely different committee, but the</b> 9 <b>link - the Chair of the PCP, of the Police</b> 10 <b>Complaints Board - always has to be a</b> 11 <b>member of the GPA. In this case, it's Mr</b> 12 <b>Frank Carreras.</b> 13 Q. Thank you, and as Chairman of the GPA 14 what is your specific role? 15 <b>A. To convene the meetings, to suggest</b> 16 <b>ways forward when we are presented with</b> 17 <b>problems. Sometimes to look at appeals</b> 18 <b>from - which are rare to tell you the truth - at</b> 19 <b>appeals when they come from the Police</b> 20 <b>Complaints Board. I usually do that in</b> 21 <b>conjunction - I mean, if it's relatively</b> 22 <b>straightforward I do it myself; if not I ask a</b> 23 <b>sub-group to look into it. Also to manage the</b> 24 <b>two-part time - I don't know what to call</b> 25 <b>them - clerks/they are not typists, they are</b></p> <p style="text-align: center;">Page 4</p>

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<p>1 <b>word processors that we have, in the room</b></p> <p>2 <b>that we have, because essentially what we</b></p> <p>3 <b>have is a room and a meeting room in</b></p> <p>4 <b>Casemates.</b></p> <p>5 Q. Roughly how many hours a week on</p> <p>6 average are you required to work to fulfil</p> <p>7 your duties?</p> <p>8 <b>A. From my perspective it's become a 24/7</b></p> <p>9 <b>job, even if I am holiday, essentially, because</b></p> <p>10 <b>there's no provision for me to nominate</b></p> <p>11 <b>another Chair to take over whilst I'm not</b></p> <p>12 <b>there. So, I've had, you know, emails, phone</b></p> <p>13 <b>calls, everywhere, and I don't like saying,</b></p> <p>14 <b>"No", so I normally answer, even if it takes a</b></p> <p>15 <b>few minutes or a few days, but it's become</b></p> <p>16 <b>full time - full time, certainly a full-time</b></p> <p>17 <b>occupation because of the responsibility of</b></p> <p>18 <b>everything that the police does, along with</b></p> <p>19 <b>the Commissioner, clearly.</b></p> <p>20 Q. What is the process - sorry, you indicated</p> <p>21 the process by which you became a member.</p> <p>22 Is there a specific process for becoming</p> <p>23 Chair, or is the same as --</p> <p>24 <b>A. No, it's different. Apparently - I didn't</b></p> <p>25 <b>know this - there's a list of people approved</b></p> <p style="text-align: center;">Page 5</p>	<p>1 <b>number of - I wouldn't say statutory duties.</b></p> <p>2 <b>We are a Public Service Commission.</b></p> <p>3 <b>Obviously, I recuse myself if it's got anything</b></p> <p>4 <b>to do with the police, but the answer is, no.</b></p> <p>5 <b>No, I also do work for the Health Care</b></p> <p>6 <b>Services Commission, which is similar to the</b></p> <p>7 <b>PSC, but for the hospital, and nobody gets</b></p> <p>8 <b>renumerated, and I think the kind of people</b></p> <p>9 <b>that are normally chosen are people who</b></p> <p>10 <b>want to give something back to the</b></p> <p>11 <b>community, to tell you the truth. I think it</b></p> <p>12 <b>would be a mistake to start paying people,</b></p> <p>13 <b>but that's just my opinion.</b></p> <p>14 Q. In your view, do the members of the GPA</p> <p>15 have the sufficient skills, experience,</p> <p>16 collectively to manage the GPA's</p> <p>17 responsibilities?</p> <p>18 <b>A. In certain aspects, when we're working on</b></p> <p>19 <b>the policing plan, yes, because there's</b></p> <p>20 <b>representation from most of the community.</b></p> <p>21 <b>In fact the members represent different</b></p> <p>22 <b>demographics and different professions. So,</b></p> <p>23 <b>in terms of providing input, the main input is</b></p> <p>24 <b>given to us by the RGP to be fair, because we</b></p> <p>25 <b>agree with them that the five main areas that</b></p> <p style="text-align: center;">Page 7</p>
<p>1 <b>by both the Governor and the Chief Minister.</b></p> <p>2 <b>That list goes to the specified appointments</b></p> <p>3 <b>committee for the Chair, and then they</b></p> <p>4 <b>recommend to the Governor whether or not</b></p> <p>5 <b>they feel that person can do the job. With</b></p> <p>6 <b>members it's different. The advice comes</b></p> <p>7 <b>from the Public Service Commission.</b></p> <p>8 Q. Are any qualifications required to be</p> <p>9 Chairman of GPA?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Is there any training provided to become</p> <p>12 either Chairman or a member of the GPA?</p> <p>13 <b>A. No, not really. It depends on the</b></p> <p>14 <b>individual experiences that members have.</b></p> <p>15 Q. Do you think that people would not</p> <p>16 benefit from training before becoming either</p> <p>17 Chairman or a member?</p> <p>18 <b>A. Absolutely.</b></p> <p>19 Q. Do you receive any remuneration for</p> <p>20 your role as Chairman?</p> <p>21 <b>A. None at all. Nobody in the GPA, except,</b></p> <p>22 <b>clearly, the two young ladies that help us out.</b></p> <p>23 Q. Do you think that the role of Chairman</p> <p>24 should be remunerated?</p> <p>25 <b>A. I speak for myself, no. I perform quite a</b></p> <p style="text-align: center;">Page 6</p>	<p>1 <b>have to be looked at, you know, are things</b></p> <p>2 <b>like drugs, traffic, those kinds of things. So,</b></p> <p>3 <b>on that scale, yes, but certain - for example,</b></p> <p>4 <b>one of the policies that we had to provide</b></p> <p>5 <b>advice on was the firearms policy, which we</b></p> <p>6 <b>have to rely on the Commissioner's and the</b></p> <p>7 <b>Assistant Commissioner's advice, and</b></p> <p>8 <b>whoever wrote up the policy - because, we</b></p> <p>9 <b>felt - well, we have to rely on trust, and what</b></p> <p>10 <b>happened with policies is, because they are</b></p> <p>11 <b>given definite review dates, we're given</b></p> <p>12 <b>comfort by that, because if anything doesn't</b></p> <p>13 <b>work, it's relatively easy to recommend</b></p> <p>14 <b>changes.</b></p> <p>15 Q. Do you believe the GPA has sufficient</p> <p>16 resources?</p> <p>17 <b>A. I mean, hindsight is 20:20. No, but to be</b></p> <p>18 <b>fair I've never complained about it, or I've</b></p> <p>19 <b>never made representations, but the answer is</b></p> <p>20 <b>no.</b></p> <p>21 Q. How often does the GPA meet?</p> <p>22 <b>A. We're supposed to meet, I think, a</b></p> <p>23 <b>minimum of once a quarter, but since I took</b></p> <p>24 <b>over from Mr Gonçalves I found we were</b></p> <p>25 <b>meeting once a month because of everything</b></p> <p style="text-align: center;">Page 8</p>

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<p>1 <b>that we have to do. Although most of the</b></p> <p>2 <b>meetings are routine because they are divided</b></p> <p>3 <b>- you can see from the minutes that they are</b></p> <p>4 <b>divided into certain areas, things like</b></p> <p>5 <b>community engagement, legislation, those</b></p> <p>6 <b>kinds of things.</b></p> <p>7 Q. You mentioned the minutes. Who is</p> <p>8 responsible for taking the minutes at the</p> <p>9 meetings?</p> <p>10 <b>A. Whichever one of the two young ladies</b></p> <p>11 <b>are available.</b></p> <p>12 Q. Is a minute taken of every GPA meeting?</p> <p>13 <b>A. If it's a formal GPA meeting, yes. If it's a</b></p> <p>14 <b>sub-group just talking about different issues,</b></p> <p>15 <b>we leave it up to the individual members, but</b></p> <p>16 <b>(inaudible), it's formal GPA meetings, so the</b></p> <p>17 <b>monthly meetings would tend to be minuted,</b></p> <p>18 <b>but informal meetings are not normally</b></p> <p>19 <b>minuted.</b></p> <p>20 Q. Is that the distinction between a formal</p> <p>21 meeting and a non-formal meeting, that</p> <p>22 everybody is present, and it is one of the</p> <p>23 monthly meetings is a formal meeting. A</p> <p>24 non-monthly or a sub-group meeting is an</p> <p>25 informal meeting?</p> <p style="text-align: center;">Page 9</p>	<p>1 advice it is less than once a year that you</p> <p>2 require legal advice?</p> <p>3 <b>A. I'm just thinking, we are taking legal</b></p> <p>4 <b>advice, but that's been ongoing - well, legal</b></p> <p>5 <b>advice.</b></p> <p>6 Q. Of course, on the inquiry, but --</p> <p>7 <b>A. No, no.</b></p> <p>8 Q. Oh, sorry.</p> <p>9 <b>A. No, we are trying to modernise because</b></p> <p>10 <b>that is one of the things that Sir Edward</b></p> <p>11 <b>Davis mentioned when he appointed me,</b></p> <p>12 <b>trying to modernise the Act, that's all he said,</b></p> <p>13 <b>and so one of the first things we did was - I</b></p> <p>14 <b>think it's ISOLAS who we instructed. We</b></p> <p>15 <b>didn't want to do Hassans, because there was</b></p> <p>16 <b>a member of Hassans there. In other words,</b></p> <p>17 <b>other people were conflicted and they offered</b></p> <p>18 <b>to do it as well, but that's still ongoing.</b></p> <p>19 <b>There's another piece of legal work being</b></p> <p>20 <b>carried out for the Police Commission by</b></p> <p>21 <b>them, but we are taking - I think it's jointly.</b></p> <p>22 <b>It was commissioned by the Ministry for</b></p> <p>23 <b>Justice, on their disciplinary regulations,</b></p> <p>24 <b>which are from the 1990s. I forget the date, I</b></p> <p>25 <b>think it's 1992, or something like that,</b></p> <p style="text-align: center;">Page 11</p>
<p>1 <b>A. It's an informal meeting and it's normally</b></p> <p>2 <b>because people give up their time personally,</b></p> <p>3 <b>but that's me. I really don't like insisting you</b></p> <p>4 <b>have to attend an informal meeting. It's</b></p> <p>5 <b>normally open to anybody who wants to</b></p> <p>6 <b>attend. There's a group of us who are retired,</b></p> <p>7 <b>but there's a group, a substantial number,</b></p> <p>8 <b>who are working full time jobs as well.</b></p> <p>9 Q. How often do you have to seek</p> <p>10 independent legal advice in your role?</p> <p>11 <b>A. Apart from inquiry related business, the</b></p> <p>12 <b>last time was for a data request from a</b></p> <p>13 <b>complainant. A retired police officer was</b></p> <p>14 <b>complaining against a grievance procedure.</b></p> <p>15 <b>It was an appeal from a grievance procedure.</b></p> <p>16 <b>We didn't deal with it, but what he wanted</b></p> <p>17 <b>was every single item of correspondence that</b></p> <p>18 <b>we held, and the reality was that we didn't</b></p> <p>19 <b>hold - because we don't normally keep those</b></p> <p>20 <b>kinds of things, but I needed legal advice to</b></p> <p>21 <b>be able to frame some sort of response.</b></p> <p>22 Q. And when was that, roughly?</p> <p>23 <b>A. Actually, 2020. I can't remember the</b></p> <p>24 <b>month, but shortly after.</b></p> <p>25 Q. So, are you saying that in terms of legal</p> <p style="text-align: center;">Page 10</p>	<p>1 <b>extremely antiquated, and, you know,</b></p> <p>2 <b>personally, I don't like the way police</b></p> <p>3 <b>officers are treated in those regulations. I</b></p> <p>4 <b>think it should be modernised, and I think the</b></p> <p>5 <b>senior management in the police agree with</b></p> <p>6 <b>me.</b></p> <p>7 Q. When you need to seek legal advice, do</p> <p>8 you seek funding from the Government for</p> <p>9 that?</p> <p>10 <b>A. I have to. We, I think, have a nominal</b></p> <p>11 <b>sum. I think in our budget it says, £1000</b></p> <p>12 <b>included. That's never enough.</b></p> <p>13 THE CHAIRMAN: You do not get much for</p> <p>14 that.</p> <p>15 <b>A. No, no, sir. So, the process is normally</b></p> <p>16 <b>because the Chief - we have to remember</b></p> <p>17 <b>that two of the appointees in the GPA are</b></p> <p>18 <b>directly appointed, one by the Chief Minister,</b></p> <p>19 <b>and one by the Governor. So, there's some</b></p> <p>20 <b>sort of input in what we do from both sides</b></p> <p>21 <b>of Government. So, normally if it's</b></p> <p>22 <b>something small I ask the Chief Secretary,</b></p> <p>23 <b>"Could you see if we can get funding for</b></p> <p>24 <b>this?" If it is something big, like, changing</b></p> <p>25 <b>the Act, I remember having to call the Chief</b></p> <p style="text-align: center;">Page 12</p>

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<p>1 <b>Minister and say, "Look, we want to do this.</b></p> <p>2 <b>The Governor's asked me to do this", and he</b></p> <p>3 <b>said, "Yes, go ahead." What they don't tell</b></p> <p>4 <b>us is who to get.</b></p> <p>5 Q. Yes. When you seek funding have you</p> <p>6 ever experienced reluctance in seeking</p> <p>7 funding, or is it normally granted?</p> <p>8 <b>A. They don't exactly say, "Yay, go for it."</b></p> <p>9 <b>Well, the last time I asked for - when we</b></p> <p>10 <b>asked Mr Neish if he wanted to continue with</b></p> <p>11 <b>us for the inquiry, I asked one of the senior</b></p> <p>12 <b>officers of the Ministry for Justice and he</b></p> <p>13 <b>said, "It's going to cost a lot", but I don't</b></p> <p>14 <b>think he knew that this was a whole inquiry.</b></p> <p>15 <b>I think he just thought that it was somebody</b></p> <p>16 <b>that wanted to sue me, or something.</b></p> <p>17 Q. But putting the inquiry to one side, ad</p> <p>18 hoc, whenever you have a meeting and</p> <p>19 decide, "Well, we need to instruct one", like</p> <p>20 the examples you have given, and if you go</p> <p>21 to Government, is the funding forthcoming,</p> <p>22 or is it a battle?</p> <p>23 <b>A. I haven't had to fight a battle, but clearly,</b></p> <p>24 <b>they always ask for - when it comes down to</b></p> <p>25 <b>- which Mr Lavarello does that for us - our</b></p> <p style="text-align: center;">Page 13</p>	<p>1 <b>Governor and the Chief Secretary have</b></p> <p>2 <b>always been members.</b></p> <p>3 Q. Prior to the events of May, June 2020, did</p> <p>4 Mr Pyle ever express any opinion to you</p> <p>5 about Mr McGrail?</p> <p>6 <b>A. Privately, but not specifically that I recall</b></p> <p>7 <b>about Mr McGrail. He said that the police</b></p> <p>8 <b>force needed modernisation, that it was</b></p> <p>9 <b>clunky, that some of the practices were -</b></p> <p>10 <b>well, he didn't say, "old fashioned" he said,</b></p> <p>11 <b>"Needed modernisation".</b></p> <p>12 Q. Did he ever express any opinion to you</p> <p>13 about the selection process by which Mr</p> <p>14 McGrail was chosen?</p> <p>15 <b>A. On several occasions he actually said, not</b></p> <p>16 <b>necessarily that we should have somebody</b></p> <p>17 <b>from outside, but that the field should be</b></p> <p>18 <b>open. I mean, he's always stood that the field</b></p> <p>19 <b>should be open, not necessarily to members</b></p> <p>20 <b>of police forces in the United Kingdom, he</b></p> <p>21 <b>includes the OTs, the overseas territories as</b></p> <p>22 <b>well. He specifically mentioned that. I can't</b></p> <p>23 <b>give you dates, but I know that was his</b></p> <p>24 <b>feeling.</b></p> <p>25 Q. Beyond that did he ever make any</p> <p style="text-align: center;">Page 15</p>
<p>1 <b>own internal budget, he never knows what to</b></p> <p>2 <b>put down for legal assistance because it's</b></p> <p>3 <b>always - they always say, "No, put one</b></p> <p>4 <b>thousand."</b></p> <p>5 Q. Mm.</p> <p>6 <b>A. But they have never said, "No".</b></p> <p>7 Q. What was your relationship with Mr</p> <p>8 McGrail like during his time as</p> <p>9 Commissioner?</p> <p>10 <b>A. Professional, and cordial, and friendly.</b></p> <p>11 Q. By the time that you joined the GPA, Mr</p> <p>12 McGrail had been Commissioner for about</p> <p>13 three months. What was his reputation at</p> <p>14 GPA level at that point?</p> <p>15 <b>A. Nobody said anything untoward about Mr</b></p> <p>16 <b>McGrail. In fact, not even the recruitment as</b></p> <p>17 <b>has been discussed here was discussed.</b></p> <p>18 Q. Do you recall the dates that Mr Pyle was</p> <p>19 a member of the GPA?</p> <p>20 <b>A. I think he was a member a bit before -</b></p> <p>21 <b>because since he was Deputy Governor.</b></p> <p>22 <b>There's no legal requirement for the Deputy</b></p> <p>23 <b>Governor and the Chief Secretary to be</b></p> <p>24 <b>members, but what I've been told is that since</b></p> <p>25 <b>2006 when the GPA started, the Deputy</b></p> <p style="text-align: center;">Page 14</p>	<p>1 comment on the selection process itself?</p> <p>2 THE CHAIRMAN: You mean by which Mr</p> <p>3 McGrail's.</p> <p>4 MR SANTOS: By which Mr McGrail's.</p> <p>5 <b>A. About Mr McGrail, no, not to me, or not</b></p> <p>6 <b>that I recall.</b></p> <p>7 Q. If we can go to B1961, please, this is an</p> <p>8 email of 19 February 2020 and it is an email</p> <p>9 to you, copied to the Chief Secretary, and it</p> <p>10 is at the time that the Governor, the previous</p> <p>11 Governor, departed and Nick Pyle stepped</p> <p>12 into his shoes as interim Governor, and he</p> <p>13 says, "Joey, I was thinking about the best</p> <p>14 way forward in terms of maintaining, or not,</p> <p>15 my role interest in the GPA as Governor, and</p> <p>16 have a suggestion for you. Why don't you</p> <p>17 send an email to all GPA members, save me,</p> <p>18 stating that for as long as I am Governor you</p> <p>19 intend to omit me from general GPA</p> <p>20 correspondence etc, but that I have offered to</p> <p>21 continue to attend GPA meetings, recusing</p> <p>22 myself as necessary, or at anyone's request. I</p> <p>23 put it as a suggestion and ask for their views.</p> <p>24 One objection to my attendance should be</p> <p>25 enough to preclude it. This gives the GPA a</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 say in how it operates." What was done on 2 the back of that email? 3 <b>A. I don't recall, but he stopped attending 4 and I don't think anybody said, "No, he 5 should be here." I think people agreed with 6 the general view that as Governor he 7 shouldn't really be there, but I must admit, it 8 came to me as a bit of a surprise. I didn't see 9 the - it's the same person.</b> 10 Q. Yes. What contact did you have with Mr 11 Pyle after that date in relation to the GPA 12 other than the section 34 process? 13 <b>A. That I recall, when he called me saying, 14 "Could you come over for a meeting?"</b> 15 Q. On 17 May - well, in May? 16 <b>A. In May, yes, that's right.</b> 17 Q. Did Phil Culligan ever attend GPA 18 meetings on Mr Pyle's behalf? 19 <b>A. No.</b> 20 Q. How would you describe the relationship 21 between Mr McGrail and the leadership of 22 the GPF? 23 <b>A. Fractious, very difficult, and no 24 disrespect meant, but it actually took me 25 back to my schooldays - well, my school</b></p> <p style="text-align: center;">Page 17</p>	<p>1 complaint against the Commissioner to be 2 made. Mr Morello states at paragraph 148 of 3 his witness statement that if such procedure 4 had been in place he would have filed a 5 complaint of bullying against Mr McGrail. 6 He said this in the context of Written 7 Warning and Regulation 9 notices issued by 8 Command, which flowed from the ongoing 9 dispute as to superintendence and guidance." 10 We are going to go to that exchange that Mr 11 Morello gives evidence about, but just to 12 focus first of all on the words, "Formal 13 complaint", what would you classify as a 14 formal complaint as opposed to an informal 15 complaint? 16 <b>A. A written complaint and something that 17 we can do something about. I mean, that's 18 us, that's what the GPA, and certainly the 19 PCB, the Police Complaints Board felt.</b> 20 Q. And in terms of a complaint - well, if you 21 do not describe it as a formal complaint, a 22 complaint, what would that encompass? 23 <b>A. Some sort of grievance, but not 24 necessarily something we could do --</b> 25 Q. Yes.</p> <p style="text-align: center;">Page 19</p>
<p>1 <b>teacher days when people just didn't get on, 2 children just simply didn't get on, and I really 3 didn't know what to do except try and listen 4 to both sides. So, Mr Morello would tell me 5 things about - not necessarily about Mr 6 McGrail, just about how senior management 7 didn't respect them, but then Mr McGrail 8 used to say, "He doesn't respect me." You 9 know, so it was constant.</b> 10 Q. Can we go to your second statement, 11 paragraph 3, A329. You have got it in front 12 of you if you prefer to read it on paper, but 13 we will have it on the screen. It is right at the 14 bottom of 329, and you say, "The issues and 15 disputes between Mr McGrail / Command on 16 the one hand, and Mr Morello / GPF on the 17 other were occasionally raised with me by 18 both sides. However, no formal complaint, 19 oral or written, was ever made. I regarded 20 things said to me as matters in dispute rather 21 than complaints. Indeed, it seems to be 22 acknowledged by Mr Morello at paragraph 23 147 of his witness statement that no formal 24 complaint was made, as there was no 25 procedure in place which enabled a</p> <p style="text-align: center;">Page 18</p>	<p>1 <b>A. -- anything about. I mean, I remember 2 that particular instance about the written 3 warning regulation because Mr Morello 4 wanted to institute disciplinary procedures 5 against - I can't remember whether it was Mr 6 Morello himself or both the Secretaries --</b> 7 Q. Mr Simpson? 8 <b>A. Mr Simpson, and I clearly - I wasn't 9 comfortable with that. It would look very, 10 very bad.</b> 11 Q. We are going to go to those minutes 12 where you refer to it. I am just going to take 13 you now to Mr Morello's evidence, A1225, 14 where he says, "At some point after being 15 served with the Written Warning and 16 Regulation 9 notices, I spoke to Dr Joey 17 Britto on the phone, and asked if I could 18 address the GPA Board, not only in relation 19 to the ongoing internal investigation but the 20 general relationship with the GPF/Command 21 and the authoritarian style of leadership. 22 This meeting was held at the GPA offices at 23 Casemates Square [sometime in February 24 2020] where I can recall that most of the 25 GPA Board were in attendance. The meeting</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 commenced and the first thing I said was 2 'how do I file a complaint of bullying against 3 the Commissioner of Police?' The room was 4 silent and I can recall Mr Britto saying words 5 to the effect, 'no please, no, that's all we need 6 now'. Again, I repeated the same 'how do I 7 file a complaint of bullying against the 8 Commissioner of Police?'. I paused for a few 9 seconds and said, 'you can't, there is no 10 recourse'. I informed persons present that the 11 point I was trying to make was that there 12 were no processes to make complaints 13 against the Commissioner or Assistant 14 Commissioner such as were in place in the 15 UK. Both these individuals expressly fall 16 outside the remit of the Police (Discipline) 17 Regulations 1991. Consequently, conduct 18 which falls short of criminal offences but 19 which would constitute disciplinary offences 20 for any other member of the force would not 21 be so for the Commissioner and the Assistant 22 Commissioner." Just before we talk about 23 whether a meeting took place, or when the 24 meeting took place, do you remember an 25 exchange of that nature with Mr Morello?</p> <p style="text-align: center;">Page 21</p>	<p>1 can bring it up. This is an email that says - if 2 we can just go up, briefly, it is an email from 3 you dated 23 January 2020 where you say, 4 "Dear colleagues, just so you know I am 5 meeting with the Federation at GPA offices 6 on Friday 31 January at 10 a.m. Should any 7 of you be able to, you are most welcome to 8 attend. Last time we met it was most fruitful, 9 if you recall, and we were able to get a better 10 feel by meeting with them like this. You'll 11 also be happy to know that the police" - we 12 do not have to deal with that. It does look as 13 though a meeting was scheduled for 31 14 January at 10 a.m. with the Federation. That 15 actually tallies with Mr Simpson's evidence, 16 which I was going to show you, but perhaps 17 you just agree that Mr Simpson gives 18 evidence, very similar to Mr Morello and 19 refers to a meeting on 31 January 2020. 20 Now, your evidence is that you do not have - 21 sorry, I just want to give you the opportunity 22 to comment on that email. 23 (10.30) 24 <b>A. Absolutely, absolutely. We did ask all 25 the members if they remembered meeting</b></p> <p style="text-align: center;">Page 23</p>
<p>1 <b>A. Vaguely, but I was convinced it was one 2 of the many coffee mornings that I used to 3 share with him, just to listen to him, and all 4 our efforts at the GPA were concentrated on 5 looking at what happened in February, or 6 possibly a bit later, and as you know we've 7 actually - when Mr Lavarello looked through 8 his diary entries he had an admin section, and 9 then we found that possibly there had been a 10 meeting in January, which there is no 11 minuted meeting in January, and clearly, I 12 think what happened there was that it was a 13 very small group. Even though they say that 14 the whole GPA was there, it certainly was 15 not a GPA meeting, but we don't recall that 16 meeting.</b> 17 Q. Can I just stop you just so that we can - 18 can I show you the emails -- 19 <b>A. Yes, of course.</b> 20 Q. -- so, that we can see what we are talking 21 about. This is an email that was provided by 22 the GPA yesterday evening following - I 23 understand but correct me if I am wrong - a 24 search by Mr Lavarello of his own 25 documents, and he's found - hopefully we</p> <p style="text-align: center;">Page 22</p>	<p>1 <b>them in February, and then we did ask them 2 if they remembered meeting in January.</b> 3 <b>Everybody said, "No", and I think it's 4 because it must have been a very, very 5 reduced number. I can't[?] actually 6 remember being there, but it can only be the 7 meeting that Mr Simpson is referring to, but 8 even then, there's no minutes or anything 9 because it was just almost like having a 10 coffee with them, but instead of our normal 11 haunt we took it there, but it wasn't a GPA 12 meeting, and certainly the fact that hardly 13 anybody can remember, and Mr Lavarello 14 can't remember if he attended, even though 15 he had it down. I have no distinct 16 recollection but possibly, it did happen.</b> 17 Q. Can we just look at A333, which is your 18 third witness statement, at paragraph 7. This 19 is where you respond to Mr Leif Simpson's 20 witness statement, which referred to 31 21 January. You say at paragraph 7, "The 22 second arises from paragraphs 156 and 157 23 of Mr Leif Simpson's witness statement. I 24 have checked the records of the GPA and can 25 find no record of a GPA meeting having been</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 held in January 2020. I have consulted the 2 other members of the GPA at the time and 3 neither they nor I have any recollection of 4 such meeting. This is not to say that Mr Leif 5 Simpson and Mr Maurice Morello did not 6 meet with us on other occasions, it is simply 7 that I have no recollection of any specific 8 meeting." Then you say that you have been 9 reminded the Mr Francis Carreras - that you 10 have been reminded by him that you met Mr 11 Simpson and Mr Morello informally twice, 12 but you cannot remember those meetings 13 yourself. So, I think it is fair to say that you 14 can qualify that evidence - or you are not 15 saying the meeting did not happen in that 16 evidence, but it seems from that email that 17 we have received from Mr Lavarello, that 18 there was in fact a meeting around that time. 19 <b>A. I hasten to add, because -- my opinion is 20 still that it was not a GPA meeting, I know it 21 is --</b> 22 Q. Yes. 23 <b>A. - possibly semantics, but it wasn't a GPA 24 meeting, and because we checked if there 25 had been minutes in January, we hardly ever</b></p> <p style="text-align: center;">Page 25</p>	<p>1 Q. Well, I am just asking you for your own 2 recollection. 3 <b>A. No. No, I really don't recall. I really 4 don't recall that. I - staff surveys, we were 5 always discussing because we were 6 concerned about the staff surveys.</b> 7 Q. If we can look at the minutes for 6 8 February, B5878, these are minutes of the 9 Authority on 6 February 2020 at 9:30, and 10 there is a meeting there attended by a number 11 of members, not by Mr Pyle. I just want to 12 focus on the final entry in the minutes at page 13 4. They are headed, "Meeting with GPF and 14 COP", and then it says, "The chairman gave 15 an overview of the situation between the GPF 16 and the RGP. He mentioned that he asked 17 the GPF for a policy based on the dignity at 18 work, however, the GPA would have to be 19 the appellate body. The chairman suggested 20 that the authority should advise COP to seek 21 guidance on how federations in the UK 22 function. He also suggested advising the 23 COP to take a step back on the proposed 24 disciplinary action against the GPF. 25 However, the authority will listen to his</p> <p style="text-align: center;">Page 27</p>
<p>1 <b>meet in January because we meet early 2 December sometimes. That is the only 3 reason we couldn't find it. Because we 4 weren't looking for - we were looking in the 5 wrong month, to tell you the truth.</b> 6 Q. If we can look at Mr Simpson's evidence, 7 very briefly, at 156, 157. Sorry, I will get the 8 other page. Can you just give me one 9 second. A1493. He gives very similar 10 evidence to Mr Morello, but then in 11 paragraph 158 he says, "Maurice followed by 12 saying that if there had been a process for 13 doing so, this would have already been done. 14 We gave the Board a summary of events that 15 had transpired since being elected as 16 Convenors and the issues raised in our Staff 17 surveys, at which point a Board...", I think 18 he meant to say a board member, "...Frank 19 Carreras said: 'that is clearly bullying, and 20 clearly the problem here is Mr McGrail'." 21 Do you have any recollection of Mr Carreras 22 saying that? 23 <b>A. Not that - I don't recall Mr Carreras 24 saying that, but you can ask Mr Carreras 25 again.</b></p> <p style="text-align: center;">Page 26</p>	<p>1 views on the matter at the meeting at 2 10.30am". At the very bottom of that page, 3 there is also a reference to the COP joining 4 the meeting and explaining the situation 5 between the GPF and the RGP. The meeting 6 ended with the COP agreeing to go down the 7 route of mediation and review. Now, your 8 evidence about these minutes was that the 9 heading of that section, item number 5; 10 meeting with the GPF and the COP, was 11 misleading because there had not been a 12 meeting. Do you want to revisit that, given 13 that you have seen what appears to have 14 occurred on 31 January? 15 <b>A. I am not 100 per cent sure that my 16 original take on that isn't the correct one, but 17 I am willing to accept that it could well be, 18 but in reality where the information came 19 from, whether it was at the offices or in other 20 meetings, I mean, that is - that reflects what 21 happened but I'm not quite sure if --</b> 22 Q. Well -- 23 <b>A. - that GPF - it could be.</b> 24 Q. There is no suggestion, I don't think, that 25 the GPF were present at this meeting, but it</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 does look from those minutes that there had 2 been a conversation between you and Mr 3 Morello about bullying, because it looks as 4 though you suggested seeking a draft policy 5 on the - based on dignity at work, and that 6 you then had a conversation with the 7 Commissioner of Police and asked him to 8 effectively back down on the disciplinary 9 process. So it looks as though you were, as 10 you alluded to earlier, playing a sort of 11 mediation role.</p> <p>12 <b>A. No. Doing my best to provide a 13 mediatory role. I can't exactly remember the 14 details, but I must admit that much of the 15 time when they spoke about bullying, it was 16 in relation to: that is what staff are saying in 17 the surveys. Plus, it wasn't exactly - I mean, 18 they never actually told me: Mr Morello is 19 bullying me. I mean, the issue was, I think, it 20 is a question of hierarchy and I think it was 21 explained by another witness who knows 22 much more about how the RGP functions 23 from the inside, Mr Field. I think it is - the 24 friction is to do with that more than anything 25 else. You know, if you are in charge of the</b></p> <p style="text-align: center;">Page 29</p>	<p>1 Section 34 process?</p> <p>2 <b>A. With hindsight, yes, but I must be honest 3 at the time I knew nothing about section --</b></p> <p>4 Q. It was not on your mind.</p> <p>5 <b>A. Not at all. Not at all.</b></p> <p>6 Q. Can we now just look at Mr Pyle's 7 evidence. A248. In paragraph 23.2 at the 8 very bottom of that page. Well first of all, 9 23.1, he says something similar to what you 10 said earlier. Well, actually, he refers to the 11 fractured hostile relationship which he puts 12 down to Mr McGrail's management style, but 13 it looks as though he is in agreement with 14 you anyway that there is a fractured almost 15 hostile relationship and then he says, "The 16 resulting tensions between the RGP 17 leadership and the Police Federation 18 culminated in formal complaints from the 19 Federation to the GPA about Mr McGrail." 20 As far as that sentence is concerned, your 21 position is there were no formal complaints?</p> <p>22 <b>A. No. No formal complaints.</b></p> <p>23 Q. Would you accept that there were 24 complaints?</p> <p>25 <b>A. "Grievances" I would call them.</b></p> <p style="text-align: center;">Page 31</p>
<p>1 <b>police, the last thing you want is somebody 2 challenging you, possibly in ways which you 3 don't like.</b></p> <p>4 Q. Just one last question about this. You say 5 that - and I do not think there is any doubt 6 that the disciplinary regulations apply to the 7 Commissioner, but could it conceivably be 8 the case that if someone came to you with a 9 serious enough allegation it could feed into a 10 Section 34 process, as far as the GPA was 11 concerned.</p> <p>12 <b>A. One of the things that I was told, and I 13 think it could have been by Mr McGrail or it 14 could have been by Mr Gonçalves when he 15 was handing over, is that normally if there 16 are complaints against very, very senior 17 managers within the police, that police forces 18 from outside would necessarily have to come 19 in. But I wouldn't know how to do that, quite 20 frankly.</b></p> <p>21 Q. Well, my question to you is more that if, 22 for example, a complaint was raised by 23 anybody to you about the Commissioner that 24 gave rise to concerns about effectiveness, 25 probity, could it conceivably feed into a</p> <p style="text-align: center;">Page 30</p>	<p>1 Q. Then he says, "The GP A regularly spoke 2 at its meetings about the allegations of 3 bullying and intimidation by Mr McGrail." 4 Do you agree with that?</p> <p>5 <b>A. No. No.</b></p> <p>6 Q. How would you - Do you say that the 7 GPA regularly spoke at its meetings about 8 allegations of bullying not specific to Mr 9 McGrail?</p> <p>10 <b>A. Yes. In the sense that there were frequent 11 articles in a newspaper that has just gone 12 defunct a couple of weeks ago, or last week. 13 For some reason, it was in that newspaper 14 talking about how bad the police were and in 15 fact how bad the GPA were, and that there 16 was a lot of bullying, because they had 17 insider knowledge. Clearly we were 18 concerned about that, and then the Federation 19 surveys constantly pointed to there being 20 bullying, but it's not something that 21 whenever we visited New Mole House we 22 actually saw, or - plus we have never ever 23 had a letter or even an email or anything 24 from a police officer saying: I'm being 25 bullied.</b></p> <p style="text-align: center;">Page 32</p>



<p>1 Q. Can we now move to the incidents at sea 2 please. If we go to C6552 we can find some 3 WhatsApp exchanges between you and the 4 Commissioner of Police, Mr McGrail. I just 5 want to look at the bottom of that page on 8 6 March 2020, the morning of the incident. Mr 7 McGrail messages you. He says, "Joey, we 8 are dealing with a critical incident. One of 9 our boats has been involved in a collision 10 with a smuggling RIB with four onboard. 11 Two on the smuggling RIB are fatalities. 12 Our crew are uninjured but clearly shaken 13 and shocked." Why do you think that Mr 14 McGrail messaged you about this? 15 <b>A. I - I really don't know. Out of courtesy, I 16 suppose. My - whenever anything major 17 happens, my initial reaction is: have you told 18 the Governor, have you told the Chief 19 Minister quite frankly. Especially if it is 20 international - the only thing at that stage, I 21 didn't know where it had happened, but I do 22 remember asking Mr McGrail: have you 23 advised the Governor. I don't remember 24 where because I don't have these.</b> 25 Q. If we look over the page, the message</p> <p style="text-align: center;">Page 33</p>	<p>1 Q. You say that -- you refer to the Coroner, 2 that it is under investigation, and it is for the 3 Coroner to determine. Was there, in your 4 view, any role for the GPA to investigate the 5 issue? 6 <b>A. I didn't even think about the GPA 7 investigating an issue, unless there happened 8 to be a disciplinary consequence, which 9 would necessitate either - not necessarily a 10 chairing, but presence by the GPA. Now, 11 disciplinaries are normally instigated and 12 organised by - internally by the RGP, but 13 they normally ask us, especially if the 14 Commissioner feels that they are conflicted, 15 asks a member of the GPA to attend the 16 disciplinaries to ensure that, you know, 17 everything is fair. I really wasn't thinking - 18 I'm not sure if, at that stage, I knew it was in 19 Spain. I really am - aren't sure if by then I 20 knew it was in Spain. I suspect so because of 21 all the people being advised, but clearly, I 22 was concerned, the moment I heard that there 23 had been death involved. It is something that 24 is quite emotive, because on the one hand 25 you have to think of the officers - the local</b></p> <p style="text-align: center;">Page 35</p>
<p>1 continues, "I am invoking post incident 2 procedures and planning for consequence 3 management. I have advised His Excellency 4 Chief Minister and the Minister of Justice 5 already." So, he informs you that he has 6 advised them. You say, "Thanks. I saw it on 7 the news feed." There is a deleted message 8 and then you say, "Not asking any questions 9 of you in view that it is under investigation 10 and for coroner to determine. Just like to say 11 that it is unfortunate to say the least." I 12 mean, when you say, "not asking any 13 questions of you", given that it was under 14 investigation, did you have any questions for 15 Mr McGrail that you chose not to ask? 16 <b>A. I didn't have enough information at the 17 time, because I think by "news feed", I meant 18 the RGP Twitter, I think, because I can't 19 recall this clearly, but I'm sure Mr McGrail 20 would have given me information had I - had 21 I asked him. Or Mr Ullger who was 22 Assistant Commissioner.</b> 23 Q. Do you recall what that deleted message 24 might have been? 25 <b>A. No.</b></p> <p style="text-align: center;">Page 34</p>	<p>1 <b>officers involved in the situation, but you 2 also have to think of, you know, the people 3 that were killed. I'm not sure, I think it was 4 almost thinking: this is not for the GPA just 5 yet, but I was sure there would be some 6 involvement on our part.</b> 7 Q. When did you first learn that the RGP 8 vessel was in Spanish waters at the time of 9 the collision? 10 <b>A. I think Mr McGrail must have told me, 11 but I really can't recall when. Sorry, I should 12 add - or Mr McGrail or Mr Ullger. I think it 13 was probably Mr McGrail, but I really can't 14 remember.</b> 15 Q. Do you remember when you learned that 16 the vessel's AIS system was switched off? 17 <b>A. I am just trying to think here. I don't 18 recall where, but I did think it strange when I 19 find out because as a boat owner, it is quite 20 difficult to -- to switch off, unless the system 21 is actually prepared to allow you to switch it 22 off. I mean, I am saying as a boat owner. 23 But I don't have anything helpful to say about 24 that except that I was extremely surprised.</b> 25 Q. Were you concerned to learn that?</p> <p style="text-align: center;">Page 36</p>

<p>1 <b>A. I was very concerned about that.</b></p> <p>2 Q. Did you raise those concerns with Mr</p> <p>3 McGrail?</p> <p>4 <b>A. I think I asked but -- I am pretty certain I</b></p> <p>5 <b>asked, but I don't think Mr McGrail had an</b></p> <p>6 <b>answer at that time.</b></p> <p>7 Q. Had you heard of AIS being switched off</p> <p>8 previously?</p> <p>9 <b>A. Personally, as a GPA member, no, but</b></p> <p>10 <b>there is always stories going around of, you</b></p> <p>11 <b>know from retired police officers, that say:</b></p> <p>12 <b>well, that's normal, and the Guardia Civil</b></p> <p>13 <b>also do it. You know, those kind of</b></p> <p>14 <b>comments, but it's hearsay. It's conjecture.</b></p> <p>15 Q. Can I show you B100, please? This is an</p> <p>16 exchange on the Maritime Incident Facebook</p> <p>17 - sorry, Facebook group - WhatsApp group,</p> <p>18 between the Chief Minister, you, Mr</p> <p>19 Carreras, the Chief Secretary and the</p> <p>20 Commissioner of Police. There is an update</p> <p>21 on 12 March 2020, sent round by Mr</p> <p>22 McGrail, and the final entry there says, "In</p> <p>23 terms of the investigation proper, the</p> <p>24 evidence points at the pursuit and collision</p> <p>25 occurring outside BGTW, not the best news</p> <p style="text-align: center;">Page 37</p>	<p>1 <b>A. Why? Because I'm convinced that we</b></p> <p>2 <b>wouldn't know how to investigate something</b></p> <p>3 <b>as important as this, and I was very relieved</b></p> <p>4 <b>when Mr McGrail said: we are going to bring</b></p> <p>5 <b>somebody from outside. But we haven't had</b></p> <p>6 <b>any investigatory input into this, if I'm</b></p> <p>7 <b>honest.</b></p> <p>8 Q. Could the GPA not have conducted an</p> <p>9 investigation into, for example, the policies</p> <p>10 about entering Spanish waters without</p> <p>11 straying into areas of technical expertise?</p> <p>12 <b>A. We were told that that was a policy.</b></p> <p>13 Q. That --</p> <p>14 <b>A. That there was a policy, that they weren't</b></p> <p>15 <b>allowed to stray - verbally by Mr McGrail</b></p> <p>16 <b>and Mr Ullger and everybody else. That is</b></p> <p>17 <b>the policy. It's not supposed to happen.</b></p> <p>18 Q. Could you have investigated whether, in</p> <p>19 fact, that policy was being followed?</p> <p>20 <b>A. With hindsight, possible, but quite</b></p> <p>21 <b>frankly, we didn't.</b></p> <p>22 Q. Once the Metropolitan Police team</p> <p>23 arrived in Gibraltar, did you have any contact</p> <p>24 with them yourself?</p> <p>25 <b>A. No. None at all.</b></p> <p style="text-align: center;">Page 39</p>
<p>1 we wanted to hear." You said earlier that</p> <p>2 you could not remember when you first</p> <p>3 learned about the incident happening in</p> <p>4 Spain. Do you know whether this was the</p> <p>5 first time you learned of it or did you know</p> <p>6 about it previously?</p> <p>7 <b>A. I don't have that, but it must have been.</b></p> <p>8 <b>It must have been. I'm - and even now, I'm</b></p> <p>9 <b>quite upset by reading that. It must have</b></p> <p>10 <b>been when I first learnt --</b></p> <p>11 Q. That message.</p> <p>12 <b>A. - that everything had happened in Spain,</b></p> <p>13 <b>because I think the working theory had been,</b></p> <p>14 <b>from what the police were telling me, was</b></p> <p>15 <b>that a chase started locally.</b></p> <p>16 Q. The next day, if we go back to C6553.</p> <p>17 On the next day, 9 March, Mr McGrail</p> <p>18 messages you about organising an</p> <p>19 independent investigation, and you say, "If</p> <p>20 I'm honest, the PCB will not have the</p> <p>21 necessary expertise...". That is the message</p> <p>22 at the bottom. Then the next line, "... neither</p> <p>23 would anybody in the GPA if we're honest."</p> <p>24 Why did you think that the GPA did not have</p> <p>25 the necessary expertise?</p> <p style="text-align: center;">Page 38</p>	<p>1 Q. Then, if we go over the page, 6554, there</p> <p>2 is another exchange at 14:43, about a third of</p> <p>3 the way down where Mr McGrail says, "I</p> <p>4 will work to get an independent team out</p> <p>5 ASAP, and we can discuss tomorrow. Time</p> <p>6 is of essence. Will explain in person.</p> <p>7 Politics." You say, "We can have a</p> <p>8 discussion about this tomorrow. I'm sure we</p> <p>9 will take your advice anyway." If we go</p> <p>10 down a little bit further it looks like -</p> <p>11 actually, if you look at the messages on 10</p> <p>12 March at 13:09, it looks like the meeting is</p> <p>13 fixed for 9 am on 11 March. You say - Mr</p> <p>14 McGrail says, "Can do any time. Shall we</p> <p>15 fix for 9 am. See you then." I just want to</p> <p>16 ask you, did Mr McGrail explain to you what</p> <p>17 he meant by "politics"?</p> <p>18 <b>A. No. Not that - that I can recall.</b></p> <p>19 Q. He says, "Time is of the essence. Will</p> <p>20 explain in person. Politics."</p> <p>21 <b>A. No, I --</b></p> <p>22 Q. Do you remember what that was a</p> <p>23 reference to?</p> <p>24 <b>A. I can only - but I am surmising here. I</b></p> <p>25 <b>can only imagine that it's to do with the fact</b></p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 <b>that it was an international incident. That's</b>  2 <b>the only thing I can surmise. I really can't</b>  3 <b>recall that exchange.</b>  4 Q. When you met, did Mr McGrail speak to  5 you about his interactions with the Chief  6 Minister, The Attorney General and Mr Pyle  7 in relation to the incident?  8 <b>A. All I was interested in was that Foreign</b>  9 <b>Office knew about the fact that it was an</b>  10 <b>international incident, whether or not there</b>  11 <b>were going to be claims against - made</b>  12 <b>against the RGP, and trying to find out, you</b>  13 <b>know, how it happened. I seem to remember</b>  14 <b>asking - I'm not sure about this, but I think -</b>  15 <b>I seem to remember asking about something</b>  16 <b>to do with a saw, a metal projection that was</b>  17 <b>on the boat, but I'm not even sure if that was</b>  18 <b>the --</b>  19 Q. The meeting.  20 <b>A. - the meeting. I really can't recall.</b>  21 Q. Do you remember having any detailed  22 discussion about the extent to which Mr  23 McGrail was keeping the Chief Minister, the  24 Attorney General, the Governor, informed  25 about location?</p> <p style="text-align: center;">Page 41</p>	<p>1 <b>McGrail is keeping everybody, the powers</b>  2 <b>that be so to speak, you know, involved and</b>  3 <b>updated and he said he was. Especially at the</b>  4 <b>back of my mind was the fact that very very</b>  5 <b>often we complain when there are incursions</b>  6 <b>into our waters and here was, you know, us</b>  7 <b>doing the same. I really can't remember - it</b>  8 <b>was prompted by another Panorama article or</b>  9 <b>what it was, but it - I think it was a random</b>  10 <b>thought. Nobody asked me to. That came</b>  11 <b>from me.</b>  12 Q. That was going to be my next question.  13 <b>A. Yes.</b>  14 Q. It was not prompted by anybody.  15 <b>A. No.</b>  16 Q. Did you have any reason to believe that  17 Mr McGrail was not keeping Mr Pyle or the  18 Chief Minister abreast of developments?  19 <b>A. Not at that time, and nobody had said</b>  20 <b>anything. I was just out of my own volition,</b>  21 <b>making sure that everybody knew just how</b>  22 <b>serious this was.</b>  23 Q. Moving onto the HMIC report, can we  24 please go to A58. This is Mr McGrail's first  25 statement. Paragraph 24, towards the</p> <p style="text-align: center;">Page 43</p>
<p>1 <b>A. No. No, I have always been working</b>  2 <b>under the assumption that the</b>  3 <b>communications were fluid.</b>  4 Q. If we go to 6556 now, please, we move  5 forward to 20 March, and the second entry  6 there is a message from you at 10:28. You  7 say, "Good morning, Iain. Just a thought.  8 Are you keeping Governor abreast of  9 developments? Also, maybe send an update  10 to the CM via the WhatsApp. Note that this  11 is just my thinking, and nobody's actually  12 asked me, but I think it would be prudent.  13 See what you think. Developments in  14 respect of maritime accident, I meant." Mr  15 McGrail says, "Yes, the Convent is up to  16 speed and AG too. Micheal fed up to CM.  17 By next week the UK team will have more  18 clarity on what route they will be suggesting  19 this to take locally. That is a good point to  20 provide a more formal update." You say,  21 "Okay. Understood. Thank you, Iain. As  22 long as both are kept updated, that was my  23 concern." What prompted this message?  24 <b>A. Basically, waking up remembering about</b>  25 <b>the incident and just wondering, I hope Mr</b></p> <p style="text-align: center;">Page 42</p>	<p>1 bottom. We know that in August or  2 September 2018, Mr McGrail asked the GPA  3 to request HMICFRS to conduct an  4 inspection of the force and he says, at 24,  5 "The reasons for my calling of the inspection  6 by HMICFRS have already been briefly  7 touched upon in the preceding paragraphs. A  8 series of meetings and discussions took place  9 in the build up to the inspection. I recall a  10 communication with the GPA Chair Dr.  11 Britto, where he expressed the view that  12 submitting the workforce to two inspections,  13 i.e. private consultancy and HMICFRS,  14 could be perceived as overbearing on the  15 workforce. I explain my rationale for the  16 request for the HMICFRS inspection in the  17 following paragraphs." Mr McGrail is  18 recalling that you were concerned about  19 another inspection. Is that correct?  20 <b>A. That is - that is true. That is very true. I</b>  21 <b>was concerned about the ordinary constable,</b>  22 <b>and even senior management, being</b>  23 <b>subjected to another inspection when they</b>  24 <b>had just finished -- it was a private</b>  25 <b>consultancy that Mr McGrail contracted to</b></p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 look at the results of the survey and how the</p> <p>2 questions were actually formulated and all</p> <p>3 that - but it actually meant interviewing</p> <p>4 officers, and I felt it was going to be another</p> <p>5 intrusion, but Mr McGrail convinced me that</p> <p>6 it was good to have another inspection.</p> <p>7 Q. What did you understand Mr McGrail's</p> <p>8 motivation for calling the inspection to be?</p> <p>9 A. He did say that he wanted Mr Pyle to</p> <p>10 look - well, not Mr Pyle - Paul Holewell</p> <p>11 who was the lead inspector - I hadn't met</p> <p>12 them yet - to look at whether or not they</p> <p>13 could find any elements of bullying in-house,</p> <p>14 in the police force. But they actually told</p> <p>15 me: we don't do that, but if we find anything</p> <p>16 we will report on it.</p> <p>17 Q. Sorry, just - can you just repeat that?</p> <p>18 A. If you go to paragraph 25, surprisingly,</p> <p>19 one of the first things I was asked to do by</p> <p>20 Sir Edward Davis, the Governor, is: look,</p> <p>21 when you get a chance, visit... The only</p> <p>22 police authority left in the United Kingdom</p> <p>23 was essentially the Met. It was not called the</p> <p>24 police authority, it is actually run by the</p> <p>25 Deputy Mayor's office, so the line manager</p> <p style="text-align: center;">Page 45</p>	<p>1 every three or four years, and Mr Gonçalves</p> <p>2 when he was leaving told me: now you're</p> <p>3 going to have to arrange the next inspection.</p> <p>4 So, I was expecting an inspection, or having</p> <p>5 to organise it. But in all honesty, when I</p> <p>6 asked, the police told me we contact them</p> <p>7 and all we have to do is make sure that we</p> <p>8 have the funding for it.</p> <p>9 A. If we can go to C6552, back to your</p> <p>10 exchanges with Mr McGrail. There, we can</p> <p>11 see at the top of the page, you are arranging</p> <p>12 to meet Mr McGrail at New Mole House</p> <p>13 "...tomorrow at 11 am." "Yes. I'll see you",</p> <p>14 and you say, "Any surprises, issues of great</p> <p>15 concern?", and he says, "Regrettably, yes to</p> <p>16 my liking.", and you say, "Okay, will discuss</p> <p>17 these tomorrow then." He says "okay", and</p> <p>18 then it looks as though a meeting takes place</p> <p>19 on 3 March and it seems as though you</p> <p>20 discussed the draft version of the report then.</p> <p>21 Is that correct?</p> <p>22 A. We - I didn't know that would happen,</p> <p>23 but Mr Morello told me, normally when there</p> <p>24 is an inspection they send you a draft report</p> <p>25 for factual accuracy, and I noticed that it</p> <p style="text-align: center;">Page 47</p>
<p>1 of the Met Commissioner is actually a</p> <p>2 Deputy Mayor, a politician. I went - I think</p> <p>3 I went with Mr Darren Grech if I recall, as</p> <p>4 Chief Secretary, and we visited HMIC</p> <p>5 headquarters, but before that we had also</p> <p>6 visited the equivalent of the police authority</p> <p>7 just to find out how they worked and clearly</p> <p>8 we were, like, taken aback when we saw the</p> <p>9 resources, the teams of people that they had.</p> <p>10 Clearly, it's a huge force. But, I mean, at that</p> <p>11 moment in time our main was to have a chat</p> <p>12 - our main concern was to have a chat with</p> <p>13 HMIC and ask them for an inspection, and if</p> <p>14 I'm not mistaken, one of the things they said</p> <p>15 is: well, we don't really look at bullying, but</p> <p>16 if there is, it will come up.</p> <p>17 Q. Did you raise with Mr McGrail that if his</p> <p>18 motivation was to look into bullying, actually</p> <p>19 the HMIC report was not going to bottom</p> <p>20 that out?</p> <p>21 A. I did, but I didn't see it as necessarily a</p> <p>22 bad thing because Mr Gonçalves had told</p> <p>23 me, almost jokingly: oh, you're going to</p> <p>24 have to - apparently there is an investigation</p> <p>25 - there was a HMIC review of the police</p> <p style="text-align: center;">Page 46</p>	<p>1 seemed to suggest that the GPA had no</p> <p>2 appetite for modernisation, plus I wasn't</p> <p>3 completely happy with the type of language</p> <p>4 that they were using when it came to the</p> <p>5 police not being alive to -- I remember that</p> <p>6 one in particular - not being alive to</p> <p>7 corruption. They weren't calling the police</p> <p>8 corrupt, but what they were intimating was</p> <p>9 that there were no policies in place, and if I'm</p> <p>10 not mistaken, I sent Mr Holewell an email. I</p> <p>11 never got a reply. If I am honest, it was</p> <p>12 never replied to, but they removed the</p> <p>13 comment on --</p> <p>14 Q. The GPA.</p> <p>15 A. - the GPA not having an appetite for</p> <p>16 modernisation when, you know, felt quite</p> <p>17 hurt by that.</p> <p>18 Q. Just focusing on that meeting, we can see</p> <p>19 that Mr McGrail is saying that there were</p> <p>20 either surprises or issues of great concern.</p> <p>21 He says, "Regrettably yes, to my liking."</p> <p>22 What was he surprised or concerned about at</p> <p>23 that meeting, from your recollection?</p> <p>24 A. I don't know what the "to my liking", I</p> <p>25 think it means: in my opinion --</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 Q. Mmh.</p> <p>2 <b>A. If it means that, it's because I knew that</b></p> <p>3 <b>he'd had verbal oral feedback before they left</b></p> <p>4 <b>and I don't think HMIC officers or inspectors</b></p> <p>5 <b>gave Mr McGrail an indication of just how</b></p> <p>6 <b>bad things seemed to be, and they didn't tell</b></p> <p>7 <b>us. I mean, we only found out when we got</b></p> <p>8 <b>the draft, quite honestly.</b></p> <p>9 Q. Once you had the opportunity to read the</p> <p>10 report, the draft report, did you think that it</p> <p>11 was a fair and accurate report?</p> <p>12 <b>A. Even before that, I thought I can't let this</b></p> <p>13 <b>out into the public because it is going to</b></p> <p>14 <b>destroy the reputation of - that was me</b></p> <p>15 <b>worrying. It is going to destroy the</b></p> <p>16 <b>reputation - or it is going to damage the</b></p> <p>17 <b>reputation of the RGP, and I was very very</b></p> <p>18 <b>concerned about that, and I think there is</b></p> <p>19 <b>evidence that I have always been concerned</b></p> <p>20 <b>about the reputation of the RGP. I didn't</b></p> <p>21 <b>know enough about how these inspections</b></p> <p>22 <b>worked but I was concerned. I was</b></p> <p>23 <b>concerned, and so was Mr McGrail quite</b></p> <p>24 <b>frankly, and the Assistant Commissioner as</b></p> <p>25 <b>well. I think al senior management were</b></p> <p style="text-align: center;">Page 49</p>	<p>1 and mitigate the threat. Our recommendation</p> <p>2 is that the Senior Leadership Team determine</p> <p>3 the best model for providing</p> <p>4 countercorruption capabilities to identify and</p> <p>5 pursue corrupt employees or employees who</p> <p>6 are susceptible to corruption". You have</p> <p>7 already addressed this in terms of the</p> <p>8 wording. Did you agree that the RGP was</p> <p>9 not fully aware of the risk?</p> <p>10 <b>A. I had no choice but to agree that they</b></p> <p>11 <b>knew much more about policing. Certainly</b></p> <p>12 <b>HMIC are police officers or have worked</b></p> <p>13 <b>with the police, so they would know much</b></p> <p>14 <b>more about policing than I would have ever</b></p> <p>15 <b>hoped to.</b></p> <p>16 Q. And then above there is an entry, a bullet</p> <p>17 point that is headed, "Role Models". "We</p> <p>18 were told of a firm leadership style in the</p> <p>19 force and some of the workforce perceive</p> <p>20 that some managers seek too readily to blame</p> <p>21 and reprimand. We didn't encounter any</p> <p>22 evidence of bullying although looking for it</p> <p>23 didn't fall within our terms of reference.</p> <p>24 Leadership development is an area of</p> <p>25 improvement for the force and it might</p> <p style="text-align: center;">Page 51</p>
<p>1 <b>concerned.</b></p> <p>2 Q. Did you feel that Mr McGrail was</p> <p>3 responsible for, or should take responsibility</p> <p>4 of the criticism in the report?</p> <p>5 <b>A. Well, the criticism that the previous</b></p> <p>6 <b>report had not been acted on. When I asked</b></p> <p>7 <b>him, he said yes, but that wasn't me, that was</b></p> <p>8 <b>Mr Yome. But, I mean, I didn't dwell on it,</b></p> <p>9 <b>but it's - I didn't quite feel it was the right</b></p> <p>10 <b>response, but I didn't say anything. Only</b></p> <p>11 <b>because it seems as if, you know, it's not me,</b></p> <p>12 <b>it's him, but he may be right. I really didn't</b></p> <p>13 <b>delve too deeply into it.</b></p> <p>14 <b>(11.05)</b></p> <p>15 Q. If we can now go to B1552, please, which</p> <p>16 is the report itself, this is the introductory</p> <p>17 summary of the report and I just want to</p> <p>18 focus on two bullet points. The first is</p> <p>19 towards the bottom, "Tackling Misconduct</p> <p>20 and Corruption. This is an area for</p> <p>21 improvement. The force doesn't fully</p> <p>22 understand its exposure to the risk of</p> <p>23 corruption. Its Professional Standards Unit</p> <p>24 lacks the resource and expertise to develop a</p> <p>25 fuller understanding of the risk or to monitor</p> <p style="text-align: center;">Page 50</p>	<p>1 benefit from exchanges with officers in</p> <p>2 England and Wales about these subjects.</p> <p>3 Our additional recommendation is that the</p> <p>4 Senior Leadership Team produce an</p> <p>5 antibullying statement and improved</p> <p>6 processes to prevent bullying." Was that</p> <p>7 consistent with any information you were</p> <p>8 receiving as to the leadership of the RGP?</p> <p>9 <b>A. Firm, yes - firm leadership style and I</b></p> <p>10 <b>think that was corroborated by previous</b></p> <p>11 <b>witnesses. This wasn't called "bullying" but</b></p> <p>12 <b>to tell you the truth, I didn't quite know what</b></p> <p>13 <b>to make of "firm leadership style" because on</b></p> <p>14 <b>the one hand I'm always told, "Well, this is a</b></p> <p>15 <b>uniformed, disciplined body and people have</b></p> <p>16 <b>to do what we tell them", but on the other</b></p> <p>17 <b>hand, one of the questions I always ask when</b></p> <p>18 <b>interviewing police officers is, "What would</b></p> <p>19 <b>you do if you disagree with an order?", and</b></p> <p>20 <b>normally I like the answers they give me,</b></p> <p>21 <b>"None[?]", but I think it could be a reference</b></p> <p>22 <b>to people simply barking out orders and</b></p> <p>23 <b>instructions where possibly in more modern</b></p> <p>24 <b>leadership styles within the police, that</b></p> <p>25 <b>doesn't tend to happen but, as I said, that's</b></p> <p style="text-align: center;">Page 52</p>

1 **how I interpreted that.**  
 2 Q. From your perspective, did you see Mr  
 3 McGrail as either willing to take the criticism  
 4 and addresses or reluctant to accept the  
 5 criticism?  
 6 **A. I think he could have been reluctant to**  
 7 **accept the criticism because I don't think he**  
 8 **saw himself as necessarily being responsible**  
 9 **for all that, but certainly he did say, "Well,**  
 10 **I'm going to work on this."**  
 11 Q. And did you see him as the person to  
 12 address those recommendations?  
 13 **A. From what I found out, the person**  
 14 **working on that was his Assistant**  
 15 **Commissioner, Mr Ullger.**  
 16 Q. Well -  
 17 **A. But yes, possibly because the**  
 18 **Commissioner had told him to start working**  
 19 **on that.**  
 20 Q. Sorry, did you - well, let me put my  
 21 question - let me ask you a better question.  
 22 Were you happy for him to be Commissioner  
 23 of Police while the RGP addressed those  
 24 concerns?  
 25 **A. Yes, I didn't think there was anything,**

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1 **you know that means closing down the police**  
 2 **station, quite frankly.**  
 3 Q. In terms of the final version of the report,  
 4 can we just go to C6 558, please? We can  
 5 see on 9 April at 11.30, you say, "Ian, check  
 6 your email. HMIC report just submitted with  
 7 Matt Parr. I haven't read it yet but will do so  
 8 shortly. Let's discuss after we've both read  
 9 it." And then if you go over two pages to  
 10 6560, 20 April, you say, "Ian, fyi, I haven't  
 11 shared the report with anyone yet but will do  
 12 so with GPA colleagues at the end of play  
 13 today. Am awaiting a response from  
 14 government and will wait until end of play  
 15 today as well at which time I will share  
 16 report with CM, MFJ, and HE first thing  
 17 tomorrow along with my recommendations  
 18 unless I am advised otherwise. It goes  
 19 without saying that I'll keep you posted." Mr  
 20 McGrail says, "The sooner we go public with  
 21 it the better. We are on the wave of good  
 22 public support and in my view it is the best  
 23 time to do it." And you say, "That'll be my  
 24 recommendation. I'll copy you in when I  
 25 share it with them." And Mr McGrail says,

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1 "Thanks." You referred to the report as a  
 2 developmental road map. Was your view  
 3 that the report was an opportunity for Mr  
 4 McGrail to move forward and improve things  
 5 for the RGP?  
 6 **A. Yes.**  
 7 Q. And there is a reference also to the  
 8 unprecedented levels of community support  
 9 the RGP is currently enjoying. What was  
 10 that a reference to?  
 11 **A. That is because Mr McGrail suggested to**  
 12 **me that even though the report was**  
 13 **published, people were more concerned with**  
 14 **the way the police were helping them out**  
 15 **with Covid restrictions plus the interviews**  
 16 **that Mr McGrail was running in conjunction**  
 17 **with the Ministry for Justice or Health,**  
 18 **Public Health, I think, talking about Covid on**  
 19 **an almost nightly basis. So, I think he said,**  
 20 **"Yes, it's a bad report, but if we publish,**  
 21 **people won't pay attention to that. They're**  
 22 **more concerned about Covid."**  
 23 Q. Just looking at what is said there about  
 24 publication, are we to take from Mr  
 25 McGrail's message that he was supportive of

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1 publishing the report from the outset?  
 2 **A. Not more than I was.**  
 3 Q. If we then go to C 6561, please, there is a  
 4 reference at the bottom of page 20 to 2 April.  
 5 You say, "Ian, fyi, we'll be sending you and  
 6 Richard an email asking for your plan of  
 7 action in response to the report and  
 8 recommendations, working groups to be set  
 9 up, how many have already been met, etc.  
 10 This is for the benefit of GPA colleagues. I  
 11 am sending them the report. I shall also send  
 12 them the contents of the PR as well but we  
 13 are going to need evidence of how you  
 14 propose to tackle the addressing of  
 15 recommendations, etc. The more we have  
 16 prepared the better. Anyway, I'll email you  
 17 but just so you know that it will be for  
 18 colleagues at GPA I'll send to tomorrow.  
 19 Thank you, by the way. I'm asking because  
 20 I've said that you are already working on the  
 21 recommendations, etc., so I'll need your  
 22 plans, etc." It looks from that that you were  
 23 willing to work with Mr McGrail and Mr  
 24 Ullger on the way forward.  
 25 **A. Yes.**

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<p>1 Q. You say that you understood that there 2 would be a delay in providing the plan of 3 action. In your view, was the matter urgent, 4 the plan of action, or were you happy for 5 there to be some delay? 6 <b>A. I always felt that if you have a negative 7 report that it would in itself provide you with 8 a plan of action and a developmental 9 strategy, even in the report because it 10 actually tells you a point to aim is for 11 development, but I felt that even at that stage 12 that things have to happen rather quickly, but 13 only because of public opinion, plus I think I 14 also worried about, you know, the impact on 15 staff within the RGP - not that I voiced that, 16 but I must have mentioned it at some point, 17 you know, it's more work for them.</b> 18 Q. Over the page on C563 there is reference 19 to a meeting between you and Mr McGrail 20 and the Minister of Justice on 30 April to 21 discuss the report. I don't have to actually 22 take you to the messages. From your 23 recollection, was the Minister of Justice 24 supportive of the RGP and Mr McGrail 25 despite the criticism?</p> <p style="text-align: center;">Page 57</p>	<p>1 publish the report in full? 2 <b>A. First and foremost, if Mr McGrail was 3 happy with having it published and he did 4 say, "I will make sure we send it to the press 5 but I will also answer questions to the press" 6 and I think I tried to - I sent an email to 7 possibly the Governor, Chief Minister 8 saying, "Look, this is going to affect the 9 community" and maybe I was just 10 exaggerating, I am really not sure, "this is 11 going to affect the community but Mr 12 McGrail says that he will be able to answer 13 questions."</b> 14 Q. So, was it a one-person decision or was it 15 a joint decision? 16 <b>A. I think it was a joint decision.</b> 17 Q. And the report was published on 7 May. 18 The Chronicle's headline was, "Hard hitting 19 external audit of the RGP identifies serious 20 deficiencies, makes wide-ranging 21 recommendations." If we go to C 6569, back 22 to the WhatsApp between you and Mr 23 McGrail, the third entry on that page, you 24 say, "Ian, Chronicle headline web version", 25 and you refer to that headline, "a bit</p> <p style="text-align: center;">Page 59</p>
<p>1 <b>A. I remember the meeting vaguely but there 2 was no negativity in the meeting. I don't 3 think she immediately said, "Yeah, let's go 4 ahead and publish it", but I think we agreed 5 that the actual report was a road map for 6 development but that's all I can remember 7 about that meeting.</b> 8 Q. Can I take you to C 3343 please. This is 9 an email of 29 April from Mr Pyle to you and 10 he says: "Joey, I've read the report twice. I 11 don't think it should be published in full. 12 Let's chat tomorrow." Did you speak the 13 following day or shortly after that email? 14 <b>A. I can't remember but my concern was that 15 HMIC would possibly post it on the website 16 anyway regardless of whether we wanted it 17 published. I'm not quite sure but I'm pretty 18 certain I must have told him.</b> 19 Q. But I am more focused on did you discuss 20 the report with Mr Pyle? 21 <b>A. Well, he said it was awful and it was 22 damning and then I started to be a bit 23 concerned about well, perhaps I hadn't given 24 it enough importance.</b> 25 Q. Who made the ultimate decision to</p> <p style="text-align: center;">Page 58</p>	<p>1 sensationalist." What did you consider to be 2 sensationalist about that? 3 <b>A. I was trying to make Mr McGrail feel 4 better if he was feeling - not feeling better, 5 but he didn't tell me he was feeling bad, but I 6 certainly was.</b> 7 Q. If we go towards the bottom of the page 8 after the relevant images are sent, then at 9 1534 you say, "We just have to carry on and 10 ensure that as many of the recs. are addressed 11 as possible in the timeframe." And then Mr 12 McGrail - well, yes, it looks there as though 13 still you are taking the view that it is right to 14 work with Mr McGrail and address this 15 report. 16 <b>A. I am not sure who Mr McGrail - is that 17 Mr McGrail with me?</b> 18 Q. Yes, that's you and Mr McGrail and you 19 say, "We just have to carry on and ensure 20 that as many of the recs", presumably 21 recommendations -- 22 <b>A. Recommendations.</b> 23 Q. "-- are addressed as possible in the 24 timeframe." 25 <b>A. "- in the timeframe."</b></p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 Q. And I am only asking you to point out 2 that 8 May, it does still look as though you 3 are willing to work with Mr McGrail to 4 address the recommendations. 5 <b>A. Yes, yes.</b> 6 Q. Did you have any doubts at that point as 7 to his suitability as Commissioner of Police? 8 <b>A. I had my doubts as to whether all this 9 could be done in as quickly as possible but at 10 that time I had no idea that there may be 11 people who thought that he wasn't fit.</b> 12 Q. And from your perspective did you have 13 any doubts? 14 <b>A. Not at that stage.</b> 15 Q. Then further down, two messages later, 16 Mr McGrail says: "He told me off the record 17 that he smelt of rat." I think he probably 18 means, "smelt a rat" - about the tone of the 19 report inferring there was some underlying 20 motive for such negative reporting. I have 21 my theories which I will share with you in 22 due course." Did you learn from Mr McGrail 23 what his theories about the report were? 24 <b>A. Well, I don't know who the "he" is that he 25 is referring to.</b></p> <p style="text-align: center;">Page 61</p>	<p>1 convenient moment, sir, to take our mid- 2 morning break? 3 THE CHAIRMAN: Yes. 4 MR SANTOS: And to make a check on 5 progress? 6 THE CHAIRMAN: I agree. 7 MR SANTOS: Thank you. 8 (11.21) 9 (Adjourned for a short time) 10 (11.27) 11 MR SANTOS: Dr Britto, can I please take 12 you to your witness statement at A321, 13 paragraph 10, the bottom of that page. You 14 say, "On 12 May 2020 Mr McGrail asked to 15 see me. I agreed to his request and met him at 16 his office at New Mole House Police Station 17 on 15 May 2020. I did not take a note of the 18 meeting but to the best of my recollection, 19 Mr McGrail informed me of an investigation 20 called Operation Delhi. Mr McGrail said 21 that Mr James Levy QC was a suspect in 22 connection with this investigation and that he 23 had Mr Levy's mobile phone in a safe. This 24 was the first time I'd heard of Operation 25 Delhi or of Mr Levy's suspected involvement</p> <p style="text-align: center;">Page 63</p>
<p>1 Q. Yes. 2 <b>A. Now, I don't.</b> 3 Q. I think it is a reference to conversations 4 with Mr Reyes of the Chronicle, presumably, 5 given that it is a response to the Chronicle 6 headline. This is only 20 minutes after you 7 sent him the Chronicle headline. If we look 8 above at 1522, "Yes, fine. We'll send you the 9 screenshots" and he sends you screenshots of 10 the whole article. You say, "Got them, okay, 11 read. I suppose it could have been worse. 12 We just have to carry on the message, I say" 13 and then he says, "It was worse. He has 14 picked up some bits of what I sent him in 15 responses to his questions which has 16 balanced it out a tiny bit. You have read in 17 between the lines to get the balancing. He 18 told me off the record that he smelt a rat 19 about the tone of the report inferring that 20 there was some underlying motive for such 21 negative reporting. I have my theories which 22 I will share with you in due course." Did Mr 23 McGrail share such theories with you? 24 <b>A. No.</b> 25 MR SANTOS: I wonder whether now is a</p> <p style="text-align: center;">Page 62</p>	<p>1 in it. Mr Levy further stated that the Chief 2 Minister was not happy with him and that 3 this had been expressed to Mr McGrail by 4 the Chief Minister directly. Mr McGrail also 5 told me that he was due to have a further 6 meeting with the Attorney General whom he 7 had already met in relation to this 8 investigation. I also recall that Mr McGrail 9 asked Mr Richard Ullger, the Assistant 10 Commissioner of Police at the time, to be 11 present during this meeting. Mr McGrail had 12 not spoken to me before about this operation. 13 Whilst it struck me as unusual that he should 14 do so then, I thought nothing further about it 15 at the time. I did not comment other than to 16 state something to the effect that, "I hope the 17 issue would resolve itself in due course." 18 Can we look at B76, please? This is an 19 email that Mr McGrail sent himself on the 20 evening of 12 May at 10.05 and he says, 21 towards the bottom of that, about a third of 22 the way up from the bottom of that page - it 23 should come on to the screen shortly - there. 24 There is a single sentence which says, "I 25 have also briefed the Chair of the GPA in</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)



<p>1 person in my office." This is an email that he 2 sent on 12 May to himself. Do you recall 3 being briefed by Mr McGrail on the day of 4 12 May? 5 <b>A. Not on the 12th. I had a meeting on the 6 15th scheduled, so I'm pretty certain that it 7 was on - almost sure that it was on the 15th.</b> 8 Q. It is just that on the 12th, the evening of 9 the 12th, he sends himself a message saying 10 that he has, so I just wanted to give you the 11 chance to respond to that. 12 <b>A. There's a remote chance that it was on the 13 12th, but my records show that it was on the 14 15th, but if he is convinced that it's on the 12th 15 -</b> 16 Q. If we go to C6 571, again the WhatsApps 17 between you on 12 May there is a message at 18 1420 where he says, "Joey, sorry for the 19 bother but I urgently need to speak to you 20 face to face", and then there is a further 21 message the next day: "Joey, met with AG 22 and others to discuss the matter. I can 23 provide you with a quick update over the 24 phone if you want or would you rather I 25 leave it for Friday when we meet?" And then</p> <p style="text-align: center;">Page 65</p>	<p>1 Q. Did he give you an account of what had 2 happened at the Chief Minister's office that 3 day? 4 <b>A. He said that the Chief Minister was very 5 upset with him.</b> 6 Q. Did he report to you about a 7 disagreement between him and the Chief 8 Minister over the DPP's advice? 9 <b>A. I can't recall the details. I don't think we 10 were given, or I was given, details about 11 exactly what it was about and to tell you the 12 truth, whilst this was going on, I was 13 thinking, "This is strange because no police 14 officer ever talks to me or to anybody from 15 the GPA about operational matters and 16 investigations. That was what was going 17 through my mind.</b> 18 Q. Did he tell you that he had been berated 19 by the Chief Minister and the Attorney 20 General? 21 <b>A. No. If I'm not mistaken, what he said 22 was, "He's very upset with me", not precisely 23 with those words. He didn't use the word, 24 "berate", I don't think.</b> 25 Q. Did he raise any concerns with you about</p> <p style="text-align: center;">Page 67</p>
<p>1 you respond, "I'm downstairs". That's on the 2 15th. So, it looks from that as well like there 3 may have been two conversations: one on the 4 12th and one on 15 May, but if you cannot 5 recall, you cannot recall. 6 <b>A. I'm convinced it was on the 15th.</b> 7 Q. Then you certainly - regardless of the 8 timing of the meeting you said in your 9 evidence what was said about Operation 10 Delhi and you state in your witness 11 statement, as we have just seen, that Mr 12 McGrail said that Mr Levy was a suspect. 13 Did Mr McGrail explain to you that the 14 investigation related to a company called 36 15 North? 16 <b>A. Not that I can recall.</b> 17 Q. Did he explain that the company involved 18 was partly owned by Hassans? 19 <b>A. He must have when he mentioned Mr 20 Levy, but to tell you the truth I didn't think 21 twice about it.</b> 22 Q. Did he mention that the Chief Minister 23 held a beneficial interest in the company? 24 <b>A. No, not that I can recall, certainly not 25 using those words.</b></p> <p style="text-align: center;">Page 66</p>	<p>1 the Chief Minister interfering in the police 2 investigation? 3 <b>A. I'm trying to think. I think he was more 4 concerned with telling me that the Chief 5 Minister was very upset with him. I can't 6 recall him going into details.</b> 7 THE CHAIRMAN: Did he say why he was 8 telling you this? 9 <b>A. I think it was connected with the fact that 10 - because one of the first things that Mr 11 McGrail told me that he had Mr Levy's 12 phone in his safe. That's one of the first 13 things that he told me and I said, "That's 14 strange", so I presumed that that's why they 15 were annoyed with him.</b> 16 MR SANTOS: But he did not go into 17 details? 18 <b>A. Not - that's what I'm at pains to explain.</b> 19 Q. Did he raise any concerns about the 20 Attorney General interfering in the police 21 investigation? 22 <b>A. My understanding was that he met with 23 both of them and, as I say, somewhere, to my 24 great relief, he said, "Well, I'm going to meet 25 with the Attorney General anyway", so I</b></p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 <b>thought maybe this would blow over or</b>  2 <b>whatever. I mean, I don't like conflict and I</b>  3 <b>don't like people being annoyed with each</b>  4 <b>other, quite frankly.</b>  5 Q. How would you describe his, Mr  6 McGrail's tone and demeanour at that  7 meeting?  8 <b>A. What I remember is that he was standing</b>  9 <b>and I was sitting, and he can be quite</b>  10 <b>imposing. He was upset, he was visibly</b>  11 <b>upset, not necessarily angry. I think he was</b>  12 <b>upset, but I'm not (inaudible) his mind - but</b>  13 <b>more than angry, I think he was upset.</b>  14 Q. Can we now move on to the section 34  15 process, please? If we look at C3 937, we  16 can see here an email exchange between you  17 and Mr Pyle on 16 May. Mr Pyle says, "Can  18 you make a meeting at the Convent with the  19 CM and I on Monday at 9.30?" and you  20 confirm. The meeting took place. Were you  21 surprised to receive an email seeking a  22 meeting between you, the Governor at the  23 time and the Chief Minister?  24 <b>A. Very, extremely surprised -</b>  25 <b>apprehensive, quite frankly. I had no idea</b></p> <p style="text-align: center;">Page 69</p>	<p>1 May?  2 <b>A. On 18 May, what, at the Convent?</b>  3 Q. Yes.  4 <b>A. I remember Mr Pyle sitting me down,</b>  5 <b>asking me to take a seat and he still didn't tell</b>  6 <b>me what it was about and I think he was</b>  7 <b>waiting for the Chief Minister to come</b>  8 <b>across, which made me even more</b>  9 <b>apprehensive, quite frankly. I really didn't</b>  10 <b>know what it was about. The tone? They</b>  11 <b>were both very forceful and to tell you the</b>  12 <b>truth, as I expect a Governor and a Chief</b>  13 <b>Minister to be, quite frankly. But I mean,</b>  14 <b>they weren't angry or anything. As to the</b>  15 <b>tone of the meeting, they were very serious.</b>  16 <b>That's the best way I can explain. They were</b>  17 <b>very serious faces which made me even more</b>  18 <b>uncomfortable, quite frankly. I said, "What</b>  19 <b>have I done?"</b>  20 Q. Did one of them do most of the talking?  21 Did they both do the same amount of  22 talking?  23 <b>A. Mr Pyle did most of the talking, if I'm not</b>  24 <b>mistaken, yes, and I'm pretty certain Mr Pyle,</b>  25 <b>as Governor, was the one who took the lead.</b></p> <p style="text-align: center;">Page 71</p>
<p>1 <b>what this could be about.</b>  2 Q. Well, I was going to ask you, did you  3 have any sense of what it might be about?  4 <b>A. No.</b>  5 Q. The meeting took place on 18 May 2020.  6 Prior to that meeting, had the Chief Minister  7 ever raised concerns with you about Mr  8 McGrail?  9 <b>A. Not to me.</b>  10 Q. What about Mr Pyle?  11 <b>A. Mr Pyle, in general about modernising</b>  12 <b>the Police Force and how old-fashioned they</b>  13 <b>were and those kind of things.</b>  14 Q. You had had a meeting with him in late  15 April about the HMIC report and we have  16 seen the email between you. Had you raised  17 any concerns about Mr McGrail's suitability  18 as Commissioner of Police in that meeting?  19 <b>A. I can't recall him saying this raises issues</b>  20 <b>about his suitability as Commissioner. I</b>  21 <b>think what the gist of that meeting was, "this</b>  22 <b>raises issues to do with the way the police is</b>  23 <b>led and managed", which may or may not be</b>  24 <b>the same thing.</b>  25 Q. What was the tone of the meeting on 18</p> <p style="text-align: center;">Page 70</p>	<p>1 Q. In the Chief Minister's evidence, he says  2 that during this meeting you were very  3 concerned but not surprised. Were you  4 surprised?  5 <b>A. I was shocked, surprised, more or less I</b>  6 <b>didn't know what had hit me.</b>  7 Q. At the end of the meeting did you feel  8 that the GPA had any option other than to  9 invite Mr McGrail to retire?  10 <b>A. I'm trying to do my best to try and recall</b>  11 <b>how I felt then because having had the</b>  12 <b>benefit of listening to all the evidence and all</b>  13 <b>the inquiry, sometimes I find it difficult to</b>  14 <b>distinguish between what I knew then and</b>  15 <b>what I know now, or what has been heard</b>  16 <b>now. I certainly left feeling that they wanted</b>  17 <b>Mr McGrail out and I really didn't know</b>  18 <b>what to do or how to do it, even though they</b>  19 <b>explained there's a way of doing it, but I was</b>  20 <b>left in very little doubt. I was placed in - I</b>  21 <b>mean, the way I remember feeling was,</b>  22 <b>"They're giving me a choice but they're not</b>  23 <b>really." Also, I must admit I was very</b>  24 <b>concerned about the difference between</b>  25 <b>somebody saying, "I think I'm going to", or</b></p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 <b>"I'm going to retire" for whatever reason, as</b>  2 <b>opposed to having to resign. And I</b>  3 <b>remember that going through my mind. I</b>  4 <b>wouldn't want that - wish that - on anyone,</b>  5 <b>but that's what I can recall about the tone, the</b>  6 <b>style of what went on.</b>  7 Q. Was your understanding at that moment  8 that if you did not invite Mr McGrail to  9 retire, he would be forced to resign?  10 <b>A. It was intimidated but I can't remember if it</b>  11 <b>was Mr Pyle or - no, it must have come from</b>  12 <b>Mr Pyle and they did mention, "I wouldn't</b>  13 <b>want to declare you in default but I will if I</b>  14 <b>have to", but then again it's so long ago I</b>  15 <b>can't - and clearly I started taking notes and I</b>  16 <b>gave up halfway through because I just</b>  17 <b>couldn't concentrate on - plus there was also</b>  18 <b>a lot of talk between them which there was,</b>  19 <b>like, all the machinery in my head there</b>  20 <b>going round and I wasn't paying too much</b>  21 <b>attention. All that I knew was that they were</b>  22 <b>asking me to start, or consider starting</b>  23 <b>section 34, which up to then I hadn't even</b>  24 <b>looked at.</b>  25 Q. Can we look at C3 993 please? This is an</p> <p style="text-align: center;">Page 73</p>	<p>1 Minister also shared another event occurring  2 last week, which had left him also in a  3 situation where the Commissioner had  4 expressly misled him and which left him  5 unable to believe the Commissioner." Is that  6 a reference to the search warrant at Hassans?  7 <b>A. I can't recall any mention of search</b>  8 <b>warrant or Hassans. In fact that was when, I</b>  9 <b>think, the Chief Minister was talking to Mr</b>  10 <b>Pyle and Mr Pyle said something along the</b>  11 <b>lines of, "It's simply that I don't like the way</b>  12 <b>he does things" and that conversation refers</b>  13 <b>to both of them saying, "We don't like the</b>  14 <b>way he does things", but I can't remember</b>  15 <b>any mention of warrants.</b>  16 Q. What is said there is that the Chief  17 Minister had shared an event where the  18 Commissioner had expressly misled him.  19 Did the Chief Minister share that event with  20 you at the time?  21 <b>A. If he did, I can't recall. I think he was</b>  22 <b>talking to - he's referring to sharing it with</b>  23 <b>the then Governor but because - I surmised it</b>  24 <b>must be because of that because Mr McGrail</b>  25 <b>had mentioned that he was annoyed with</b></p> <p style="text-align: center;">Page 75</p>
<p>1 informal record of meeting. It is a document  2 headed, "Informal record of meeting with  3 HE, The Governor, and the Chief Minister,  4 Monday 18 May 2020."Your evidence is that  5 that note, which was prepared and circulated  6 by the Chief Minister two days later, is an  7 accurate minute of what was discussed. Is  8 that still your position?  9 <b>A. There may be things missing but it</b>  10 <b>certainly covers the main areas of what they</b>  11 <b>told me rather than discussed, because quite</b>  12 <b>frankly, I didn't say much.</b>  13 Q. You say that you started taking notes of  14 the meeting and then stopped.  15 <b>A. Yes.</b>  16 Q. Did you retain them?  17 <b>A. I think I left them behind, but quite</b>  18 <b>honestly, I think I went to a meeting and that</b>  19 <b>was it. I really can't recall what happened. I</b>  20 <b>really can't recall what happened. I don't</b>  21 <b>think I had anything that was usable, which</b>  22 <b>was possibly why I think he offered to,</b>  23 <b>"Well, I'll send you what happened."</b>  24 Q. At 3996, just in C, just a little bit higher  25 than that there, C, the note says, "The Chief</p> <p style="text-align: center;">Page 74</p>	<p>1 <b>him, but it wasn't a major part of the</b>  2 <b>conversation. Most of the - can I?</b>  3 Q. Yes.  4 <b>A. Most of the conversation was about the</b>  5 <b>fact of the Governor being very, very upset</b>  6 <b>and annoyed about Mr McGrail not being</b>  7 <b>able to confirm until very, very late that the</b>  8 <b>maritime incident happened in Spain and the</b>  9 <b>report, but mostly it was about the maritime</b>  10 <b>incident.</b>  11 Q. But just to be as clear as we can, do you  12 have a recollection about the Chief Minister  13 referring during that meeting to the  14 Commissioner having expressly misled him?  15 <b>A. "It's not the first time I think he</b>  16 <b>mentioned it. It's not the first time he says</b>  17 <b>one thing and does another", or something</b>  18 <b>along those lines but quite honestly I am</b>  19 <b>surmising that it's referring to what Mr</b>  20 <b>McGrail told me about.</b>  21 THE CHAIRMAN: Mr Santos has read that  22 paragraph (c) "The Chief Minister also  23 shared another event occurring last week".  24 That is very vague. It gives no details.  25 During the meeting did the Chief Minister</p> <p style="text-align: center;">Page 76</p>

<p>1 actually give any more details?  2 <b>A. If he did it wasn't to me. I think they</b>  3 <b>were talking amongst each other, amongst</b>  4 <b>themselves, but quite possibly. Quite</b>  5 <b>possibly, and certainly there was no mention</b>  6 <b>of warrant or everything that we've heard</b>  7 <b>about production orders and all that.</b>  8 THE CHAIRMAN: Or Mr Levy?  9 <b>A. Possibly mentioned Mr Levy's phone, but</b>  10 <b>I'm not sure. I'm not sure, but I think what</b>  11 <b>that refers to is the fact that they were both</b>  12 <b>saying, "He says one thing and then does</b>  13 <b>another."</b>  14 MR SANTOS: Just after that paragraph it  15 says, "The Chief Minister stated that for him  16 this is possibly the issue of deepest concern  17 as it goes to the integrity and probity of a key  18 individual in the maintenance of the respect  19 for the rule of law." Given that the note  20 reflects that, did you understand that this was  21 the most important issue for the Chief  22 Minister?  23 <b>A. Not at that time. Not at that time.</b>  24 Q. So, when you say that this was an  25 accurate note, do you want to qualify your</p> <p style="text-align: center;">Page 77</p>	<p>1 <b>a meeting with police. I'm not sure, actually.</b>  2 <b>I'm actually not sure.</b>  3 <b>(11.52)</b>  4 MR SANTOS: Or his interest in 36 North?  5 <b>A. No, I really didn't know about that -</b>  6 <b>certainly not then.</b>  7 Q. Can we please go now to A240? This is  8 Mr Pyle's evidence. At 14.1 Mr Pyle gives an  9 account of the meeting and he says, "At my  10 request, the Chief Minister set out the issues of  11 concern to both of us, namely the damning  12 HMIC report, the incident at sea involving a  13 fatal collision, the Police Federation  14 allegations and the mishandling of a high-  15 profile ongoing investigation." Do you  16 remember a reference to that?  17 <b>A. I think that's the reference that I was</b>  18 <b>talking about, that's the main thing that I</b>  19 <b>meant, "Mishandling of high-profile ongoing</b>  20 <b>investigation." But I wasn't given any details,</b>  21 <b>or they certainly didn't discuss any details in</b>  22 <b>front of me. But remember that Mr McGrail</b>  23 <b>had already told me that the main issue was</b>  24 <b>that he had somebody's phone in a safe.</b>  25 Q. And then at 14.2 he says, "I endorsed the</p> <p style="text-align: center;">Page 79</p>
<p>1 evidence as far as that is concerned?  2 <b>A. Yes, it's an accurate note because those</b>  3 <b>things were covered. What I don't remember</b>  4 <b>are the actual details, so I'm sorry if I misled</b>  5 <b>accidentally.</b>  6 Q. And as far as you say that Mr Levy - can  7 you just explain briefly from your  8 recollection what the reference to Mr Levy  9 was?  10 <b>A. I think the reference was that he said he</b>  11 <b>was going to do things one way and he did it</b>  12 <b>another. That was the main thing. That's</b>  13 <b>what I can recall.</b>  14 Q. Was there any other reference - was there  15 any reference to 36 North?  16 <b>A. No, not that I recall at all.</b>  17 Q. And was there any reference to the Chief  18 Minister's own investment in 36 North?  19 <b>A. Definitely not.</b>  20 Q. When was the first time that you learned  21 of that?  22 <b>A. Possibly here.</b>  23 THE CHAIRMAN: You mean during the  24 inquiry process?  25 <b>A. During the inquiry process or possibly at</b></p> <p style="text-align: center;">Page 78</p>	<p>1 Chief Minister's position and said that there  2 had to be accountability for the failings. I said  3 the common thread through all the issues  4 appeared to be a lack of adequate management  5 and leadership and that, therefore, in my  6 opinion, it is the Commissioner who is to be  7 held accountable." Do you recall him saying  8 that?  9 <b>A. Not exactly but it's the kind of thing that -</b>  10 <b>that is the general tone of the meeting.</b>  11 Q. Do you agree that a Commissioner should  12 be held accountable for the failings of the  13 RGP?  14 <b>A. Yes.</b>  15 Q. If we go to 14.3, he says, "I said that,  16 should the GPA determine that a call to retire  17 was not appropriate, I would consider using  18 the powers available to me under s.13 which  19 allowed me to call for the resignation of the  20 Commissioner and that, as things stood, I  21 would need strong and persuasive arguments  22 not to do so. I said, whilst I was not looking to  23 prejudice the deliberations of the GPA, I was  24 mindful that the Commissioner is allowed to  25 make representations, as s.34 allows, the GPA</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 should be in no doubt as to the strength of my 2 feelings. I concluded by saying that the 3 powers I have under s.13(1)(f) only come into 4 play in default by the Authority." Specifically, 5 do you remember him saying he would 6 consider using the power and would need 7 strong persuasive arguments not to do so as 8 things stood? 9 <b>A. Maybe not quite - I don't recall those 10 words but he definitely said, "If you don't do 11 this, I'll probably do it" or, "Probably" - "I'll do 12 it" but I remember he said section 13 and 13 actually mentioned that, but I was left in no 14 doubt that one way or another it could happen.</b> 15 Q. Do you recall him saying that you should 16 not be in doubt as to the strength of his 17 feelings? 18 <b>A. Most definitely.</b> 19 Q. Do you recall him saying that his s.13 20 powers only came into play in default by the 21 Authority? 22 <b>A. I think he said, "I wouldn't like to declare 23 the Authority in default."</b> 24 Q. What did you understand him to be saying 25 from that?</p> <p style="text-align: center;">Page 81</p>	<p>1 <b>A. I don't want to say Yes outright because 2 different people perceive pressure differently. 3 I mean, I did, but I'm not sure if somebody else 4 in my position would. But I felt pressured - 5 not necessarily because of being declared in 6 default, but because of this thing about me not 7 doing my duty properly. Yes, I can't deny that 8 I felt pressured.</b> 9 Q. If you look at 14.4, Mr Pyle says, "Mr 10 Britto said he took note, could see where we 11 were coming from and would convene a 12 meeting of the GPA as soon as practicable, 13 commenting that the Commissioner would 14 most likely fight this." Do you recall saying 15 that? 16 <b>A. Yes, especially, "I can see where you're 17 coming from", i.e. not necessarily agreeing 18 that the Commissioner had to go but agreeing 19 that, if I didn't do it, he would, frankly.</b> 20 Q. At this stage, and given your unfamiliarity, 21 or your lack of familiarity with the s.34, did 22 you consider seeking legal advice? 23 <b>A. I can't recall, but I don't think so.</b> 24 Q. Then you called a meeting and, if we go to 25 B2446 we can find your communication. You</p> <p style="text-align: center;">Page 83</p>
<p>1 <b>A. I wasn't quite sure because I hadn't yet read 2 the relevant part, but I think he meant that, "If 3 you don't do your duty, then I will do mine." 4 That's my interpretation.</b> 5 Q. Did you go away and read s.34 after this? 6 <b>A. Possibly. I can't remember. I was quite 7 nervous and upset and I really didn't know 8 what to do, but I remember going home and 9 pacing up and down my corridor. I really 10 didn't know.</b> 11 THE CHAIRMAN: This is not a criticism, 12 Doctor, but s.34 was something about which 13 you had no knowledge at all by the sound of 14 it? 15 <b>A. No, I must have that very night, I must 16 have looked at it.</b> 17 Q. But you did not know about it before? 18 <b>A. No.</b> 19 Q. No. As I said, that is not a criticism. 20 <b>A. No, no, no, no, absolutely. Thank you. 21 Thank you, sir. But I didn't.</b> 22 MR SANTOS: Did you feel pressured to 23 invite Mr McGrail to retire because, if he did 24 not, you would be deemed to be in default by 25 Mr Pyle?</p> <p style="text-align: center;">Page 82</p>	<p>1 say, "Dear all, we are going to need to meet 2 urgently and face to face, please. Please let me 3 know if you are able to make a meeting at 9.30 4 this Thursday. I shall be needing all of you to 5 discuss a very sensitive matter and arrive at a 6 consensus on next steps." That is on the 18th 7 of May at 10.55. Why in your view was it 8 necessary to meet urgently? 9 <b>A. Because for me it became a very urgent 10 matter. I mean, I've been asked, why did you 11 call it an emergency meeting? I have no idea, 12 I can't explain. I called it an emergency 13 meeting. Also, because, fortunately or 14 unfortunately, I don't always get email 15 responses as quickly as I would like them to 16 get because people have their own jobs and 17 their own - so, I wanted to make it as 18 important sounding as possible.</b> 19 Q. There were four GPA members who were 20 not in attendance, Claire Pizzarello, Edgar 21 Lavarello Julio Alcantara and Rebecca 22 Figueras. Had they all told you in advance 23 that they would not be able to attend? 24 <b>A. No, but I wasn't surprised because of social 25 distancing and Covid and all that and it was</b></p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 quite normal for people to turn up, you know, 2 five minutes late or six minutes late, but not 3 necessarily. I think one of them, it might have 4 been Claire, said, "I can't make it." I think she 5 was worried about her elderly parents and 6 Covid. And the same goes for Mr Alcantara, I 7 think - not for his parents but he was worried 8 about infection.</p> <p>9 Q. Did you realise that the meeting would be 10 inquorate?</p> <p>11 A. It was the last thing on my mind, I must 12 admit. It really was the last thing on my mind.</p> <p>13 Q. Did you consider postponing the meeting 14 or finding another date when more members 15 could be present?</p> <p>16 A. No.</p> <p>17 Q. Did you consider whether the GPA should 18 conduct its own investigation into the matters 19 that had been raised with you before 20 commencing the process?</p> <p>21 A. No.</p> <p>22 Q. Why did you not think that the GPA 23 should look into the matters before exercising 24 its own decision?</p> <p>25 A. Possibly because I really hadn't - I couldn't</p> <p style="text-align: center;">Page 85</p>	<p>1 the matter involving Mr Levy would be an 2 important part of the deliberations?</p> <p>3 A. No, but it was certainly mentioned at the - I 4 did mention - I can't remember if I mentioned 5 him by name, I think I did, or simply said a 6 senior partner at Hassans phone is - you know, 7 he has got himself into trouble. I think I did 8 mention him by name.</p> <p>9 Q. If we can go to A323, which is your 10 statement, paragraph 16, you refer to the 11 emergency meeting on the 21st of May, and 12 just picking it up from the third line, "As s.6(1) 13 of the Act requires a quorum of six members 14 and only five were in attendance, the non- 15 attending members were consulted by 16 telephone on the same day, shortly after the 17 emergency meeting ended. They all agreed 18 with the decision taken and the reasons 19 therefore. A minute of the meeting, as 20 required by s.6(4) of the Act was not made 21 contemporaneously as members of the GPA 22 felt that their secretary might be compromised 23 as she was a personal friend of Mr McGrail's 24 secretary. A minute was made retrospectively 25 on the advice of TSM. This minute was</p> <p style="text-align: center;">Page 87</p>
<p>1 unpick my thought processes, but possibly 2 because I don't think we had the wherewithal 3 to actually examine this, and the only way of 4 doing it was to have representations from one 5 side and representations from another, and 6 even then I was thinking to myself: how do we 7 know who is saying the truth and who isn't? I 8 must be honest, that's what I thought. And we 9 don't have investigators, we don't have people 10 qualified for this. I mean, a lot of things were 11 going through my mind. Even though I said 12 we would discuss next steps, quite honestly I 13 have no idea what next steps at that stage 14 could possibly be.</p> <p>15 Q. If we go back two pages to 2444, there is 16 an exchange between you and Ms Pizzarello at 17 12.46 and you say there, "It may be best if you 18 don't participate. I need to explain." Why did 19 you think it was best that Ms Pizzarello should 20 not participate?</p> <p>21 A. I know she didn't come to the meeting. 22 Possibly because she was employed by 23 Hassans and I didn't want her involved in a 24 possible conflict.</p> <p>25 Q. Does that mean that you considered that</p> <p style="text-align: center;">Page 86</p>	<p>1 circulated to all members of GPA and 2 approved by them." Why was it not possible 3 for someone else to take a minute of that 4 meeting?</p> <p>5 A. I wasn't thinking clearly because in other 6 meetings we - people volunteer to take notes. 7 It just didn't happen and I really wasn't 8 thinking the way I should have been thinking 9 in terms of notetaking.</p> <p>10 Q. When you called up the non-attending 11 members to consult them, were you getting 12 them, were you asking for their votes or were 13 you asking them just, or were you informing 14 them of what had happened?</p> <p>15 A. I was informing them of what had 16 happened, the fact that I had been called by the 17 Governor and the Chief Minister and I said, 18 "Look, we've had a meeting, I've just realised 19 we're not quorate. What do you think about 20 this?" But I did go over the main points, but I 21 didn't take - which is why, even if I thought we 22 were quorate by doing that, it's clear that we 23 weren't because I've got no proof of what I 24 actually told them. I'm pretty certain of what I 25 told them, I'm pretty satisfied, but nobody</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 <b>actually said, "No, we can't do that." They</b>  2 <b>were just as surprised and shocked as I was.</b>  3 Q. So, are you saying that you realised at that  4 point that you were not quorate, at the time?  5 <b>A. At the end of the meeting I told everyone,</b>  6 <b>"I think I'm going to have to call the absent</b>  7 <b>members." The only one I couldn't reach on</b>  8 <b>the phone was Mr Lavarello, who I happened</b>  9 <b>to meet outside because we used to live in the</b>  10 <b>same area.</b>  11 Q. So, by the time that you sent the invitation  12 on the 22nd of May, were you pretty much  13 aware at that point that you had not had a  14 quorate meeting?  15 <b>A. No, not at that stage. I thought that getting</b>  16 <b>the okay over the phone was fine. Clearly, it</b>  17 <b>wasn't, but I really did think that it was fine.</b>  18 Q. If we can go to C4141 now, this is the  19 minute that was put together subsequently.  20 Just looking at paragraph 3, you say, "The  21 Chair explained to the members what had  22 transpired at the meeting with the Governor  23 and relayed the information as expressed to  24 him by both the Governor and Chief Minister.  25 He explained that both the Governor and Chief</p> <p style="text-align: center;">Page 89</p>	<p>1 <b>gave me the most information.</b>  2 Q. Because there you do make a reference to  3 the Commissioner saying, "They were trying  4 to interfere in an investigation."  5 <b>A. I put "they" in inverted commas because</b>  6 <b>that's what Mr McGrail intimated.</b>  7 Q. Or is "they" a reference to ...  8 <b>A. He said "they" - I'm assuming he's talking</b>  9 <b>to the Chief Minister, but later on I found out</b>  10 <b>that there had been allegedly more people</b>  11 <b>involved. I didn't for one minute think that he</b>  12 <b>was talking about the Governor, to tell you the</b>  13 <b>truth.</b>  14 Q. Was that the extent of the information that  15 you provided to the GPA as to Mr McGrail's  16 allegations, or did you provide more  17 information?  18 <b>A. We were honestly waiting for Mr McGrail</b>  19 <b>to provide his representation where we were</b>  20 <b>sure he would give us because, I mean, if you</b>  21 <b>look at the transcript of the recording that he</b>  22 <b>made, I'm at pains to say, "Please come to the</b>  23 <b>GPA and tell us everything. Don't just tell me,</b>  24 <b>tell everyone." And that was still - it still</b>  25 <b>hadn't dawned on me that the process was</b></p> <p style="text-align: center;">Page 91</p>
<p>1 Minister in no uncertain terms had expressed  2 that they had lost all confidence in the  3 Commissioner. The reasons for this are given  4 in the file note and this was read to all  5 present." When you refer to the file note, is  6 that the informal note prepared by the Chief  7 Minister that you referred to?  8 <b>A. That's right, plus I explained to them how</b>  9 <b>it all went and the way I was called and that I</b>  10 <b>didn't know what it was about and all that. But</b>  11 <b>I think that pretty much reflects what</b>  12 <b>happened. I mean, for us the main thing was</b>  13 <b>that they had both lost confidence in the</b>  14 <b>Commissioner.</b>  15 Q. If we then look at paragraph 4, "After the  16 Chair read out the file note and fully explained  17 what had been discussed, including the fact  18 that the Commissioner had claimed at a  19 previous meeting that they were trying to  20 interfere in an investigation in which allegedly  21 a senior partner in a law firm was allegedly  22 involved ..." Is this a reference to your  23 meeting with Mr McGrail on the 12th or 15th  24 of May?  25 <b>A. It has to be because it's the person who</b></p> <p style="text-align: center;">Page 90</p>	<p>1 <b>flawed, quite, or would be flawed, quite</b>  2 <b>honestly. I felt that I had the backing and:</b>  3 <b>look, this is what's going to happen, I'm going</b>  4 <b>to have to tell him what both the Chief</b>  5 <b>Minister and the Governor think about him,</b>  6 <b>which I really didn't know how I was going to</b>  7 <b>tell him.</b>  8 Q. How much did you tell them about the  9 Chief Minister's allegation that the  10 Commissioner had expressly misled him?  11 <b>A. I think I said Mr McGrail is convinced that</b>  12 <b>- the Chief Minister is convinced that</b>  13 <b>somehow Mr McGrail has lied to him. But I</b>  14 <b>can't remember if I said the Chief Minister or</b>  15 <b>the AG, quite frankly, because Mr McGrail</b>  16 <b>also mentioned - and it's just coming back to</b>  17 <b>me now - mentioned the AG, the Attorney</b>  18 <b>General.</b>  19 Q. Did you say what the lie was in relation to?  20 <b>A. I wasn't too sure myself what the lie was</b>  21 <b>about.</b>  22 Q. Did you link it to the same investigation  23 that Mr McGrail was complaining about?  24 <b>A. Possibly, yes.</b>  25 Q. And do you think you linked it to Mr</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 Levy?</p> <p>2 THE CHAIRMAN: You mentioned a lie, but</p> <p>3 he has not mentioned a lie, has he?</p> <p>4 MR SANTOS: I mentioned "misled" and Dr</p> <p>5 Britto ...</p> <p>6 <b>A. No, misled. Sorry. I did say "misled".</b></p> <p>7 THE CHAIRMAN: Yes, "Misled" is the word</p> <p>8 in the Chief Minister's note.</p> <p>9 <b>A. Well, then I said "lie" without meaning to.</b></p> <p>10 MR SANTOS: Do you think you said "lie" at</p> <p>11 the meeting rather than "misled"?</p> <p>12 <b>A. Quite possibly. Quite possibly. I really</b></p> <p>13 <b>can't remember.</b></p> <p>14 Q. And would that be because of something</p> <p>15 that the Chief Minister said at the time or</p> <p>16 because of the way that you interpreted the</p> <p>17 words, "Expressly misled"?</p> <p>18 <b>A. No, the thing is that at the meeting both the</b></p> <p>19 <b>Governor and the Chief Minister were saying,</b></p> <p>20 <b>"He has lied to us" but, I mean, I don't like</b></p> <p>21 <b>using the word "lie" myself, but I really can't</b></p> <p>22 <b>recall if I said "lie" or "misled", but it was</b></p> <p>23 <b>clear they were both convinced that they had</b></p> <p>24 <b>been misled, and you mislead people possibly</b></p> <p>25 <b>by lying. I mean, I'm not sure myself.</b></p> <p style="text-align: center;">Page 93</p>	<p>1 <b>the Commissioner has to work with both.</b></p> <p>2 Q. Is there not a danger that, if by purely</p> <p>3 saying that they had lost confidence in Mr</p> <p>4 McGrail, the Chief Minister and the Governor,</p> <p>5 if by them saying that you simply took it as a</p> <p>6 given that you needed to invite Mr McGrail to</p> <p>7 retire, is there not a danger that you were</p> <p>8 effectively handing the decision over to them?</p> <p>9 <b>A. Yes, I accept that now. It wasn't apparent</b></p> <p>10 <b>to me then.</b></p> <p>11 Q. Particularly if the GPA was not going to</p> <p>12 investigate the reasons that they gave for that</p> <p>13 loss of confidence?</p> <p>14 <b>A. Sorry, could you repeat that?</b></p> <p>15 Q. You have said earlier that you did not</p> <p>16 consider that you were able to investigate the</p> <p>17 matters that were being raised by the Chief</p> <p>18 Minister and the Governor in support of that</p> <p>19 loss of confidence. So, if you were not going</p> <p>20 to investigate their reasons and if you were</p> <p>21 going to conclude on the basis of their stated</p> <p>22 loss of confidence that Mr McGrail could not</p> <p>23 continue, then effectively you were handing</p> <p>24 over the decision to them?</p> <p>25 <b>A. More than to them - to the Governor, I</b></p> <p style="text-align: center;">Page 95</p>
<p>1 Q. Do you think that at the meeting it was</p> <p>2 sufficiently clear that Mr McGrail's</p> <p>3 allegations, the allegation of misleading or</p> <p>4 lying and the involvement of James Levy all</p> <p>5 revolved around the same thing, they were all</p> <p>6 linked?</p> <p>7 <b>A. Not at that time. I didn't join the dots. I'm</b></p> <p>8 <b>not saying whether I should have or whether I</b></p> <p>9 <b>shouldn't. I really didn't.</b></p> <p>10 Q. The note then states, "It was felt that the</p> <p>11 Commissioner would find it very difficult to</p> <p>12 continue to work with Government and the</p> <p>13 Governor given their lack of confidence in him</p> <p>14 and for the reasons expressed to the Chair."</p> <p>15 Did you discuss in this meeting the fine</p> <p>16 criteria in s.34 of the Police Act -</p> <p>17 effectiveness, efficiency, probity, integrity,</p> <p>18 independence, were those raised?</p> <p>19 <b>A. Not that I can recall. All we were</b></p> <p>20 <b>concerned about or I was concerned about was</b></p> <p>21 <b>the fact that, if both main arms of the</b></p> <p>22 <b>Government, the top people in the</b></p> <p>23 <b>Government, have lost faith in the way the</b></p> <p>24 <b>Commissioner functions, how could he</b></p> <p>25 <b>possibly function? Any of the two - I mean,</b></p> <p style="text-align: center;">Page 94</p>	<p>1 <b>think, because he had the, he told me, he had</b></p> <p>2 <b>the power to actually remove the</b></p> <p>3 <b>Commissioner, which was quite alarming. But</b></p> <p>4 <b>I can say that now. It certainly wasn't what I</b></p> <p>5 <b>was thinking back then.</b></p> <p>6 Q. You just said that he said he had the power</p> <p>7 to remove the Commissioner, which was quite</p> <p>8 alarming. Did you see it as if you were, in</p> <p>9 effect, helping Mr McGrail by giving him this</p> <p>10 opportunity to retire rather than be forced to</p> <p>11 resign?</p> <p>12 <b>A. I felt that Mr McGrail deserved the dignity</b></p> <p>13 <b>of - if he did decide to leave, of doing so on his</b></p> <p>14 <b>own terms. And I think that's reflected in the</b></p> <p>15 <b>recording, throughout the recording, plus at</b></p> <p>16 <b>some point - I should remember where - but at</b></p> <p>17 <b>some point, when deciding should we call Mr</b></p> <p>18 <b>McGrail here? I said, "No, look, I'd better talk</b></p> <p>19 <b>to him on my own" because I didn't feel it was</b></p> <p>20 <b>right, you know, for him to meet the whole</b></p> <p>21 <b>board and say, "Look, we are considering</b></p> <p>22 <b>asking you to leave." I'd rather him think of</b></p> <p>23 <b>representations to make, which we did get, and</b></p> <p>24 <b>come to us and meet us, hopefully in person.</b></p> <p>25 <b>Naively or otherwise, I certainly thought that</b></p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)



1 **at the end of the week, at some point, he would**  
 2 **come with a lawyer or with somebody saying,**  
 3 **"Look, this can't happen because of this" or to**  
 4 **give explanations and possibly even explain**  
 5 **why these people would think that, the two**  
 6 **would think that he had lied to them. That's as**  
 7 **much as I can say really.**  
 8 Q. Then the note continues, "The GPA felt  
 9 that the maritime incident seemed to be far  
 10 more serious in its repercussions overall than  
 11 we had previously been alive to and felt that  
 12 this was the major factor in our decision."  
 13 What aspect of this incident was more serious  
 14 than you had previously been alive to?  
 15 **A. The fact that it happened outside Gibraltar**  
 16 **waters and the Governor was adamant and**  
 17 **repeated it over and over again, the fact that**  
 18 **Mr McGrail wasn't transparent with him as to**  
 19 **when or where it happened exactly. That for**  
 20 **us and, yes, we believed it ...**  
 21 Q. Was - sorry, I cut across you.  
 22 **A. Sorry. No, no, that's the main thing, that's**  
 23 **what we meant. We felt that the report was**  
 24 **ultimately fixable by putting in a lot of hard**  
 25 **work, but this had no possible solution, plus**

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1 **we were worried as well about Gibraltar's**  
 2 **reputation, the incursions and I think at that**  
 3 **time they were talking about starting, if it**  
 4 **hadn't started already, Treaty negotiations, and**  
 5 **for us that was it. Plus we felt maybe we**  
 6 **should have been, we should have done**  
 7 **something more about that.**  
 8 Q. Had you previously discussed with Mr  
 9 McGrail the concerns about the deaths, AIS,  
 10 the fact that the collision took place in Spanish  
 11 waters? Had you had the opportunity to  
 12 discuss that with him?  
 13 **A. No, because we were waiting for the**  
 14 **investigation. What I didn't know was: would**  
 15 **the Governor have inside information or**  
 16 **would Mr McGrail have more information that**  
 17 **he was willing to give? But we certainly didn't**  
 18 **have all the information about what exactly**  
 19 **had happened.**  
 20 Q. And then at 5 the note says, "After  
 21 discussion and based on what had been  
 22 expressed by the Governor and Chief Minister  
 23 and the contents of the file notes, it was felt  
 24 that the best course of action would be to  
 25 activate s.34 of the Act and invite the

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1 Commissioner to retire but always affording  
 2 him the opportunity to make representations to  
 3 GPA so we could arrive at a firm and final  
 4 decision and able to make recommendations to  
 5 the Governor. The GPA felt that this recourse  
 6 was better and gentler than the Governor  
 7 potentially activating s.13 which allows him to  
 8 seek his resignation." At that stage did you  
 9 consider that there was any prospect of the  
 10 GPA changing its views once it received Mr  
 11 McGrail's representations?  
 12 **A. Yes, I did, and Mr McGrail asked me,**  
 13 **"What would you do if you believe me and not**  
 14 **them?" and I think at some point I said, "If I**  
 15 **can get anything done I'll stand down", that's**  
 16 **the only thing I could do, and possibly other**  
 17 **members would stand down and then create**  
 18 **some sort of hullabaloo. But I wasn't sure if - I**  
 19 **mean, it says the Governor potentially**  
 20 **activating s.13, which allows him to seek his**  
 21 **resignation - I think it's more like force his**  
 22 **resignation, which I, for better or worse, I**  
 23 **really didn't - I wanted to avoid that by all**  
 24 **means.**  
 25 Q. How long do you recall the meeting

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1 lasting?  
 2 **A. Definitely more than an hour and a half but**  
 3 **I didn't - I should have put the time. I didn't**  
 4 **put how long it took. About an hour and a**  
 5 **half, something along those lines.**  
 6 Q. If you go to A324 now, please, which is  
 7 your witness statement, at paragraph 25, you  
 8 say, "I would state that the decision by the  
 9 GPA to exercise its powers under s.34 of the  
 10 Act was not based on or influenced by Mr  
 11 McGrail's conduct of the criminal inquiry in  
 12 Operation Delhi as alleged by Charles Gomez  
 13 & Co. in the 29th of May 2020 letter. The  
 14 reasons for the GPA's decision were those set  
 15 out at paragraph 18 in the minutes of the  
 16 emergency meeting and in the second letter."  
 17 Can you explain as clearly as possible the  
 18 GPA's reasons for initiating the s.34 process?  
 19 **A. The primary reason was because we were**  
 20 **being told that both the Governor and the**  
 21 **Chief Minister had lost confidence in Mr**  
 22 **McGrail, and the reason that moved us more**  
 23 **was the fact that the Governor was insisting**  
 24 **that he hadn't been told the truth about the**  
 25 **maritime incident, which was for us, if I'm**

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<p>1 <b>honest, more important than the report, even</b>  2 <b>though the report was quite bad. But I</b>  3 <b>maintain that - I mean, the reason we decided,</b>  4 <b>it had nothing to do with - we certainly didn't</b>  5 <b>have enough information about Operation</b>  6 <b>Delhi. I didn't even know it was called</b>  7 <b>Operation Delhi until Mr McGrail had told</b>  8 <b>me. But that's as far as I can say on that.</b>  9 Q. But the notes, the informal notes that you  10 had prepared had referred to the Chief  11 Minister being expressly misled and had  12 referred to that being probably the most  13 important basis for the Chief Minister losing  14 confidence. So, if you were going to the  15 meeting and putting the Chief Minister's  16 confidence on the table, it was on the strength  17 of what the Chief Minister had reported to  18 you, is that not correct?  19 <b>A. No, no, not quite. One of the things that</b>  20 <b>we were thinking was, had this only been a</b>  21 <b>politician telling us, or a Chief Minister telling</b>  22 <b>us, perhaps things would have been different,</b>  23 <b>but this was the case of both, and, quite</b>  24 <b>frankly, I think we listened more to the</b>  25 <b>Governor's point of view than to the Chief</b></p> <p style="text-align: center;">Page 101</p>	<p>1 <b>A. No, I didn't. I took his word for it, sir.</b>  2 Q. Did you know, for example, that the  3 Governor might have been told that very day,  4 the 8th of March, that the incident happened in  5 Spain?  6 <b>A. No, I didn't know, and nor did he say, "Oh,</b>  7 <b>by the way, now I know everything." He said,</b>  8 <b>"I haven't been told the truth" and, sir, I did</b>  9 <b>take his word for it.</b>  10 Q. Yes, precisely, you took his word for it.  11 <b>A. I did.</b>  12 MR SANTOS: Do you agree that under s.48  13 of the Constitution the GPA has an obligation  14 to carry out its functions independently?  15 <b>A. Yes.</b>  16 Q. Do you think it can be said that the GPA  17 was acting independently on this occasion?  18 <b>A. 50/50. We weren't, now I realise and as</b>  19 <b>soon as I discuss this with Mr Neish, but then</b>  20 <b>we quickly regained our independence by</b>  21 <b>refusing to continue with the process because,</b>  22 <b>apart from the fact that it was flawed, we felt</b>  23 <b>that we couldn't continue because of the flaw,</b>  24 <b>which possibly included that lack of</b>  25 <b>independence that at the time I didn't even</b></p> <p style="text-align: center;">Page 103</p>
<p>1 <b>Minister's point of view. I mean, that is</b>  2 <b>certainly what most of us agreed with, which</b>  3 <b>is why the maritime incident for us was the</b>  4 <b>most important.</b>  5 Q. I accept what you say about that, but in  6 terms of the Chief Minister - you refer to the  7 fact that both of them had lost confidence and  8 the Chief Minister was saying that the main  9 reason for his loss of confidence was being  10 misled or lied to in relation to that. So, would  11 you not accept that it did play some role?  12 <b>A. I don't think so. I think the main area was</b>  13 <b>of the Chief Minister, I think the main area of</b>  14 <b>our considerations was the Governor, who</b>  15 <b>after all had the power.</b>  16 THE CHAIRMAN: You have said several  17 times that you understood that the Governor  18 was saying that he had not been told the truth  19 about the maritime incident, but in what  20 respect?  21 <b>A. In confirming that everything had</b>  22 <b>happened, that's my recollection, in Spain</b>  23 <b>rather than here.</b>  24 Q. But did you ask what he had been told and  25 when he had been told it?</p> <p style="text-align: center;">Page 102</p>	<p>1 <b>think about. I'm being quite honest, I really</b>  2 <b>didn't think about that part.</b>  3 Q. If we go to B1436, there is an exchange  4 between you and the Chief Minister, asking to  5 see him at 4 p.m. This is towards the bottom  6 of the page, 21st of May 2020, 11.58: "Could I  7 possibly see you this afternoon ... see you at 4,  8 or around that time?" "Yes, sure, I'll see you  9 then." "Thanks, see you at 4" and then there is  10 a message that attaches media which we do  11 not have, and the Chief Minister replies, "Hi.  12 Yes, that is what you will in effect be doing.  13 You've come back to us to seek our consent  14 after the representations have been received. I  15 will write the sequencing down for you as I  16 see it if you wish. I'm just going to finish a  17 note first."  18 <b>A. I asked for advice on the wording of the</b>  19 <b>letter. I mean, I couldn't recall - I thought it</b>  20 <b>could even have been my imagination because</b>  21 <b>I don't have these, but I must have asked him</b>  22 <b>for advice on the wording because, as I said, I</b>  23 <b>had never done anything like this before, to tell</b>  24 <b>you the truth; to send somebody a letter</b>  25 <b>saying, "Look, we want you to consider</b></p> <p style="text-align: center;">Page 104</p>

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<p>1 <b>retiring."</b></p> <p>2 Q. Did you discuss the sequencing of the</p> <p>3 process?</p> <p>4 <b>A. No. No, because that was pretty clear, that</b></p> <p>5 <b>we - we didn't need, the GPA didn't need to go</b></p> <p>6 <b>back to the Governor to seek permission</b></p> <p>7 <b>because we'd already been told, "Look, we</b></p> <p>8 <b>want him to go." So, more or less they said</b></p> <p>9 <b>that was, the Governor said that permission,</b></p> <p>10 <b>you can take it for granted, from what I recall.</b></p> <p>11 Q. If you look at C4315, we have the letter,</p> <p>12 the first letter of the 22nd of May. Did the</p> <p>13 members of the GPA see this letter before you</p> <p>14 gave it to Mr McGrail?</p> <p>15 <b>A. No. No, I think I showed it to them once I</b></p> <p>16 <b>had sent it.</b></p> <p>17 Q. The Chief Minister did see the letter,</p> <p>18 though, before you sent it?</p> <p>19 <b>A. Yes, he was the only lawyer I could ask -</b></p> <p>20 <b>wrongly, I get it now, but ...</b></p> <p>21 Q. If we look at the second paragraph, it says,</p> <p>22 "Given the above, the Authority invites you to</p> <p>23 retire in the interests of policing in Gibraltar."</p> <p>24 You then in the following paragraph refer to</p> <p>25 the opportunity to make representations. Do</p> <p style="text-align: center;">Page 105</p>	<p>1 Authority and there tell you what I have to, but</p> <p>2 I said this is best face to face, one person</p> <p>3 alone, because the truth is I have never done</p> <p>4 anything like this in my life." What did you</p> <p>5 mean by, "I have never done anything like this</p> <p>6 in my life"?</p> <p>7 <b>A. Give somebody the news that, "Look,</b></p> <p>8 <b>we're considering asking you to leave your</b></p> <p>9 <b>job", ever. Never, ever. Not personally,</b></p> <p>10 <b>anyway.</b></p> <p>11 Q. At 355 - in your previous roles</p> <p>12 professionally, had you had to do something</p> <p>13 like that?</p> <p>14 <b>A. (No audible response)</b></p> <p>15 Q. 355, if you look at page 3 of that transcript,</p> <p>16 about a third of the way down, the</p> <p>17 Commissioner of Police says, "But what is the</p> <p>18 position of the Authority? Is the Authority</p> <p>19 accepting that? Have you had any concerns</p> <p>20 about me?" and you say, "No, no, wait, we</p> <p>21 would have told you." Does this mean that at</p> <p>22 the time you as an Authority had no concerns</p> <p>23 about Mr McGrail prior to the Chief Minister</p> <p>24 approaching you?</p> <p>25 <b>A. I was at pains to explain that it wasn't us,</b></p> <p style="text-align: center;">Page 107</p>
<p>1 you accept, in retrospect, that Mr McGrail</p> <p>2 should have been asked to provide</p> <p>3 representations before the GPA invited him to</p> <p>4 retire?</p> <p>5 <b>A. Clearly, now I do, even though when I</b></p> <p>6 <b>gave him the letter and I had the long</b></p> <p>7 <b>conversation with him, I was convinced that</b></p> <p>8 <b>that is what I was doing. It is only until I had</b></p> <p>9 <b>legal counsel that we were told it should have</b></p> <p>10 <b>been the other way round, and I really don't</b></p> <p>11 <b>understand how I didn't see that.</b></p> <p>12 Q. If we can go to B353 now, please, this is a</p> <p>13 transcript of the meeting on the 22nd of May</p> <p>14 with Mr McGrail, and the first question is: did</p> <p>15 you know that Mr McGrail was recording the</p> <p>16 meeting?</p> <p>17 <b>A. No, no, not at all.</b></p> <p>18 Q. What do you think about the fact that the</p> <p>19 meeting was recorded?</p> <p>20 <b>A. Mixed feelings. I think my first reaction</b></p> <p>21 <b>was one of disappointment, but I wouldn't like</b></p> <p>22 <b>to judge, if I'm honest, but I remember feeling</b></p> <p>23 <b>disappointed.</b></p> <p>24 Q. You start the meeting, at 353, saying,</p> <p>25 "Basically, I'm supposed to call you to the</p> <p style="text-align: center;">Page 106</p>	<p>1 <b>that it was the two main arms of, the principal</b></p> <p>2 <b>arms of Government expressing their concerns</b></p> <p>3 <b>and losing confidence.</b></p> <p>4 Q. When you were discussing deliberating as</p> <p>5 an Authority, did you take into account the fact</p> <p>6 that you had no concerns?</p> <p>7 <b>A. We all felt that we were surprised, frankly,</b></p> <p>8 <b>but we felt, and everybody I asked felt that it</b></p> <p>9 <b>was impossible for somebody to work in a</b></p> <p>10 <b>high profile job with this loss of confidence on</b></p> <p>11 <b>both sides, in particular with the Governor.</b></p> <p>12 Q. Going over to 356, just under 12.14 ...</p> <p>13 MR WAGNER: I will say this, and it is a very</p> <p>14 small thing, but Mr Santos asked Mr Britto</p> <p>15 whether he had had experience of this kind of</p> <p>16 thing, and I think he nodded but he did not say</p> <p>17 anything, unless I missed it, and I just wonder</p> <p>18 whether you might ...</p> <p>19 MR SANTOS: I think the answer was No, he</p> <p>20 had not.</p> <p>21 <b>A. No.</b></p> <p>22 MR WAGNER: It is just for the transcript.</p> <p>23 MR SANTOS: He said, he spoke, "No, I</p> <p>24 didn't have experience of this", I believe. 356,</p> <p>25 between 12.14 and 12.56, you say, "Yes, yes.</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 No, no, no, no, that, you have to tell me about 2 the incident at sea, that this explanation, the 3 reason why the preference is to alert you to a 4 s.34 is because there is provision in the second 5 part, 1/2. That's it, it's very simple. 1/2, and 2 6 says the Commissioner may make 7 representation to the Authority and, because 8 the Authority has to seek consent from - it's 9 been done the wrong way round. In other 10 words, they told us, 'We are going to trigger 11 this.' There's two ways of doing it. In other 12 words, from the Authority's perspective, we 13 haven't taken a firm view, but this ..." And he 14 says, "Have I lost my job?" You say, "Right 15 now, no. Right now, no." He says, "So, 16 what's the situation, then?" You say, "The 17 letter you've invited, we have to invite, we 18 have to invited you to resign, but if you don't 19 feel that you can ..." And he says, "But, what, 20 you're giving me seven days to make the 21 decision?" You say, "To make, no, to make 22 representations. Look ..." He says, "Yes, but 23 what effect does that letter have? Do I have to 24 hand in everything here and I've got to go, or, I 25 don't know ..." And you say, "No, no, no,</p> <p style="text-align: center;">Page 109</p>	<p>1 <b>not mistaken, I was also trying to see if by the</b> 2 <b>time Mr McGrail came to see us we could also</b> 3 <b>have a lawyer representing us, but it didn't</b> 4 <b>happen because he didn't come.</b> 5 Q. If we go to B360, about a third from the 6 bottom, you say, "Yes, yes, there's two main 7 reasons but I took my personal notes, the thing 8 is I haven't brought them with me, but I took 9 my own personal notes at the meeting where 10 they gave me the reasons. You can take it 11 from me, but you don't need to ..." and then 12 you say, "I will send them to you now." What 13 notes are you referring to there? Are you 14 referring to your handwritten notes or are you 15 referring to the informal note give to you by 16 the Chief Minister? 17 <b>A. I must admit that I didn't have notes but I</b> 18 <b>told him - and my first thought is, I'd better ask</b> 19 <b>for notes from somebody who is either the</b> 20 <b>Governor or the Chief Minister, who I am sure</b> 21 <b>is better at these things. I started taking notes</b> 22 <b>but, I mean, I think it was a couple of lines and</b> 23 <b>I gave up because I felt a bit overwhelmed -</b> 24 <b>well, rather overwhelmed.</b> 25 Q. Over the page, 361, towards the bottom,</p> <p style="text-align: center;">Page 111</p>
<p>1 you're not suspended or anything. You now 2 have to, it's an invitation, it's an invitation. I 3 think the other way would be, you would lose 4 your job if the Governor ..." At that stage was 5 your understanding that this was an invitation 6 which Mr McGrail could decline? 7 <b>A. Absolutely. I know it's not a legal term,</b> 8 <b>but that was my interpretation, that, "We're</b> 9 <b>inviting you to retire", not resign - please,</b> 10 <b>that's very important, that I make that point.</b> 11 Q. Yes, apologies, "Retire". 12 <b>A. No, no, but I also make that mistake.</b> 13 <b>"We're inviting you" and a invitation can be</b> 14 <b>turned down, but I'm not a legal expert,</b> 15 <b>clearly.</b> 16 Q. It was later said in Gomez &amp; Co.'s letter to 17 you that this was not an invitation but an 18 instruction to retire. Do you accept that? In 19 effect? 20 <b>A. What Mr Gomez - we took that advice and</b> 21 <b>we took that to be Mr McGrail's</b> 22 <b>representations, and there were a lot of</b> 23 <b>representations there which I felt I needed</b> 24 <b>legal advice on how to deal with that because I</b> 25 <b>was still expecting him to come. And if I'm</b></p> <p style="text-align: center;">Page 110</p>	<p>1 Mr McGrail says, "This has all been triggered 2 off from the impromptu meeting that I was 3 called to in the Chief Minister's chamber with 4 the AG. That is where it all stems from. 5 There's no doubt at all, at all, at all that this is 6 where this is stemming from. The fact is that 7 he has not been in agreement with the way we 8 have been handling the case involving Haim 9 Levy. I was threatened there and then and I 10 was told that he was going to call up; in other 11 words, there was like total interference with 12 the operational running. That is against the 13 law itself. Look, now this is how the issues ..." and then you respond to him. Were you surprised to hear that explanation from Mr McGrail? 14 <b>A. He gave me much more detail there about</b> 15 <b>what he felt the issues were, which is why I</b> 16 <b>said, at some point I said, "Look, tell us, tell all</b> 17 <b>of us, not just me." I felt overwhelmed by</b> 18 <b>that. But, yes, I was surprised. Not - shocked,</b> 19 <b>I think.</b> 20 Q. If we go to 363, second from the bottom, 21 Mr McGrail says, "No, no, but I say, I'm 22 telling you because I'm letting off a bit of 23 24 25</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 steam. I'm informed that he was aware of all 2 that is alleged. It is alleged that the ..." He is 3 referring here to the Chief Minister. Was this 4 the first time that you heard about the Chief 5 Minister allegedly being involved in the events 6 that were under investigation? 7 <b>A. I suspect it was and it was also the first 8 time I'd heard about those two surnames there, 9 Cornelio and Perez, if I'm honest.</b> 10 Q. Within the realms of this exchange? 11 <b>A. Yes.</b> 12 Q. Sorry, the reason why I clarify that is that 13 by that point they had been arrested. Then if 14 we go to 367, which is the very end of the 15 meeting, and just picking it up from about 16 seven or eight boxes up, you say, "No, no, 17 what was mentioned is the way you handled 18 the case, that you had lied, you had lied 19 basically to the Chief Minister." "On what?" 20 "Or omitted the truth and that's ..." "On what?" 21 Wait, wait, wait. On what?" And you say, 22 "I'll find out. Or that you kept the truth from 23 them or that you sort of - why would they lose 24 faith? Or "faith" is not the word - confidence 25 in you." "I lied in what? In what? The</p> <p style="text-align: center;">Page 113</p>	<p>1 <b>No, I didn't.</b> 2 Q. If we go to B1437, these are further 3 exchanges between you and the Chief Minister 4 and it looks like immediately after the meeting 5 you messaged the Chief Minister about the 6 letter which Mr McGrail had requested, setting 7 out the reasons, and you agreed to meet at 2 8 p.m. Did you manage to meet at 2 p.m. with 9 the Chief Minister on that day? 10 <b>A. I think I did, but the main thing I asked 11 him was, "I think I'm going to need a lawyer, 12 especially if Mr McGrail is going to come with 13 legal representation." I think I did go but I 14 really don't have any record of that meeting. I 15 think I just needed to talk to someone, quite 16 frankly.</b> 17 Q. So, you believe that in that meeting you 18 asked for legal representation? 19 <b>A. I think I said, "I'm going to need/the GPA 20 is going to need ..." - I didn't quite say what 21 somebody was doing, but legal representation. 22 Legal representation.</b> 23 Q. And what was the reaction to that? 24 <b>A. He didn't say No. But I can't actually 25 remember if he said, "I'll get you someone" or,</b></p> <p style="text-align: center;">Page 115</p>
<p>1 collision or in that particular case?" "In 2 everything, in everything." Why did you not 3 explain the details of the alleged lie to Mr 4 McGrail at that point? 5 <b>A. Because I don't think I was sure myself 6 and, quite frankly, I wanted to leave. It was 7 more than uncomfortable and, honestly, I felt, 8 I felt very bad for Mr McGrail and I really 9 wanted to just - I'm telling the truth - leave.</b> 10 Q. Did you manage to find out? You said, 11 "I'll find out." Did you manage to find out 12 what the lie was? 13 <b>A. I certainly found out when Mr Gomez 14 wrote to us.</b> 15 Q. But did you seek the lie from the Chief 16 Minister? 17 <b>A. No, but I think from Mr Pyle, which is 18 what, quite frankly, I was interested in because 19 that is what really affected us.</b> 20 Q. Sorry to interrupt, but you say he had lied 21 basically to the Chief Minister, and then you 22 say, when he asked you on what, you say, "I'll 23 find out." 24 <b>A. No, I didn't find out what about, but I 25 expected Mr McGrail to tell us at some point.</b></p> <p style="text-align: center;">Page 114</p>	<p>1 <b>"You go and get someone."</b> 2 Q. When did you get someone? 3 <b>A. I think the call to Mr Neish came from Mr 4 Yamas, from Michael Yamas, asking Mr 5 Neish if he wanted to - I'm not sure if this is 6 privileged information. I wouldn't know. But 7 I think ...</b> 8 Q. I do not think the mere fact of the call will 9 be ... 10 <b>A. I can say that? So, he must have told him, 11 "Can you look for somebody for the GPA?"</b> 12 Q. And when did that take place? 13 <b>A. I'm pretty certain at some point during the 14 meeting or, if not, I called him. I really can't 15 remember. I just remember being extremely 16 relieved when we got Mr Neish.</b> 17 Q. Mr McGrail had told you his belief that 18 Operation Delhi was the real reason for the 19 Chief Minister's actions. Did you ask the 20 Chief Minister any follow up questions about 21 it? 22 <b>A. No, but I said what Mr McGrail had said, 23 "I think he's saying it's to do with Operation 24 ..." - I didn't call it Operation Delhi, but, " ... 25 with the telephone in the safe." But I can't</b></p> <p style="text-align: center;">Page 116</p>

<p>1 <b>remember what he said. I don't think he said,</b>  2 <b>"Yes, that's why." In fact, I am pretty certain</b>  3 <b>because, if I'm honest, it would have been the</b>  4 <b>first thing I would have told Mr Neish.</b>  5 <b>(12.42)</b>  6 Q. Why did you involve the Chief Minister  7 in drafting this second letter to Mr McGrail?  8 <b>A. Because I wanted to make sure that I was</b>  9 <b>conveying what both the Governor and the</b>  10 <b>Chief Minister were telling me because I was</b>  11 <b>at pains to tell Mr McGrail that this is not the</b>  12 <b>GPA, this is them losing confidence and</b>  13 <b>these are the reasons. And to tell you the</b>  14 <b>truth, it was quite traumatic and I really</b>  15 <b>didn't, I didn't know where to turn to.</b>  16 Q. Do you think it was appropriate and  17 consistent with the GPA maintaining  18 independence for the Chief Minister to be  19 involved in the drafting?  20 <b>A. I do now.</b>  21 Q. You do?  22 <b>A. Now. I didn't think even think about --</b>  23 Q. You think it was consistent with  24 independence or it was not consistent with --  25 <b>A. No, no, that it wasn't. But I feel I should</b></p> <p style="text-align: center;">Page 117</p>	<p>1 <b>don't know many. But with hindsight clearly</b>  2 <b>I should have done that.</b>  3 Q. If we go to the letter, it is at C4282, we  4 can see here that there are highlighted parts  5 which are the parts which the Chief Minister  6 added to the letter. Is that correct?  7 <b>A. I don't have the original, so I only really</b>  8 <b>found out which bits were mine and which</b>  9 <b>bits were his here. Because I think I must</b>  10 <b>have overwritten my version. But I've got no</b>  11 <b>reason to doubt that that's right, that's correct.</b>  12 Q. I just want to look at the second  13 highlighted paragraph, which says:  14 "Additionally the Authority itself has agreed  15 with the matters raised by the Governor and  16 the Chief Minister and have taken the view  17 that your position is untenable as  18 Commissioner, given that you have lost the  19 confidence of both the Governor and the  20 Chief Minister."  21 When it says that the Authority itself has  22 agreed with the matters raised by the  23 Governor and the Chief Minister, is that  24 actually correct given that you say that you  25 had not had the chance to investigate the</p> <p style="text-align: center;">Page 119</p>
<p>1 <b>point out that not at the moment, at the time.</b>  2 <b>I do now.</b>  3 Q. Yes. Did you have any concerns about  4 letting the Chief Minister be involved given  5 his links to Mr Levy?  6 <b>A. I wasn't thinking along those lines at all,</b>  7 <b>at all.</b>  8 Q. Did you think about the GPA reflecting  9 its own reasons in the letter given that it had  10 already met by this point?  11 <b>A. It didn't cross my mind. Perhaps with</b>  12 <b>hindsight that would have been the proper</b>  13 <b>way.</b>  14 Q. Did you consider seeking help from  15 a lawyer to draft the letter? Did you consider  16 waiting until you had help from a lawyer to  17 draft the letter?  18 <b>A. I'm just trying to remember if I thought</b>  19 <b>that, if that went through my head. I don't</b>  20 <b>think it did. I don't think it did.</b>  21 Q. To be fair to you, you had proposed  22 a lawyer at this stage, but it seems that it did  23 not materialise until some time after.  24 <b>A. That's my recollection, but I don't think I</b>  25 <b>thought, "I'm going to phone up a lawyer." I</b></p> <p style="text-align: center;">Page 118</p>	<p>1 matters that had been raised by them?  2 <b>A. My interpretation of that is that we had</b>  3 <b>agreed that the position was untenable, not</b>  4 <b>necessarily that we knew the insides and</b>  5 <b>outsides of all the reasons, but I think it's the</b>  6 <b>primary motivator was that the position is</b>  7 <b>untenable because they had both lost</b>  8 <b>confidence.</b>  9 Q. You see, the wording is actually, it says:  10 "Additionally the Authority itself has agreed  11 with the matters raised by the Governor and  12 the Chief Minister."  13 That suggests rather that you agree with the  14 substance of what is being said by them.  15 <b>A. I didn't see that then. Well, I saw it, but I</b>  16 <b>didn't understand what that --</b>  17 Q. Let me ask you a different question. Was  18 it the Authority's position at the time that it  19 agreed with the matters raised by the  20 Governor and the Chief Minister, as far as  21 you were concerned?  22 <b>A. As far as I was concerned, yes, but it's</b>  23 <b>difficult now for it to make sense, if you see</b>  24 <b>what I mean, now that we have reached this</b>  25 <b>stage of the proceedings. It could even be</b></p> <p style="text-align: center;">Page 120</p>

30 (Pages 117 to 120)

<p>1 <b>that I just sent the letter without ... trusting</b>  2 <b>basically, without actually going into it. But</b>  3 <b>what I interpreted was that what that meant</b>  4 <b>was that Authority had agreed that both had</b>  5 <b>lost complete confidence in Mr McGrail.</b>  6 Q. Would you agree that some of these  7 amendments that are highlighted in yellow  8 were quite substantive changes to the letter,  9 introducing new material, introducing detail  10 that went beyond what was discussed within  11 the Authority's own section 34 process?  12 (Pause).  13 <b>A. Yes.</b>  14 Q. Did you think about whether to accept  15 these changes?  16 <b>A. I obviously accepted them because I sent</b>  17 <b>the letter.</b>  18 Q. Did you have any concerns about  19 accepting them?  20 <b>A. Now I do.</b>  21 Q. No, no, at the time.  22 <b>A. Not, not, not at the time because I don't</b>  23 <b>think I was thinking very clearly.</b>  24 Q. Did you discuss these amendments with  25 anyone else at the GPA?</p> <p style="text-align: center;">Page 121</p>	<p>1 This is in reference to the previous page,  2 probity and integrity, and that the Governor  3 and the Chief Minister felt that their dealings  4 with you had left them with a sense that you  5 were lacking in both probity and integrity.  6 Were you informed that the Attorney General  7 had the same feelings? Were you aware of  8 the Attorney --  9 <b>A. It could well be that at the meeting I was</b>  10 <b>told it's not just me, it is the AG as well, I'm</b>  11 <b>not sure. But remember that Mr McGrail</b>  12 <b>also mentioned that.</b>  13 Q. Yes.  14 <b>A. I took it at face value.</b>  15 Q. There is no explicit reference in the letter  16 to Operation Delhi, to Mr Levy or to the  17 criminal investigation at all, other than that  18 bit that I have just read out to you. Given  19 that the Chief Minister had mentioned that  20 investigation and given that the informal note  21 said that it was the main reason for his loss of  22 confidence, why did this letter not refer to  23 that explicitly?  24 <b>A. I really can't answer that. I think it's to do</b>  25 <b>with the fact that when I read this, this for me</b></p> <p style="text-align: center;">Page 123</p>
<p>1 <b>A. The amendments? No, I don't think we</b>  2 <b>had time and I didn't want to circulate this</b>  3 <b>via email for it to wait a long time.</b>  4 Q. If we look at 4284 ... well, just to pick  5 you up, why did you think that you did not  6 have time?  7 <b>A. I think at some point I was told that this</b>  8 <b>had to happen, I'm not sure, but this had to</b>  9 <b>happen before the new Governor, um, came</b>  10 <b>in. But I wasn't given the reasons and, to be</b>  11 <b>honest, I didn't ask. I always assumed that it</b>  12 <b>was because they simply needed to do it. But</b>  13 <b>I did feel pressured to do it.</b>  14 Q. Who told you that it should be done  15 before the new Governor arrived?  16 <b>A. I think Mr Pyle was keen on this</b>  17 <b>happening before Sir David took over.</b>  18 Q. Did you know whether Sir David was  19 being kept informed?  20 <b>A. No.</b>  21 Q. Just going back to this page 4284, the  22 third page of the letter, you say:  23 "Additionally the Authority is informed that  24 the Attorney General has also expressed the  25 same feelings."</p> <p style="text-align: center;">Page 122</p>	<p>1 <b>was a mention of that, or at least an allusion</b>  2 <b>to that. And, as I said, I was still hoping that</b>  3 <b>Mr McGrail would provide us with more</b>  4 <b>information. Um, it never crossed my mind</b>  5 <b>that, any of our minds, that we could actually</b>  6 <b>summon Mr Pyle or summon the Chief</b>  7 <b>Minister to ask, so we thought, well, maybe</b>  8 <b>Mr McGrail can ask. But that part I think is</b>  9 <b>as much as I could say because it's</b>  10 <b>an allegation.</b>  11 Q. Did you not think it would have been  12 useful to Mr McGrail to have a bit more  13 detail as to the alleged misleading or lie that  14 was such an important factor in the Chief  15 Minister's loss of confidence?  16 <b>A. I was convinced that Mr McGrail knew.</b>  17 <b>But it doesn't mean that he did know. I was</b>  18 <b>convinced that Mr McGrail knew because it</b>  19 <b>was, from what he said, it was down to</b>  20 <b>a conversation that he had had with the Chief</b>  21 <b>Minister.</b>  22 Q. In your view, did the letter provide  23 sufficient information for him to understand  24 the criticism being made against him and to  25 be able to respond to it?</p> <p style="text-align: center;">Page 124</p>

31 (Pages 121 to 124)

1 **A. I wasn't sure, but when we got the**  
 2 **representations everything was covered. So**  
 3 **he must have had enough. But I don't know.**  
 4 **But clearly Mr McGrail had enough**  
 5 **information, also Mr Llamas did, because of**  
 6 **the letter that he sent us, which covered**  
 7 **everything.**  
 8 Q. You refer to that letter. The letter argued  
 9 that the incident at sea and the HMIC report  
 10 were fig leaves for the real reason that  
 11 Mr McGrail was being invited to retire  
 12 Operation Delhi. Did you agree with that  
 13 argument?  
 14 **A. It made me think. It made me think, but I**  
 15 **didn't necessarily believe it. But it still made**  
 16 **me think. Um, but again, it's difficult, for me**  
 17 **personally it's almost impossible to**  
 18 **remember what I used to think back then and**  
 19 **what I think now. Um, but I ... I'm not sure**  
 20 **... I can't remember how I reacted to that. All**  
 21 **I know is that when we got Mr Gomez's**  
 22 **letter I was pretty certain that Mr Gomez,**  
 23 **well, Mr Gomez, Mr McGrail, certainly**  
 24 **knew what it was that I was talking about.**  
 25 Q. And having received that letter were you

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1 still of the view that Mr McGrail should be  
 2 invited to retire?  
 3 **A. Put it this way, I paid a lot of attention to**  
 4 **Mr Gomez's letter. I read it many times and**  
 5 **passed it over to Mr Neish for his views.**  
 6 **And I think that what happened afterwards is**  
 7 **nobody in the GPA said, "No, no, we**  
 8 **shouldn't."**  
 9 Q. At C4504 is the end of the letter and,  
 10 having set out the arguments, the letter states  
 11 at paragraph 77:  
 12 "For the reasons stated above there is no  
 13 possible valid reason for the GPA to exercise  
 14 its section 34 power to remove Mr McGrail  
 15 from office. The only rational decision for  
 16 the GPA to reach is to dismiss the request of  
 17 the Governor and the Chief Minister. In any  
 18 event the defects in this process are already  
 19 so flagrant that it would not be possible to  
 20 reach a just result unless it is to allow  
 21 Mr McGrail to remain in post."  
 22 Did you think that there was any prospect of  
 23 Mr McGrail remaining in post at this stage?  
 24 **A. Yes. If I'm honest, at that stage, well, at**  
 25 **that stage, after talking to the GPA lawyers,**

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1 **yes. I've got to be honest. I don't know how,**  
 2 **but yes.**  
 3 Q. Did the letter negatively impact your  
 4 view of Mr McGrail in any way?  
 5 **A. My personal view? No.**  
 6 Q. You will have seen the responses of the  
 7 Chief Minister, the Attorney General and  
 8 Mr Pyle, all of which said that the contents of  
 9 the letter had served to cement or deepen  
 10 their loss of confidence. Did it cement or  
 11 deepen your loss of confidence or your  
 12 decision to invite him to retire?  
 13 **A. Again, it's difficult to recall my feelings**  
 14 **and my thoughts four years ago. But I**  
 15 **remember the first time I read the letter was,**  
 16 **you know, I felt that these things just don't**  
 17 **happen in Gibraltar. I found it hard to**  
 18 **believe. I'm being very honest here. I really**  
 19 **did find it hard to believe that so much could**  
 20 **be happening at the same time. And I was**  
 21 **particularly alarmed, and I really can't recall**  
 22 **the section, at a section which said that, Joey**  
 23 **or Mr Britto, you should get somebody**  
 24 **outside of Gibraltar to support you because**  
 25 **most people here would be conflicted or**

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1 **involved or ... I might have made that ...**  
 2 **misinterpreted that. Um, but I'm sure in**  
 3 **Mr Gomez's letter at some point it says that**  
 4 **you should get somebody from outside of**  
 5 **Gibraltar to look at this. I can't remember**  
 6 **where, but I'm pretty certain that I read that**  
 7 **somewhere.**  
 8 Q. Can we go to C4654, please?  
 9 THE CHAIRMAN: Carry on. Sorry, I  
 10 thought you were going to suggest breaking.  
 11 MR SANTOS: Well, at some stage I was  
 12 going to suggest that I probably have about  
 13 15 minutes left and I would ask to intrude on,  
 14 perhaps intrude on the lunch break to that  
 15 extent, either now or after --  
 16 THE CHAIRMAN: Carry on.  
 17 MR SANTOS: Thank you. Yes, it is C4654,  
 18 thank you. This is the meeting, the minutes  
 19 of the meeting, of Monday, 1 June at 9.30,  
 20 where you need the next working day to  
 21 discuss the letter received from Gomez and  
 22 Co. The minutes records that, at the bottom,  
 23 sorry, item 4:  
 24 "On the question of potential conflicts, other  
 25 potential conflicts of interest among

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<p>1 Authority members were discussed and 2 a unanimous view expressed that no such 3 conflicts exist." 4 Who was discussed as having potential 5 conflicts from your recollection? 6 <b>A. I think Mr Gomez mentioned the Chief 7 Secretary, at that moment in time, 8 Mr Gomez, sorry, I keep talking about 9 Mr Gomez, Mr McGrail, I think in 10 Mr McGrail's letter sent to us by Mr Gomez, 11 I think most people, anybody working for 12 Hassans. Clearly he didn't know that 13 Mr Pyle wasn't participating, so he 14 mentioned Mr Pyle. Um, and possibly even 15 the Chief Secretary. I can't remember. We 16 felt if we keep removing people I'm going to 17 be on my own. Um, but that's what that 18 refers to. I think it is a reference to what, 19 from Mr McGrail's or Mr Gomez's letter.</b> 20 Q. If we read paragraph 5, you say: 21 "It was also agreed that not only does the 22 Authority categorically via GPA's legal 23 representatives refute that the chair 24 introduced the issue of the investigation into 25 his conversation with Mr McGrail, but also</p> <p style="text-align: center;">Page 129</p>	<p>1 the opportunity to comment on that. Do you 2 accept now that you did refer to the lie but 3 potentially you did not refer to the 4 investigation itself? 5 <b>A. I must have. I really at that stage I 6 couldn't remember, but yes, I possibly did.</b> 7 Q. But I think to be fair to you as well, there 8 is a reference to refuting that the chair 9 introduced the issue of the investigation. 10 Was your position perhaps that it was in fact 11 Mr McGrail who had introduced the issue of 12 the investigation rather than you? 13 <b>A. I think that's what I was getting at, that it 14 was always Mr McGrail trying to lead the 15 conversation back to, "This is because of the 16 investigation, this is because of the 17 investigation." Whereas I was more 18 concerned about, rather than the 19 investigation, about the potential allegations 20 made against him about not saying the truth, 21 I suppose, or allegedly. Allegedly, always 22 allegedly.</b> 23 Q. Can we look at B1445, please? This is 24 B1445, yes, there is an entry for 2 June. The 25 Deputy Governor sends round some media</p> <p style="text-align: center;">Page 131</p>
<p>1 that he should have subsequently opted to 2 admit it in his letter for the surreptitious 3 reason alleged by Mr McGrail's lawyer. This 4 is considered by the Authority to be a very 5 serious allegation by the lawyer and 6 a potential misrepresentation of what actually 7 transpires." 8 Why did you consider that to be 9 a misrepresentation? 10 <b>A. Because for us simply that they had lost 11 confidence in Mr McGrail and it had nothing 12 to do with ... at that stage we didn't even 13 think about that. It wasn't to do with the 14 investigation.</b> 15 Q. So as far as you are concerned, you say 16 that you did not introduce the issue of the 17 investigation into your conversation with 18 Mr McGrail. 19 <b>A. Not at that time. I mean, maybe going 20 through a transcript, I'm not sure if I did or 21 Mr McGrail did.</b> 22 Q. I was going to refer to the part at the end 23 when you talk about lying to the Chief 24 Minister. Admittedly, you do not refer to the 25 investigation, but I just wanted to give you</p> <p style="text-align: center;">Page 130</p>	<p>1 and then the Chief Minister responds, 2 midday: 3 "AG and Joey, works for me. I will check 4 with the others. Thanks." 5 It looks from those messages as if there may 6 have been a meeting on 2 June between you, 7 the Attorney General, the Chief Minister and 8 Mr Pyle. Did that meeting take place? 9 <b>A. I really can't recall if that's the meeting, if 10 it did take place, where I said that I need 11 legal representation, or it was the previous 12 meeting. I really am completely unclear on 13 this. I can't remember meeting the AG 14 personally.</b> 15 Q. But you remember a meeting with the 16 Deputy Governor and the Chief Minister 17 where you sought legal advice? Or was it 18 just to the Chief Minister? 19 <b>A. I don't remember if the Deputy Governor 20 was there. I remember at some point it could 21 have been, I don't think it was as late as 2 22 June, but it may well have been, that I said, 23 "Look, who is going to represent us?"</b> 24 Q. If we go to C4725, this is an email from 25 Mr Pyle on 5 June, on the morning of 5 June,</p> <p style="text-align: center;">Page 132</p>

<p>1 where he says: 2 "As discussed yesterday, things have taken 3 a turn for the worst. The AG told me 4 yesterday that the Gibraltar Police Authority 5 meeting that was held last week was not 6 quorate so deliberations are therefore null 7 and void and the chair of the GPA should 8 therefore not have cause for the 9 Commissioner of Police to resign. I should 10 get a letter this morning from the chair 11 informing me of this. The AG advised there 12 is no point in looking to appoint new GPA 13 members as they are chosen by the Public 14 Service Commission from a list proposed by 15 the CM and I. They are then appointed by 16 the Governor. Any new GPA members 17 would therefore be likely perceived as 18 biased. This leaves section 13 as the only 19 way forward." 20 So the AG on 4 June, because this is a 5 21 June, morning of 5 June, email reporting on 22 a conversation with the AG the previous day, 23 the AG appears to have reported to the 24 Deputy Governor the legal advice that the 25 GPA had received as to the meeting being</p> <p style="text-align: center;">Page 133</p>	<p>1 your letter of 5 June. But we will move on to 2 1420. There is an exchange on 5 June at 3 1.41: 4 "Any news from GPA? No. FFS. They 5 started meeting at midday. Okay." 6 So the Attorney General seems to be aware 7 that there was a meeting starting at midday. 8 Do you know how the Attorney General -- 9 <b>A. No.</b> 10 Q. -- was aware of this? 11 <b>A. No. At all.</b> 12 Q. Were you in communication with the 13 Attorney General at this point? 14 <b>A. No. I think the only communication was</b> 15 <b>when he asked me for copies of what I had</b> 16 <b>sent at some point, but no.</b> 17 Q. But at some point there was a decision, 18 you say that the Attorney General may have 19 been involved in instructing Mr Neish. 20 THE CHAIRMAN: Recommending 21 Mr Neish. 22 <b>A. Recommending.</b> 23 MR SANTOS: Recommending Mr Neish. 24 <b>A. Yes. Um, I really can't recall when</b> 25 <b>exactly. I can't recall the sequence of events.</b></p> <p style="text-align: center;">Page 135</p>
<p>1 quorate ... not being quorate. Do you know 2 how the Attorney General knew that by 4 3 June? 4 <b>A. I'm not sure. By 4 June?</b> 5 Q. I ask you this because the letter in which 6 you indicate that you are withdrawing the 7 section 34 process -- 8 <b>A. Yes.</b> 9 Q. -- is dated 5 June. But this is an email of 10 5 June referring to the Attorney General 11 saying the previous day that the meeting was 12 not quorate. 13 <b>A. I really don't know. That the meeting</b> 14 <b>was not ... no, I don't know. I thought the</b> 15 <b>first that the AG found out was when we</b> 16 <b>wrote saying --</b> 17 Q. Yes. 18 <b>A. -- we cannot proceed with this.</b> 19 Q. It is just I will ask you to note that this is 20 an email of 9.54 on 5 June and Mr Pyle is 21 reporting on a conversation with the Attorney 22 General on the previous day, 4 June. He 23 says: "The AG told me yesterday." If we 24 could go to B14 ... we will move on and 25 perhaps we can revisit this when we look at</p> <p style="text-align: center;">Page 134</p>	<p>1 <b>But definitely, I mean, I really can't</b> 2 <b>remember talking to Mr Llamas about any of</b> 3 <b>this.</b> 4 Q. Did you talk to him about instructing 5 Mr Neish or did the Chief Minister talk to -- 6 <b>A. I think the Chief Minister. I'm pretty</b> 7 <b>positive about that.</b> 8 Q. If we go to 4770, this is the letter from 9 the Police Authority dated 5 June, which sets 10 out the process and just focusing on the 11 paragraph starting on 29 May 2020, it says: 12 "Charles Gomez &amp; Company wrote to the 13 Authority attacking the process on the 14 grounds of fundamental unfairness, abuse of 15 process and procedural flaws. Bias was not 16 expressly alleged but it was impliedly so, 17 given that the Authority was accused of 18 effectively doing what you and the Governor 19 wanted and reaching a decision without 20 considering representations by the 21 Commissioner." 22 Is it fair, did you accept by this stage that 23 criticism? 24 <b>A. I think I began to accept it when I first</b> 25 <b>read Mr Gomez's letter, but I had</b></p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 <b>corroboration, absolutely.</b>  2 Q. Did the Chief Minister or Mr Pyle  3 influence your decision, do you believe?  4 <b>A. Influence in withdrawing?</b>  5 Q. No, in inviting.  6 <b>A. In inviting the Commissioner --</b>  7 Q. The retirement, yes.  8 <b>A. I think so.</b>  9 Q. Then if we go to the next paragraph:  10 "We have taken independent legal advice and  11 have been advised that the process which we  12 have adopted under section 34 of the Police  13 Act is fundamentally flawed and should be  14 withdrawn. However, we are also advised  15 that the complaints by you and the Governor  16 remain live and have to be determined. We  17 have also been advised that the Authority as  18 presently constituted and vulnerable to  19 challenge on the grounds of bias. The  20 Authority considers that as presently  21 constituted it is unable to process the  22 complaints without being vulnerable to legal  23 challenge and is not therefore prepared to do  24 so."  25 We have seen that in Gomez &amp; Co's letter</p> <p style="text-align: center;">Page 137</p>	<p>1 <b>I know is that we all agreed to withdraw and</b>  2 <b>if they wanted to ask us to step down we</b>  3 <b>would all, well, I certainly would, step down</b>  4 <b>and they could reconstitute the GPA with</b>  5 <b>other people. Um, I didn't ... the only reason</b>  6 <b>that we kept the process of the complaints is</b>  7 <b>because there were complaints about him.</b>  8 <b>But we felt that we couldn't look into them,</b>  9 <b>not because of the fundamental flaws, and</b>  10 <b>the first one being that the way I achieved</b>  11 <b>quality wasn't the right way.</b>  12 Q. Can we go to C4742, please? This is the  13 TSN's letter to Gomez &amp; Co notifying  14 Gomez &amp; Co of the same position,  15 acknowledging certain procedural errors.  16 When it refers to procedural errors, were you  17 referring to the lack of a quorum?  18 <b>A. Everything, I think.</b>  19 Q. Just to check, would that also include the  20 sequencing of the events?  21 <b>A. Yes.</b>  22 Q. Would it include a failure to take notes of  23 the meeting?  24 <b>A. I think everything, but which with</b>  25 <b>hindsight I would have done completely</b></p> <p style="text-align: center;">Page 139</p>
<p>1 was suggesting that it could be remedied by  2 taking a fully independent decision and in  3 fact concluding that Mr McGrail should not  4 be removed from office, a decision by the  5 full GPA as an authority. Was it not open to  6 you to go down this route and take a fully  7 independent decision?  8 <b>A. We felt that we were in no position to</b>  9 <b>take any more decisions because of the flaws</b>  10 <b>that Mr Neish pointed out as well. And</b>  11 <b>based on what we had read.</b>  12 Q. You have already said that you were  13 aware of the Governor's intention or possible  14 intention to use section 13 if you did not go  15 through with the section 34 process. Was  16 your understanding upon sending that letter  17 that you were effectively activating section  18 13 or giving him the option to exercise the  19 power in section 13?  20 <b>A. Not really. Um, not really. I wasn't</b>  21 <b>really thinking along those grounds. I was</b>  22 <b>thinking maybe they will abandon the</b>  23 <b>process and rebuild the GPA and restart ...</b>  24 <b>again, I really didn't know what they ...</b>  25 <b>because I didn't discuss it with them. Um, all</b></p> <p style="text-align: center;">Page 138</p>	<p>1 <b>different.</b>  2 Q. Of course.  3 <b>A. Completely differently.</b>  4 Q. And the Chief Minister and Mr Pyle's  5 role in the process, would that come within  6 the procedural errors?  7 <b>A. This is my view. I think so. I would say</b>  8 <b>so.</b>  9 Q. And then the letter refers to:  10 "The complaints made against your client by  11 the Governor and the Chief Minister  12 remaining live and our clients will consider  13 how it will proceed in respect of them."  14 Did the GPA consider or get to consider how  15 to proceed in respect of those live  16 complaints?  17 <b>A. We didn't have time because after this</b>  18 <b>letter was sent, the next we heard was that</b>  19 <b>Mr McGrail had had a meeting with Mr Pyle</b>  20 <b>and was considering retiring.</b>  21 Q. Did you have any idea as to how you  22 would deal with the complaints?  23 <b>A. No.</b>  24 Q. If we go then to C4801, this is an email  25 from Mr Gomez to Mr Neish at 5.24 on 5</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 June, referring to the letter received at 4.28, 2 just under an hour previously, and the final 3 paragraph said: 4 "Our client is gravely concerned by how he 5 has been treated during this process and I 6 would welcome your frank 7 acknowledgement that there have been 8 procedural flaws. He is an officer of the 9 highest standing with an impeccable record 10 over the past 36 years. In these 11 circumstances, and given how unfairly he has 12 been treated and improper pressure put upon 13 him to alter the course of a live criminal 14 investigation, our client feels he must apply 15 for early retirement from the Royal Gibraltar 16 Police." 17 Did you forward this letter, this email, to the 18 Attorney General or the Chief Minister or 19 Mr Pyle? 20 <b>A. I think ... no, I didn't. Not me. In fact I</b> 21 <b>think I found out about this letter once</b> 22 <b>Mr Neish shared it with me.</b> 23 Q. Did you discuss this email with the 24 Attorney General, the Chief Minister -- 25 <b>A. No.</b></p> <p style="text-align: center;">Page 141</p>	<p>1 start seeing if I can help you clarify for the 2 inquiry this business about the meeting with 3 Mr Morello on 31 January. The emails, I do 4 not have the number, the ones that were 5 disclosed last night - can they be on the 6 screen? Can I just show you on the screen 7 the one from 24 January. Is that the one? 8 No. 9 MR SANTOS: It is at the bottom of the 10 page. 11 SIR PETER CARUANA: Yes, can we go to 12 the top of that? Okay, I did not have - yes, 13 there it was, sorry, I do beg your pardon, yes. 14 Can you see there in the middle of the page, 15 just below the middle of the screen - I 16 wanted you to have a look at that to see if 17 that helped you recall why, perhaps, you 18 have not found minutes and things. So, this 19 was on Friday 24 January, and you are telling 20 your colleagues on the board, it seems to me 21 you are, or Elka - Elka is your secretaries, or 22 one of your secretaries? 23 <b>A. Yes.</b> 24 Q. And she appears to be saying to the 25 people on the board that "The GPF meeting</p> <p style="text-align: center;">Page 143</p>
<p>1 Q. -- or Mr Pyle? 2 <b>A. This particular email? No, no.</b> 3 Q. Did you have any further contact with 4 Mr McGrail about his retirement after that 5 point? 6 <b>A. No.</b> 7 Q. In retrospect, do you think that the GPA 8 could have benefited from legal advice at 9 an earlier stage in the section 34 process? 10 <b>A. At a much earlier stage. In fact, as soon</b> 11 <b>as I got the call and found out what it was</b> 12 <b>about, absolutely. Absolutely.</b> 13 MR SANTOS: Thank you, Dr Britto. I think 14 we are going to pause for lunch and then 15 after lunch other representatives may have 16 questions for you. Thank you very much. 17 THE CHAIRMAN: I think we will stand by 18 2 o'clock. 19 MR SANTOS: Yes, thank you. 20 (13.16) 21 (The short adjournment) 22 (14.00) 23 Questioned by SIR PETER CARUANA 24 Q. Good afternoon, Mr Britto. I have one or 25 two issues to put to you. I wonder if I could</p> <p style="text-align: center;">Page 142</p>	<p>1 on Friday 31st has been rescheduled to 11.15 2 as Police Complaints Board meeting". Do 3 you see that? 4 <b>A. Yes.</b> 5 THE CHAIRMAN: No, as the Police 6 Complaints Board meeting, because a Police 7 Complaints Board meeting has already been 8 scheduled for ten o'clock. 9 SIR PETER CARUANA: Yes. Yes, people 10 had already been rescheduled, so the time 11 was changed. Do you now accept that there 12 very likely was a meeting on that day, 13 whether it was formal or informal? Do not 14 get a hang up about the formality, or minutes, 15 or no minutes. Did I understand your 16 evidence to be this morning that eventually 17 you accepted - well, eventually; scratch 18 "eventually" - but you now accept that there 19 very likely was a meeting with Morello on 20 the 31st, and Mr Simpson? 21 <b>A. Yes, now we do, and it's probably that</b> 22 <b>one that's being referred to in his statement.</b> 23 <b>We were looking for February and onwards,</b> 24 <b>not January.</b> 25 Q. Exactly, so, okay. Thank you. Then I</p> <p style="text-align: center;">Page 144</p>

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<p>1 need not press that further. You said this 2 morning in answer to Mr Santos that you had 3 felt, on one occasion, pressurised or 4 pressured, and then on a second occasion you 5 said, "Influenced by the Chief Minister and 6 Mr Pyle to issue the invitation to retire." Do 7 you recall expressing that sentiment -- 8 <b>A. Yes.</b> 9 Q. -- even if, not in those precise words. 10 Can we just explore that briefly? Can we put 11 up A322 on the screen and go to paragraph 12 13 of your witness statement. You say there, 13 "The Interim Governor and the Chief 14 Minister stated that it was a matter for the 15 GPA, having been appraised of these 16 concerns, whether in its discretion, it wanted 17 to invoke the powers vested in it pursuant to 18 Section 34 of the Police Act 2006 ... which 19 provides", and then etc. Does that remain 20 your evidence? 21 <b>A. Yes.</b> 22 Q. And at paragraph 14, at the second last 23 line, you say, "The Interim Governor and 24 Chief Minister stated that should the GPA be 25 minded to call upon Mr McGrail to retire,</p> <p style="text-align: center;">Page 145</p>	<p>1 sir, it is C, not B, C3997, at the bottom, right 2 at the bottom. C3997, and this is the note 3 that you received from the Chief Minister 4 about your note. I do not know if you prefer 5 to read it yourself. "If the GPA decide to go 6 down this road the first step is to" effectively 7 it is what you have got in your witness 8 statement - "the first step is to allow the 9 Commissioner to make representation if he 10 wishes to do so under section 34(2). It will, 11 of course, be necessary for the GPA to 12 consider any representations the 13 Commissioner might make. Thereafter, if 14 the GPA are of the view that the 15 Commissioner should be invited to retire 16 then that is when they would need to consult 17 both the Governor and the Chief Minister, 18 and then seek the agreement of one of them. 19 The Governor and the Chief Minister would 20 then also have the benefit of any 21 representation that the Commissioner might 22 have made under section 34(2) in expressing 23 a final and firm view", much in the same vein 24 as what you have in your witness statement. 25 I am just coming to your view about</p> <p style="text-align: center;">Page 147</p>
<p>1 both should be deemed to have been 2 consulted and agreed." 3 <b>A. Yes.</b> 4 Q. And then, and finally, at paragraph 15, 5 "The Interim Governor and the Chief 6 Minister pointed out that if the GPA were to 7 consider inviting Mr McGrail to retire, the 8 first step would be to allow Mr McGrail to 9 make representations, if he wished to do so." 10 Is that a fair reflection of what the Governor, 11 the then Governor, interim Governor and the 12 Chief Minister put to you? That was your 13 evidence at the time that you made this 14 statement. 15 <b>A. As far as my recollection goes, yes, but I 16 did qualify what I said earlier that different 17 people would feel different - would react 18 different to what they're being asked to do.</b> 19 Q. Yes. I am just going to give you the 20 opportunity to say that in just a moment, but 21 can I just put to you, very quickly, 3997, 22 which is the 13 May note, which you have 23 also testified is accurate. So, the three last 24 paragraphs, last page, 3997 should be the last 25 page of the note. Sorry, I beg your pardon,</p> <p style="text-align: center;">Page 146</p>	<p>1 pressure, being subjective and that idea. I do 2 not ride roughshod over that, but do you 3 agree that, or do you continue to be of a view 4 that that also is a fair representation of how 5 the meeting went on the 18th? 6 <b>A. Yes, for the simple reason I could have 7 said, "No, I'm walking out. I'm not doing --</b> 8 Q. I understand that, and now I am going to 9 come to what you might have meant by 10 influenced. So, when you say that you felt 11 pressured or influenced, was it by anything 12 that the Chief Minister or Mr Pyle said to 13 you? We know that Mr Pyle said to you, "I 14 want to leave you in no doubt of my personal 15 views". That to one side, which the 16 Chairman already knows about, were you 17 pressured by anything different to these 18 things that we have looked at that they said, 19 or was it just a sense of occasion, or simply 20 the sense of perhaps it was just the fact that it 21 was the Chief Minister and the Governor 22 both speaking to you, and in a sense, that is a 23 sense of aura around that occasion? You 24 were very candid in admitting that different 25 people feel pressure in a different way.</p> <p style="text-align: center;">Page 148</p>

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<p>1 Would you explain how you felt pressure?  2 <b>A. I think that after nearly 40 years working</b>  3 <b>within a hierarchy, if you like, and going up</b>  4 <b>through the ranks, for me the position of the</b>  5 <b>Chief Minister, and indeed, the Governor are</b>  6 <b>held in very, very high respect by me,</b>  7 <b>certainly, and anything they say, as I've said</b>  8 <b>before, I felt I had to believe. It was a</b>  9 <b>position of - I think possibly subjective now</b>  10 <b>- but awe, if you like.</b>  11 Q. Okay. So, in a sense it was the sense of  12 occasion, the sense of deference or, perhaps,  13 even excessive deference to the office  14 holders that you were being spoken to by  15 rather than what they were saying to you?  16 <b>A. Yes, I think that's evident from some of</b>  17 <b>the WhatsApps that were exchanged where I</b>  18 <b>was apologising for disturbing the Chief</b>  19 <b>Minister.</b>  20 Q. Yes, okay, thank you for that. Can I just  21 ask whether, whatever might have been your  22 subjective sense of being influenced - can  23 you say about the board members when they  24 convened on the 21st in the emergency  25 meeting, they had not been present at the</p> <p style="text-align: center;">Page 149</p>	<p>1 Q. You can recast my question if you think I  2 have not described it - you said words to that  3 effect, that it had not made you think less of  4 Mr McGrail, or words to that effect?  5 <b>A. Not him, personally.</b>  6 Q. Not yet. Now, can we just put up A324,  7 paragraph 27 of your witness statement? So,  8 this is you explaining why you forwarded the  9 Gomez letter to the Chief Minister, the  10 interim Governor, and you do not recall  11 whether the Attorney General got it, but it  12 any case, he got it. Whether it was directly  13 from you, it does not matter. The first line  14 there is, "Given the nature of the allegations  15 made, I copied the Letter to them." Do you  16 see that?  17 <b>A. Yes.</b>  18 Q. So, were you of the view that these letters  19 contained serious - well, the nature of the  20 allegations; what was the nature of the  21 allegations: complimentary, serious?  22 <b>A. No, they were not complimentary, they</b>  23 <b>were extremely serious allegations.</b>  24 Q. And am I right in saying - I think your  25 evidence says so forgive me for asking</p> <p style="text-align: center;">Page 151</p>
<p>1 meeting, so they had not been subjected to  2 the same situation as you had in the meeting.  3 Is that correct?  4 <b>A. That is, absolutely, correct.</b>  5 Q. So, I mean, you did not put pressure on  6 the board members, did you?  7 <b>A. You can see me here, now. I don't think</b>  8 <b>I'm the kind of person that puts pressure on</b>  9 <b>anyone.</b>  10 Q. I am keen to give you the opportunity to  11 say that, but I think it is pretty obvious to  12 most of us. So, whatever subjective pressure  13 you may have felt, this was not transmitted to  14 the board members when they came to make  15 their decision?  16 <b>A. Not at all.</b>  17 Q. If I could just ask you briefly about the  18 Charles Gomez and Co letter of 29 May  19 2020, correct me if I am wrong, I thought I  20 understood you to say this morning that that  21 letter had had no impact on you as far as  22 concerned your view of Mr McGrail? Do  23 you remember saying that, or have I got you  24 wrong?  25 <b>A. I think that's what I said.</b></p> <p style="text-align: center;">Page 150</p>	<p>1 questions to which the answer is obvious -  2 you had already formed the view that his  3 position was untenable simply on the basis  4 that he had lost the confidence of the  5 Governor and the Chief Minister. Is that  6 correct?  7 <b>A. Yes.</b>  8 Q. Before this letter?  9 <b>A. Yes.</b>  10 Q. So, after this letter that made what you  11 have described as extremely serious  12 allegations, was it your view that his  13 position, the tenability of his position, had  14 worsened?  15 <b>A. Ah, now I see what you mean. Possibly,</b>  16 <b>quite possibly.</b>  17 Q. I mean, if he could not work with the  18 Chief Minister before because he had lost  19 their confidence, how could you do so, in  20 your mind, after he had said all these terribly  21 serious things about them?  22 <b>A. Yes, quite possibly.</b>  23 Q. If you would confirm that you have done  24 this already, I will not ask you any more  25 questions. Is it your evidence now - I do not</p> <p style="text-align: center;">Page 152</p>

38 (Pages 149 to 152)

<p>1 mean "now" in the critical sense of the word 2 - is it your evidence that you probably did 3 mention Delhi, or rather that the Delhi/Chief 4 Minister's reasons/lie was mentioned at the 5 18 May meeting, and that you transmitted 6 that to the board at the emergency meeting? 7 <b>A. There's a probability that I did. I can't</b> 8 <b>recall, but I certainly mentioned to the board,</b> 9 <b>"Look, Mr McGrail is going to say", because</b> 10 <b>I did mention that he'd called me to his</b> 11 <b>office, before I told them, to explain all about</b> 12 <b>the Chief Minister being upset with him, and</b> 13 <b>all that.</b> 14 THE CHAIRMAN: Well, I do not think, 15 with respect, you precisely answered the 16 question. 17 SIR PETER CARUANA: No. My question 18 was focused more on whether you are any 19 clearer in your mind. What is your evidence 20 now as to whether in the 18th May meeting 21 between you, the Governor, and the Chief 22 Minister, one or both of them mentioned to 23 you that they had lost confidence in Mr 24 McGrail because "lie" or "misled" - I am not 25 holding you to the word "lie" or "misled" - in</p> <p style="text-align: center;">Page 153</p>	<p>1 <b>properly.</b> 2 Q. Yes. Am I right in saying that on receipt 3 of the first letter of 22 May, Mr McGrail had, 4 understandably in my view, complained that 5 he was very scant on detail and that he had 6 insisted on asking you for the reasons for the 7 alleged loss of confidences? 8 <b>A. Yes, and if I recall, I said, "I'll ask", and</b> 9 <b>that's what I did.</b> 10 Q. Right. So, your evidence has been that 11 the actual reason for the GPA's decision was 12 really the loss of confidence. Is that your 13 evidence? 14 <b>A. The loss of confidence on both sides.</b> 15 Q. Yes. 16 <b>A. And the reasons given to us, primarily if</b> 17 <b>not in the majority, by the Governor.</b> 18 Q. So, leaving to one side what you, the 19 Chairman, may take in due course about the 20 reasons themselves, insofar as concerns the 21 GPA, the sufficiency of the reasons was not 22 uppermost in your mind. It really did not 23 matter what the reasons were for loss of 24 confidence. The fact is that they asserted to 25 you, and you took them at their word that</p> <p style="text-align: center;">Page 155</p>
<p>1 other words, that point was fielded in some 2 language or other in the 18th May meeting. 3 Yes, no, probably, maybe? 4 <b>A. Yes, they did say that, that he had misled</b> 5 <b>them both.</b> 6 Q. Okay. Now, the drafting of the letters of 7 22 May, am I right that this was after the 8 decision had been taken by the board? 9 <b>A. Yes.</b> 10 Q. Yes. So, the Chief Minister's help to you 11 in drafting those letters had no influence on 12 the decision that had been communicated in 13 that letter? 14 <b>A. It didn't.</b> 15 Q. Sorry? 16 <b>A. It didn't.</b> 17 Q. It did not, and do you recall why the 18 Chief Minister - well, first of all I think you 19 said this morning that you had asked him, 20 and we have seen the WhatsApp where you 21 asked him to help you with this. Do you 22 recall why? What was it that you wanted the 23 Chief Minister's input about? 24 <b>A. Well, essentially, because I couldn't recall</b> 25 <b>everything that had gone on in the meeting,</b></p> <p style="text-align: center;">Page 154</p>	<p>1 they had lost confidence in him? 2 <b>A. Yes.</b> 3 THE CHAIRMAN: Both of them? 4 <b>A. Both of them.</b> 5 SIR PETER CARUANA: Yes. And when 6 you said in your witness statement at 7 paragraph 34 - I am not going to take you it 8 in the interests of time - you said that this 9 left the matter, "abandoned, live and 10 unresolved" - do you remember saying that? 11 <b>A. Yes.</b> 12 Q. I thought I understood you to mean this 13 morning that you felt that you were spent, 14 that the GPA as it was constituted was spent 15 and could not deal with the matter any 16 further. So, is it correct to say that you had 17 decided that he should be invited to retire 18 because he had lost the confidence, and you 19 think his position was thereby untenable, but 20 could not do anything about it because of the 21 flaws, and you were disqualified, so to speak, 22 from following through on your view. Is that 23 fair, or would you like me to put that in 24 different terms? 25 <b>A. I think it's fair from what I can recall.</b></p> <p style="text-align: center;">Page 156</p>

<p>1 <b>We withdrew the letter, but I've always</b>  2 <b>assumed that we withdrew the letter and</b>  3 <b>everything else, except the two complaints or</b>  4 <b>grievances, or what have you, or allegations</b>  5 <b>that we had against Mr McGrail, but we</b>  6 <b>couldn't do anything about it.</b>  7 Q. What I was asking you to agree or  8 disagree with me was fair is this, that you  9 had already decided that he should retire, or  10 be asked, or be invited, more accurately in  11 your words this morning, to retire, because  12 he had lost confidence. He had lost the  13 confidence of both the Chief Minister and the  14 Governor, and that remained unaltered by the  15 fact that you were procedurally disqualified.  16 <b>A. Well, we withdrew the letter, so we were</b>  17 <b>assuming that we're no longer expecting him</b>  18 <b>to retire.</b>  19 Q. Yes.  20 <b>A. That was my understanding.</b>  21 Q. Yes, for procedural reasons, but you had  22 not recanted, and we have seen no evidence -  23 this is your opportunity to say it if you wish -  24 we have seen no evidence that you had  25 recanted or the GPA had recanted from its</p> <p style="text-align: center;">Page 157</p>	<p>1 far --  2 <b>A. We never got that far.</b>  3 THE CHAIRMAN: -- because it was  4 pointed out to you that, in fact, you had made  5 the decision before he got the representation.  6 <b>A. Yes, Sir, that is correct.</b>  7 THE CHAIRMAN: Yes.  8 SIR PETER CARUANA: And actually, it  9 was all overtaken by the letter of 29 May,  10 which were the representations. You were  11 expecting oral representations.  12 <b>A. Yes.</b>  13 Q. And what, in fact, you got was written  14 representations. Is that correct?  15 <b>A. That's right.</b>  16 Q. Which you have just finished telling the  17 inquiry, made his untenability even worse,  18 because of the seriousness of the allegations  19 made, not just against the Governor and the  20 Chief Minister now, but against the Attorney  21 General as well. Is that correct?  22 MR WAGNER: You are putting words in  23 the witness's mouth.  24 SIR PETER CARUANA: I am repeating the  25 words that the witness has just uttered in</p> <p style="text-align: center;">Page 159</p>
<p>1 view that he should be invited to retire  2 because he had lost the confidence of the  3 Governor and the Chief Minister?  4 <b>A. Forgive me for being obtuse. Yes, we still</b>  5 <b>felt that the loss of confidence was an</b>  6 <b>important factor --</b>  7 Q. Yes.  8 <b>A. -- but felt that we couldn't do anything</b>  9 <b>about it - not prepared.</b>  10 THE CHAIRMAN: I rather got the  11 impression this morning you were suggesting  12 at the meeting of the 21st when you  13 acknowledged the loss of confidence, that  14 you were still expecting representations from  15 Mr McGrail, and I sort of got the impression  16 you were rather hoping and expecting that he  17 would come along with a lawyer and reassure  18 you and everything would be all right?  19 <b>A. I was hoping that everything would be all</b>  20 <b>right, but we hadn't gone as far as working</b>  21 <b>out what to do or how to do it, once he came</b>  22 <b>with representations, simply because we</b>  23 <b>hadn't had recourse to solid, good, legal</b>  24 <b>advice.</b>  25 THE CHAIRMAN: And you never got that</p> <p style="text-align: center;">Page 158</p>	<p>1 clarifying the chair's intervention. Okay, no  2 need to repeat all of that. On bullying, I am  3 very happy to leave it at this if you can agree.  4 If you cannot, it does not matter. Do not feel  5 any need to agree with me. I am not  6 interested in whether they were justified or  7 unjustified - I think you referred to the  8 Panaroma articles and the surveys and all of  9 that this morning. W  10 Were you and the GPA generally aware that  11 there was a live issue out there - forget the  12 merits, or whether justified or not - that there  13 was a live issue out there about bullying in  14 the RGP, or allegations of bullying, good or  15 bad, but there as a live issue? Was that  16 something that the GPA board was broadly  17 aware of?  18 <b>A. Broadly aware, yes.</b>  19 Q. So, you had seen the articles in  20 Panorama. The Police Federation had done  21 its own survey. You knew that the RGP -  22 this AAP survey - you knew they were doing  23 that?  24 <b>A. Yes.</b>  25 Q. Indeed, you knew that Mr McGrail had</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)



<p>1 asked for the inspection by Her Majesty's 2 Inspectorate of Constabulary, in order to 3 bottom out the issue about, correct - 4 <b>A. Yes.</b> 5 Q. -- of bullying? 6 <b>A. Yes.</b> 7 Q. So, these were three or four initiatives, 8 leaving Panorama to one side, that suggested 9 that this was not a non-issue; it was an issue 10 of some sort, the merits of which were not 11 clear? Correct? 12 <b>A. I would put it that way, yes.</b> 13 Q. Okay, and did the GPA ever discuss this? 14 <b>A. We discussed the fact, not necessarily</b> 15 <b>that the Federation had told us, but every</b> 16 <b>time it came out in the Panorama, we really</b> 17 <b>didn't know what to do, because it seemed</b> 18 <b>like an ongoing complaint.</b> 19 Q. Yes. 20 <b>A. But every time we asked the RGP they</b> 21 <b>said, "Look, there's no bullying. How many</b> 22 <b>officers have written to you complaining?"</b> 23 <b>So, we were really in somewhat of a</b> 24 <b>quandary.</b> 25 Q. Yes. So, on the one hand there were no</p> <p style="text-align: center;">Page 161</p>	<p>1 said, or given what we have been discussing 2 between us in the last two or three minutes - 3 you can see it if you want to, paragraph 23.2 4 of his witness statement. Could it be - yes, 5 thank you, 23.2. Is that MP1 or MP2? I 6 have 23.2 in my note here. It might be the 7 first witness statement. It must be MP1. 8 Yes, there we go. "The GPA regularly spoke 9 at its meetings about the allegations of 10 bullying and intimidation by Mr McGrail." 11 Leaving to one side the "Mr McGrail", bit 12 which you can answer as well if you want, 13 without the "by Mr McGrail" bit initially, 14 you take great issue with the fact that the 15 GPA spoke at its meetings about bullying in 16 the RGP given all the newspapers and 17 surveys and things of that sort? 18 (14.26) 19 <b>A. I can't recall. If it was it certainly hasn't</b> 20 <b>been formally minuted that we were talking</b> 21 <b>about bullying, I am sure. We did a search,</b> 22 <b>but if anybody brought it up, it must have</b> 23 <b>been Mr Pyle, but not necessarily about Mr</b> 24 <b>McGrail. I think he was concerned about the</b> 25 <b>general chatter, as you say, about</b></p> <p style="text-align: center;">Page 163</p>
<p>1 formal complaints from any police officer, 2 but on the other hand there was all this 3 background noise about it? 4 <b>A. Yes.</b> 5 Q. Is that fair? 6 <b>A. Fair.</b> 7 Q. And the board discussed it in that 8 context? 9 <b>A. Briefly, because we felt we couldn't do</b> 10 <b>much about it, except me as a person trying</b> 11 <b>to mediate, and get them to work together.</b> 12 THE CHAIRMAN: Hence the note in the 13 meeting of 6 February? 14 <b>A. That's right, I think.</b> 15 THE CHAIRMAN: Right, yes. 16 SIR PETER CARUANA: So, leaving to one 17 side the question of whether they were 18 allegations, or the noise related to bullying 19 by Mr McGrail or not or just general 20 bullying, leaving aside Mr McGrail, would 21 you disagree with a statement by Mr Pyle 22 that the GPA regularly spoke about this at its 23 meetings? I mean, "regularly" is a very long 24 or short word. I realise it doesn't have a 25 precise meaning, but given what you have</p> <p style="text-align: center;">Page 162</p>	<p>1 <b>background, the newspapers and all that.</b> 2 <b>The surveys we knew were actually being</b> 3 <b>taken care of by the RGP itself. They would</b> 4 <b>be analysing them even before we did.</b> 5 Q. For my part, I do not want to get too hung 6 up about the difference between formal and 7 informal and minuted or unminuted. I am 8 really just trying to get a sense of whether, 9 given all this background noise that you have 10 described about the live issue, the GPA 11 would discuss it and if your recollection is 12 that you did not - we have already seen a 13 note to the effect that it did, the Chairman 14 has just reminded us of it - would it not be 15 surprising that given this noise - I am just 16 really asking you to agree or disagree. 17 <b>A. No, I wouldn't say regularly but it must</b> 18 <b>have been discussed because we discussed</b> 19 <b>everything that was out there in the</b> 20 <b>community.</b> 21 Q. Okay, thank you. Can I just take you, 22 and this is my last point to you - I think there 23 was a reference this morning to I think they 24 are called bow defenders, on the bow of Mr 25 John Chapple. Can I just take you to the</p> <p style="text-align: center;">Page 164</p>

41 (Pages 161 to 164)

<p>1 draft Solis report at C 5631? There, that 2 paragraph. Thank you. Have you seen this 3 before where the Solis report said, under the 4 heading, "Log Defenders" which is this sort 5 of teathed, tooth-like metal structure affixed 6 to the bow of the boat, "SAFE Boat", which 7 must be the manufacturers - this is quite 8 difficult to read because for some reason, 9 whoever has printed this, it seems to be 10 dropping all the "Ls". I think this is an RGP 11 printer problem but anyway, all the "Ls" and 12 "Is" are missing. So, I will minimise the 13 reading because actually the first paragraph 14 is quite difficult to do, but do you see, "The 15 log defenders", in the second - about eight 16 lines down - second citation - "The log 17 defenders are installed on vessels to aid in 18 pushing logs and debris. The teeth on the log 19 defender bite into the log and prevent it from 20 sliding under the hull and into the vessel's 21 propellers. Log defenders are very common 22 in the logging industry where logging vessels 23 manoeuvre logs into position for recovery 24 and processing by capturing them with the 25 log defender. SAFE Boats", which I am</p> <p style="text-align: center;">Page 165</p>	<p>1 <b>to why they were used. For me, it was</b> 2 <b>basically as a layperson, like having a chain</b> 3 <b>saw - maybe I'm exaggerating - on the bow</b> 4 <b>of a boat. I found it quite alarming.</b> 5 Q. Thank you. 6 Questioned by MR CRUZ 7 Q. Good afternoon, Mr Britto. 8 <b>A. Good afternoon.</b> 9 Q. If I can just take you back a little bit to 10 some of the questions that I have about the 11 process of joining the GPA, now I think 12 earlier on today you acknowledged, I think, 13 not unlike Mr Goncalves and Mr Lavarello 14 that there was no training. Is that right? 15 <b>A. That's absolutely correct.</b> 16 Q. Right, and I think you told counsel to the 17 inquiry that you would have benefited by 18 such training, people would have benefited if 19 they had had some training. Is that fair? 20 <b>A. Certainly the teachers amongst us would</b> 21 <b>have. If you come from a corporate</b> 22 <b>background, possibly you would have a</b> 23 <b>different experience, but I certainly would</b> 24 <b>have benefited.</b> 25 Q. Okay and as Chairman, you will</p> <p style="text-align: center;">Page 167</p>
<p>1 assuming is the manufacture of the Sir John 2 Chapple, "has installed log defenders on law 3 enforcement vessels other than the Gibraltar 4 boats specifically in the US Pacific North 5 West region where floating logs and debris is 6 common", and if you can just go down a little 7 bit to the last one at 3.4.43, "The rationale for 8 installing log defenders on to the stem of the 9 Sir John Chapple is not fully understood. 10 The implications of installing log defenders 11 on to the stem of Sir John Chapple were not 12 properly considered by the RGP and 13 therefore the opportunity to identify this 14 safety risk was missed." Were you aware of 15 this issue? 16 <b>A. I was aware of this issue, not because the</b> 17 <b>police told me but because, if I'm not</b> 18 <b>mistaken, it was mentioned in one of the</b> 19 <b>newspapers or possibly as a reference for</b> 20 <b>this. I remember asking - I can't remember</b> 21 <b>who I asked; it could have been Mr Ullger or</b> 22 <b>could have been Mr McGrail - and they said,</b> 23 <b>"This can't be removed easily."</b> 24 Q. All right. 25 <b>A. But I was never given an explanation as</b></p> <p style="text-align: center;">Page 166</p>	<p>1 appreciate that Mr Ullger, on the stand the 2 other day, said he had a good working 3 relationship with you and it is probably 4 unnecessary for me to say but the 5 Commissioner of Police and senior 6 management hold you in regard. But what I 7 would say is that you would appreciate that a 8 chairman is the leader of an authority 9 ultimately. Would you accept that? 10 <b>A. Yes.</b> 11 Q. Yes, and insofar as the role, I think we 12 heard from Mr Goncalves that he used to 13 spend about 30 hours maybe a week, I think 14 he said - 15 THE CHAIRMAN: He did say a week, on 16 average. 17 MR CRUZ: Yes, on average, and I think you 18 have described it even more, as 24/7. 19 <b>A. Weekends included.</b> 20 Q. Weekends included, so as a person in 21 such a position leading other people, the 22 issue of training might have been even more 23 important in the position of chair. Would 24 you accept that? 25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 168</p>

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<p>1 Q. Thank you. Now, Mr Lavarello 2 mentioned the issue of resources and I think 3 he said words to the effect that they were 4 sufficient if nothing happened, which is a 5 little bit like saying, "My umbrella works 6 well until it rains." It is when something 7 happens that you need resources, is it not? 8 <b>A. Yes. Would you like me to elaborate a 9 bit?</b> 10 Q. Yes, please. 11 <b>A. Well, what that, I think, meant was that 12 part of our routine work, like checking up on 13 policies, holding meetings, checking up on 14 police complaints, the routine parts of our 15 responsibilities, I think we are okay with that 16 but the moment that there is the need for 17 anything major, we certainly have to ask for 18 outside help.</b> 19 Q. And in relation to that, and I am not 20 trying to sell my own profession, it would be 21 quite normal that you would reach out for 22 legal advice when issues happen? That 23 would be what normally might occur. Would 24 you accept that? 25 <b>A. Definitely now, knowing what I know,</b></p> <p style="text-align: center;">Page 169</p>	<p>1 MR CRUZ: I understand, sir. I understand. 2 I am going to try to move on as quickly as I 3 can. In relation to the Constitution and the 4 Police Act, I know you were not trained in 5 other matters, but was there any time in 6 which somebody gave you an explanation of 7 how the Constitution and the Police Act 8 should work, the interaction of those? 9 <b>A. No.</b> 10 Q. No, so before I go into a couple of 11 sections would you accept that one of the 12 important roles of the Royal Gibraltar Police 13 and the Police Authority is to be a guardian 14 of the rule of law? 15 <b>A. I don't know what rule of law you could 16 mean.</b> 17 Q. Well, let me put it in different terms. A 18 rule of law is in essence that everybody 19 should be treated equally under the law 20 regardless of who they are without fear or 21 favour. 22 <b>A. Yes.</b> 23 Q. Yes, so the Police Authority and the RGP 24 are guardians of the basic concept. Would 25 you accept that?</p> <p style="text-align: center;">Page 171</p>
<p>1 <b>yes.</b> 2 Q. Yes, so for you to have had a sort of not 3 quite on call but easy to access legal support 4 in your role would have been of assistance 5 not just in the focus of this matter, which we 6 will go on to in a moment, but generally? 7 <b>A. Generally speaking, yes.</b> 8 Q. Without having to rely on a very kind 9 board member that spends his time giving 10 advice, which was the evidence yesterday. 11 So, in relation to that and before I get on to 12 the issue of constitution and the Police Act, 13 would you say that having a financially 14 resourced authority might be helpful, a more 15 substantially financial resource, might be of 16 help to you and still have helped you? 17 <b>A. Not to me personally.</b> 18 Q. Well, to the authority. 19 <b>A. But to the authority itself, quite possibly. 20 Quite possibly. I've never made 21 representations.</b> 22 Q. No, I understand but this part of the 23 process as I understand it is to see where we 24 can all perhaps learn to do better. 25 THE CHAIRMAN: I have the point.</p> <p style="text-align: center;">Page 170</p>	<p>1 <b>A. Yes, and the Governor as well.</b> 2 Q. And the Governor? 3 <b>A. Yes.</b> 4 Q. And indeed maybe other officials 5 including the Chief Minister? 6 <b>A. Yes.</b> 7 Q. Now, in our Constitution at section 48 - 8 are you familiar with that? I know that you 9 would have heard me referring to it. 10 <b>A. Possibly, but -</b> 11 Q. Well, it is going to go on screen, I think, 12 hopefully. It might need to go a little bit 13 bigger, I think, for all of us, except the 14 younger people here. So, if I can just draw 15 your attention to 48(1) - you can read it if 16 you want, but I will read it out for you: 17 "There shall be a Police Authority for 18 Gibraltar, composed in such manner and 19 having such functions as may be prescribed 20 by a law enacted by the Legislature 21 consistent with this Constitution; and subject 22 to the provisions of any such law such 23 Authority shall be independent in the 24 exercise of its functions." Do you see that? 25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 172</p>

<p>1 Q. And that, would you accept, is a 2 fundamental pillar of any police authority, 3 the independence aspect? 4 <b>A. I can't really say "no".</b> 5 Q. No, no, you can say - 6 <b>A. I just wasn't - I mean, I was vaguely</b> 7 <b>aware of that but I guess -</b> 8 Q. No, I understand, "vaguely" - that goes 9 back to the training point, but Mr Goncalves, 10 when he explained his role, the first thing he 11 said was, "The overarching mission 12 statement, as it were, was a safeguarding of 13 the independence of the RGP", which I 14 would suggest to you was consistent with 15 section 48, the independence point. Would 16 you accept that? 17 <b>A. Yes, yes.</b> 18 Q. Okay. Now, would you understand that 19 independence would include independence 20 from any form of interference or pressure? 21 <b>A. It depends what you mean by interference</b> 22 <b>or -</b> 23 Q. Well, let me put it differently: any 24 improper interference or pressure? 25 <b>A. I've never experienced it myself in that</b></p> <p style="text-align: center;">Page 173</p>	<p>1 <b>Governor and the Chief Minister for quite a</b> 2 <b>few things.</b> 3 Q. Yes, indeed, but outside what is 4 prescribed by the Act, in other words that is 5 why I said improper interference - there 6 might be proper interference for which you 7 might not even use the word "interference" 8 but what I mean is any improper influence or 9 pressure. Of course, if there is a provision of 10 the Act, that is a different matter, but would 11 you accept that? 12 <b>A. I really don't know what to answer.</b> 13 Q. That's fine. That's fine. You are 14 perfectly entitled not to. 15 THE CHAIRMAN: That is a perfectly 16 proper answer. If you do not follow the 17 question, it is much better to say so rather 18 than agreeing with it. 19 <b>A. Thank you, sir.</b> 20 MR CRUZ: Let me try addressing this in a 21 slightly different way and see if you agree 22 with this comment. Mr Lavarello yesterday 23 said - in this transcript at page 234 there is a 24 reference to be taken, "The Authority is there 25 to, I suppose, act as an independent party so</p> <p style="text-align: center;">Page 175</p>
<p>1 <b>sense with the police but yes.</b> 2 Q. Yes, okay, so - 3 THE CHAIRMAN: Do not agree with 4 something just because it is put to you. If 5 you feel unfamiliar with it - 6 <b>A. I don't understand it.</b> 7 MR CRUZ: Okay, let me - 8 <b>A. I don't understand what he is saying, I am</b> 9 <b>sorry.</b> 10 Q. All right, well I apologise. It might be 11 down to my questioning. 12 THE CHAIRMAN: No, I do not think it is 13 down to your questioning. I do not think 14 anyone has ever explained 48 to him. 15 MR CRUZ: Oh, I see. (To the witness) 16 Well, the Constitution says that the 17 independence of policing is important and 18 independence, I put it to you, means the 19 ability to make your own decisions without 20 interference from any outside force. Let us 21 put it in those terms. Would you agree with 22 that basic concept? 23 <b>A. Well, it depends what you mean by</b> 24 <b>interference: the actual Act presupposes that</b> 25 <b>the police authority has to consult the</b></p> <p style="text-align: center;">Page 174</p>	<p>1 that the Chief Minister and the Governor 2 cannot exercise undue influence over the 3 Commissioner". That is what Mr Lavarello 4 said yesterday. Would you agree with that 5 comment by Mr Lavarello? 6 <b>A. I don't recall him saying that, but if he</b> 7 <b>said it, he has been there far longer than I</b> 8 <b>have been.</b> 9 Q. Would you agree with the comment by 10 Mr Lavarello? I am not asking you whether 11 - I am sure those around us will pick us up if 12 I have said it wrong. I am just quoting from 13 the transcript. 14 <b>A. Okay.</b> 15 Q. Would you agree with that comment? 16 <b>A. Yes.</b> 17 Q. Okay, so it is fair to say that the police 18 authority - I am asking you - is to some 19 extent a filter to secure the independence that 20 the Constitution envisaged, to make sure that 21 there is not interference, and in the mind of 22 Mr Lavarello, also interference from the 23 Government or the Governor or the Chief 24 Minister and the Governor - that is what he 25 used - from undue influence. That is what</p> <p style="text-align: center;">Page 176</p>

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<p>1 you have just agreed to, so you understand 2 that. Yes? 3 <b>A. I understand it but remember that there is 4 a direct appointee from the Government there 5 and there's a direct appointee from the 6 Governor there.</b> 7 Q. Understood. 8 <b>A. I mean, that's a fact.</b> 9 Q. Okay. You might not, but would you 10 accept that if you had a police force that was 11 not controlled by a police authority, an 12 independent police authority, but rather by 13 politicians as an example - 14 <b>A. For example.</b> 15 Q. I do not specifically know their structure 16 but it might be a good example, or by a 17 governor in a colonial sense, that there is 18 always the possibility of abuse, political 19 abuse or some other type of abuse? 20 <b>A. Yes, and conversely there is always a 21 possibility of abuse by the police by having 22 too much power.</b> 23 Q. Indeed, and the police authority is the 24 pivot or the anchor or the filter to ensure that 25 neither the police have used power but that</p> <p style="text-align: center;">Page 177</p>	<p>1 <b>A. No, I was familiar with that section.</b> 2 Q. Okay, so we see just briefly - I am not 3 going to go to all of the sections, but the 4 opening words under the heading, 5 "Responsibilities and powers of the 6 authority", "to secure the maintenance of an 7 efficient and effective police force for 8 Gibraltar within the financial resources 9 available to it and on a value for money 10 basis", and at (b), "to ensure high standards 11 of integrity, probity and independence of 12 policing in Gibraltar". So, again, the word 13 "independence". So, you are familiar with 14 this section. That is one of the 15 responsibilities of the authority, to secure that 16 independence of policing. You would accept 17 that, and you understood that? 18 <b>A. Not to secure it, to ensure.</b> 19 Q. To ensure, yes. So, in those sections you 20 have what are the responsibilities of the 21 authority. So, would you accept that absent a 22 default, and we will go to section 13, if we 23 can just have section 13 up, absent a default 24 by the authority, the responsibility falls on 25 the authority. In other words, it is not the</p> <p style="text-align: center;">Page 179</p>
<p>1 no one else can exert pressure on the police 2 either. Would you accept that? 3 <b>A. I am not certain why the police authority 4 was constituted, but that is probably - in all 5 probability one reason.</b> 6 Q. Yes. Just to return to section 48, if you 7 read that section again, and at the bottom 8 part, "and subject to the provisions of any 9 such law such Authority shall be independent 10 in the exercise of its functions." So, the 11 Constitution envisaged a police authority - 12 that is the answer to your question of why it 13 is there and that it be independent and then 14 we have the Police Act that created powers. 15 So, under the Police Act, if I can just take 16 you forward to that and ask that it be put on 17 the screen, Section 5, now you may recall 18 that you said earlier on today that you were 19 not familiar with section 34 until very late in 20 the day. 21 <b>A. Yes.</b> 22 Q. Is that the same case in the case of 23 section 5 which outlines the responsibilities 24 and powers of the authority, or were you 25 familiar with this?</p> <p style="text-align: center;">Page 178</p>	<p>1 Governor who is responsible; he is ultimately 2 responsible but in essence there is a 3 delegation to an authority and absent a 4 default, it is them who have the responsibility 5 to carry out to ensure that the police provide 6 what I've just described in terms of an 7 efficient and independent policing. Would 8 you accept that? 9 <b>A. That's not my understanding, not - there 10 is a section there that actually says quite 11 clearly that the Governor is -</b> 12 Q. (inaudible) - section 11 and 12 you are 13 looking at. 14 <b>A. 11 and 12.</b> 15 Q. Yes. 16 <b>A. But I am not going to start a legal 17 argument -</b> 18 Q. No, I understand. 19 THE CHAIRMAN: We have been debating 20 law and I do not think it is very helpful. 21 MR CRUZ: No, I understand. I think I was 22 just trying to establish whether section 11 - 23 yes, I understand. I was just trying to 24 understand - I will not take you to too much 25 law -</p> <p style="text-align: center;">Page 180</p>

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<p>1 <b>A. Which one?</b>  2 Q. Section 13. I will take you to two  3 sections: section 13. I hear what you say on  4 section 11.  5 <b>A. And 12.</b>  6 Q. And 12, correct, but in terms of section  7 13, the Governor's powers in default by  8 authority, did you understand at the relevant  9 time that the powers, including the power to  10 remove the Commissioner of Police, which is  11 (f) "to suspend from duty, or call for the  12 resignation of the Commissioner", would  13 have involved a failure to discharge by the  14 authority? In other words, the authority must  15 fail in something in order for that power to be  16 triggered?  17 <b>A. Not at the time but soon after.</b>  18 Q. Okay, so at the time you were not sure?  19 <b>A. Yes.</b>  20 Q. Okay. And if we go just to the section  21 that we referred to, 34, and then we can leave  22 the law behind, and this is purely because we  23 happen to have it open on the screen and not  24 to go back to it again, would you accept - it  25 is not the best drafting of a section but would</p> <p style="text-align: center;">Page 181</p>	<p>1 <b>A. Yes.</b>  2 Q. Yes, that is really it, so if I can now take  3 you to the meeting that you had with the  4 Governor and the Chief Minister, and you  5 will remember, if I recall correctly, that  6 happens as a result of an email that you are  7 sent on 16 May, if I recall - is that right?  8 <b>A. I don't remember the date, but yes, by the</b>  9 <b>Governor.</b>  10 Q. Yes. Now, at that point am I right in  11 saying that you had already had this  12 conversation with Mr McGrail? He had  13 already seen you about the Operation Delhi  14 issue before you walked into that meeting?  15 <b>A. He briefed me and explained that the</b>  16 <b>Chief Minister was annoyed with him and a</b>  17 <b>host of other things that I cannot recall. I</b>  18 <b>mean, I really can't recall the details of that</b>  19 <b>meeting. It may be Mr McGrail has deposed</b>  20 <b>otherwise. There might be a recording, in</b>  21 <b>which case I would -</b>  22 Q. That is fine. It is just the chronology. I  23 just wanted to check that the chronology is  24 such that he had already briefed you and that  25 that happened before your meeting with Mr</p> <p style="text-align: center;">Page 183</p>
<p>1 you accept that section (1) should be read  2 with section (2), by which I mean that before  3 seeking the approval of the Governor and the  4 Chief Minister to call upon the  5 Commissioner to retire, there needs to be that  6 opportunity for the Commissioner to explain  7 himself?  8 <b>A. I think we've gone over this already.</b>  9 Q. And you accept that?  10 <b>A. And I accept that is why we withdrew -</b>  11 <b>one of the reasons, anyway.</b>  12 Q. Understood, understood. So, if I can say  13 the following, would you accept that the  14 powers in the authority, absent a default,  15 should be exercised by the authority? Would  16 you just accept that basic concept?  17 <b>A. Say it again, please.</b>  18 Q. The powers in the Act vested in the  19 authority should be exercised by the  20 authority absent a default by the Governor?  21 <b>A. I don't understand the question.</b>  22 Q. Well, absent a default by the authority,  23 the powers that are vested in the authority,  24 which you were the chairman of, should have  25 been exercised by you.</p> <p style="text-align: center;">Page 182</p>	<p>1 Picardo and Mr Pyle. Is that right?  2 <b>A. Yes, emphasis on the word "brief".</b>  3 Q. Yes, I understand, that you were briefed.  4 When they raised the issues that they raised,  5 just to be clear, because I think your evidence  6 this morning at two points somewhat  7 contradicted itself, are you saying you made  8 no connection at all between the brief, the  9 brief brief that Mr McGrail gave you on that  10 Operation Delhi meeting he had had where  11 the Chief Minister was angry with him and  12 the events that were taking place on the 18th?  13 Did you ever put those two together?  14 <b>A. Not that I can recall because I didn't</b>  15 <b>necessarily understand or believe everything</b>  16 <b>Mr McGrail was telling me but I didn't take</b>  17 <b>notes of what he was saying, but as I said</b>  18 <b>before, I don't think I joined the dots.</b>  19 Q. Okay, that's fine. That's fine, okay.  20 Parking that for the moment, during those  21 meetings, do you think, in order to secure the  22 independence that we talked about earlier of  23 the authority, it might have been at any stage  24 sensible to say to both Mr Pyle or Mr  25 Picardo, "Look, gentlemen, I hear your</p> <p style="text-align: center;">Page 184</p>

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<p>1 complaints. You are two very senior 2 individuals. I respect you greatly but I need 3 to take your complaint in writing and take it 4 to my committee, give it some thought, 5 analyse it, invite Mr McGrail, go through that 6 process." Do you not think that would have 7 been a sensible thing to have done? 8 <b>A. Now, after taking legal advice, most 9 probably but then I wasn't thinking along 10 those lines, certainly. Certainly not.</b> 11 Q. Well, can I ask you this. Your counsel 12 said that you felt very uncomfortable and 13 after that meeting, and this is Mr Neish on 14 day two of the transcript at page 88. He said 15 that you felt extremely uncomfortable at 16 what you were doing. "Dr Britto felt 17 extremely uncomfortable and found what he 18 was doing was ... unpalatable." What 19 particularly was unpalatable about it? 20 <b>A. Having to tell somebody, give to 21 somebody essentially bad news that people 22 have lost confidence in you and you're 23 required to make representations and you 24 may be required to not resign, hopefully, but 25 retire. The whole situation was unpalatable.</b></p> <p style="text-align: center;">Page 185</p>	<p>1 <b>their heads.</b> 2 THE CHAIRMAN: Well, you do not like 3 conflict. 4 <b>A. I have spent my life as a teacher, I think, 5 in an all-boys school, avoiding those kind of 6 things.</b> 7 MR CRUZ: Okay. You did say that you did 8 not like conflict. I understand that. So, at 9 one point, again your counsel in his opening 10 submissions said that the GPA cannot ask the 11 Governor to retire or the Chief Minister to 12 retire. He can ask the Commissioner to 13 retire. Is it the case that really you felt you 14 had no choice? 15 <b>A. I felt I had a choice. I felt I was given a 16 choice but whether I gave myself a choice is 17 a complete - it's another matter. The thing is 18 I did what I did.</b> 19 MR NEISH: Mr Chairman, I am sorry to 20 interrupt. Is that not rather a vague question? 21 A choice about what? Really, confronted 22 with the facts and the meeting with the Chief 23 Minister, did he have a choice? Well, the 24 answer is probably "no", but the question 25 could be more specific.</p> <p style="text-align: center;">Page 187</p>
<p>1 Q. Uncomfortable? Unpalatable. Did you 2 feel a sense of injustice towards Mr McGrail 3 as a result of that meeting? 4 <b>A. I didn't have time to think.</b> 5 Q. Okay, and after the meeting, during that 6 period did you feel that something unjust was 7 happening? 8 <b>A. I'm not sure.</b> 9 Q. You are not sure? 10 <b>A. I can't answer.</b> 11 Q. Okay. 12 <b>A. Something in that surrounding - I really 13 don't know what I thought at the time.</b> 14 Q. Okay. Can I suggest to you that - 15 <b>A. If you ask me a question, I might be able 16 to answer rather than suggest things, please.</b> 17 Q. Of course. Can I put it to you, or can I 18 ask you, do you think it was unjust? 19 <b>A. That's for the inquiry to find, I think. I 20 am not in a position to judge absolutely 21 anyone except myself.</b> 22 Q. Okay. 23 THE CHAIRMAN: You do not like making 24 judgments between people really, do you? 25 <b>A. I avoid it, sir, because I am not inside</b></p> <p style="text-align: center;">Page 186</p>	<p>1 THE CHAIRMAN: In fact, he said this 2 morning - I will get his precise words: 3 "They were giving me a choice, but not 4 really." That is what he said. 5 MR CRUZ: In essence, it is the same 6 question. It is the same question that I was 7 eliciting, just to be clear, but, Mr Chairman, 8 you have picked it up. I am grateful to you. 9 Mr Britto, just a couple more questions. If 10 Mr Lavarello is correct in what he said 11 yesterday, which is had he had the full set of 12 facts, there might have been a different 13 outcome - would you agree with that 14 comment? 15 <b>A. Had we had the full set of facts -</b> 16 Q. From Mr McGrail. 17 <b>A. Had we known -</b> 18 Q. Had you known - 19 <b>A. -- that even before the meeting with the 20 Chief Minister and the Governor - we didn't 21 know anything.</b> 22 Q. I understand, but Mr Lavarello said 23 specifically - 24 <b>A. A very hypothetical question and I am 25 not sure I can answer that.</b></p> <p style="text-align: center;">Page 188</p>

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<p>1 Q. Well, Mr Lavarello was able to answer - 2 THE CHAIRMAN: That does not mean that 3 this witness (inaudible) is prepared to answer 4 it. 5 MR CRUZ: No, well I know. I appreciate 6 that sir, but I am just trying to put it to him 7 and if he is unable to, well I understand but I 8 do not think it is fair not to put it to him. He 9 was asked a question - he was asked two 10 questions, one by Mr Wagner and then by my 11 learned friend Sir Peter, right? In the case of 12 Sir Peter's one, "Moving on, you said that if 13 you had known the facts that you know now, 14 the board may have come to a different 15 conclusion. Do you remember saying that?" 16 "Yes, may have." Now, would you agree 17 that had you had the facts you may have 18 come to a different decision? 19 <b>A. May, may.</b> 20 Q. Indeed, may. And therefore can I ask you 21 whether if the GPA had adhered to its role as 22 identified in the Constitution to be 23 independent, would it be fair to say that the 24 outcome might have been completely 25 different?</p> <p style="text-align: center;">Page 189</p>	<p>1 THE CHAIRMAN: Yes, okay. 2 (1500) 3 (Adjourned for a short time) 4 (15.09) 5 MR WAGNER: Thank you. 6 THE CHAIRMAN: I know that you will have 7 taken this on board, Mr Wagner, but you need 8 not cover the ground that has been covered 9 already by others. 10 MR WAGNER: Yes, and I have also taken on 11 board it is the last thing on a Friday, and I do 12 not want to be responsible for us finishing ... 13 THE CHAIRMAN: I would propose sitting 14 until 6 o'clock if necessary, but I would not 15 encourage it. 16 MR WAGNER: I am not going to. 17 Questioned by MR WAGNER 18 Q. Good afternoon, Dr Britto. 19 <b>A. Good afternoon, Mr Wagner.</b> 20 Q. First, policies. You referred to Mr Ullger 21 submitting policies for the GPA's approval and 22 you spent some time on that. 23 <b>A. Yes.</b> 24 Q. Do you recall which Commissioner it was 25 that instigated the system of the GPA</p> <p style="text-align: center;">Page 191</p>
<p>1 <b>A. I am not a fortune teller. I think - what 2 would have happened, I had no way of 3 knowing that.</b> 4 MR NEISH: Sorry, what might have 5 happened? 6 THE CHAIRMAN: Yes, do not worry, Mr 7 Neish. 8 MR CRUZ: All right. Well, let me put a 9 different question to you. Do you think that 10 the GPA failed the RGP, and I say it in a 11 general sense given that the Commissioner is 12 one of its senior personnel, on this occasion 13 failed the RGP in its approach? 14 <b>A. No.</b> 15 Q. You do not? 16 <b>A. (no reply)</b> 17 MR CRUZ: Okay. Thank you. 18 MR WAGNER: Sir, I do not know whether 19 it makes sense to break now or I can stop 20 after 15 minutes, whatever? 21 THE CHAIRMAN: I had completely lost 22 track of time. 23 MR WAGNER: It is three o'clock. 24 THE CHAIRMAN: Yes, it probably is. 25 MR WAGNER: Okay.</p> <p style="text-align: center;">Page 190</p>	<p>1 reviewing police policies? 2 <b>A. No, it's actually in the Act.</b> 3 Q. It is in the Acts, and do you recall that Mr 4 McGrail was a keen proponent of that? 5 <b>A. Possibly.</b> 6 Q. Gibraltar Police Federation. You were 7 asked about the relationship between the GPF 8 and the RGP Senior Leadership and you 9 accepted it was difficult. 10 <b>A. Very.</b> 11 Q. Did things improve after Mr McGrail left? 12 <b>A. At first.</b> 13 Q. And then what happened? 14 <b>A. Things then went back to normal; 15 fractious.</b> 16 Q. Fractious. Yes. And is it not right that - 17 we have seen the email and I will not take you 18 to it - that Mr Ullger last year said he would no 19 longer work with the GPF under its leadership 20 at the time? 21 <b>A. He did say that, but he still tried.</b> 22 Q. And Mr Pyle did not mention the 23 relationship with the GPF during your meeting 24 of the 18th of May, is that right? 25 <b>A. I think so. I'm not sure. Yes. No, sorry,</b></p> <p style="text-align: center;">Page 192</p>



<p>1 <b>not Mr Pyle - at the meeting with the Governor and the Chief Minister?</b></p> <p>2</p> <p>3 Q. Yes.</p> <p>4 <b>A. No. He said he was concerned about it but he didn't make it a huge issue.</b></p> <p>5</p> <p>6 Q. It was not a big thing. The incident at sea.</p> <p>7 You mentioned that you had heard comments</p> <p>8 from retired officers about the AIS being</p> <p>9 switched off, both in Gibraltar and amongst</p> <p>10 the Spanish police, is that right?</p> <p>11 <b>A. I had heard, yes, but it's purely anecdotal.</b></p> <p>12 Q. Had you heard those rumours before the</p> <p>13 14th of May, before mid May 2020?</p> <p>14 <b>A. It's a good question. I'm not sure.</b></p> <p>15 Q. You are not sure.</p> <p>16 <b>A. I'm not sure.</b></p> <p>17 Q. So, it could have been before, it could have</p> <p>18 been after?</p> <p>19 <b>A. It could have been before.</b></p> <p>20 Q. And it could have been after.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Did you, when you heard about the AIS</p> <p>23 being switched off in the incident at sea, did</p> <p>24 you raise the rumours, if you had heard them</p> <p>25 by that stage, with anyone on the GPA?</p> <p style="text-align: center;">Page 193</p>	<p>1 Q. So, you knew that the matter was being</p> <p>2 independently investigated?</p> <p>3 <b>A. I suppose, yes.</b></p> <p>4 Q. Just to pause on independent</p> <p>5 investigations, is it fair to say that Mr McGrail</p> <p>6 regularly requested independent reports?</p> <p>7 <b>A. I'm not sure. I know he requested an</b></p> <p>8 <b>independent report from, and I might get this</b></p> <p>9 <b>wrong, the APP, or the ...</b></p> <p>10 Q. AAP. So, he requested the independent</p> <p>11 report into bullying, did he not?</p> <p>12 <b>A. I remember because he actually mentioned</b></p> <p>13 <b>what it was going to cost the police force,</b></p> <p>14 <b>which was £20,000.</b></p> <p>15 Q. And he requested the HMICFRS report,</p> <p>16 did he not?</p> <p>17 <b>A. Through me.</b></p> <p>18 Q. But he convinced you to request it?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. It was not your idea. And he requested the</p> <p>21 Metropolitan Police report into the incident at</p> <p>22 sea, did he not?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. You have been sat in these hearings</p> <p>25 throughout, I think?</p> <p style="text-align: center;">Page 195</p>
<p>1 <b>A. No, no.</b></p> <p>2 Q. Did you raise them with Mr McGrail?</p> <p>3 <b>A. No.</b></p> <p>4 Q. You gave evidence that you thought that</p> <p>5 you, and I think the GPA generally, when you</p> <p>6 heard about the significance of the incident at</p> <p>7 sea to the loss of confidence, you assumed</p> <p>8 there must be some, it must have been more</p> <p>9 serious than you had previously thought, and</p> <p>10 you were asked why you had not, as the GPA,</p> <p>11 done anything about it until then and you said</p> <p>12 because the reports had not been produced yet.</p> <p>13 Which report were you talking about?</p> <p>14 <b>A. I'm not sure. Mr McGrail commissioned</b></p> <p>15 <b>an external police force to investigate</b></p> <p>16 <b>everything, but I'm not sure when the actual</b></p> <p>17 <b>results were out.</b></p> <p>18 Q. But as at May 2020, you did not, you were</p> <p>19 not aware that the report had been produced?</p> <p>20 You had not been given any kind of draft or</p> <p>21 any report?</p> <p>22 <b>A. No.</b></p> <p>23 Q. But you knew it ...</p> <p>24 <b>A. We were just aware that it had happened</b></p> <p>25 <b>outside our waters.</b></p> <p style="text-align: center;">Page 194</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. You may or may not have seen, but in one</p> <p>3 of the transcripts of the meetings which took</p> <p>4 place that you were not in, that took place</p> <p>5 from the 13th of May onwards, Mr McGrail</p> <p>6 said at one point, "Look, I'm happy to send</p> <p>7 out/I'm willing to send out the Op Delhi</p> <p>8 investigation to an independent police force to</p> <p>9 review" - I do not know if you saw that or not?</p> <p>10 <b>A. No.</b></p> <p>11 Q. No. Do you recall that Mr McGrail</p> <p>12 referred, while he was Commissioner, a case</p> <p>13 of bullying to the GPA to quality assure how</p> <p>14 the RGP was handling the matter?</p> <p>15 <b>A. A case of bullying?</b></p> <p>16 Q. There was a case, there was a complaint of</p> <p>17 bullying, I guess it was probably a grievance.</p> <p>18 <b>A. It was a grievance.</b></p> <p>19 Q. And he referred it to the GPA?</p> <p>20 <b>A. Because at the time there was no bullying</b></p> <p>21 <b>policy, anti-bullying policy, so it had to go</b></p> <p>22 <b>through grievance. Now I'm glad to say there</b></p> <p>23 <b>is an anti-bullying policy.</b></p> <p>24 Q. Yes, but do you recall him referring that to</p> <p>25 the GPA?</p> <p style="text-align: center;">Page 196</p>

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<p>1 <b>A. Vaguely.</b></p> <p>2 Q. For the assistance of the GPA. And indeed</p> <p>3 you may or may not know this, but Mr</p> <p>4 McGrail originally called for this inquiry - I do</p> <p>5 not know if you did or did not know that?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Taking all that together, the fact that he</p> <p>8 regularly called for independent processes to</p> <p>9 analyze quite difficult circumstances, does that</p> <p>10 suggest to you that he was open or closed to</p> <p>11 criticism?</p> <p>12 <b>A. I'm not sure. I don't think I worked long</b></p> <p>13 <b>enough with him to answer that, but having</b></p> <p>14 <b>said that, it's normal for the police force to call</b></p> <p>15 <b>outside help, especially when there's a death in</b></p> <p>16 <b>custody and anything that they feel they can't</b></p> <p>17 <b>investigate themselves. Not because of</b></p> <p>18 <b>conflict of interest but simply because they</b></p> <p>19 <b>haven't got the expertise. I think. I mean, I'm</b></p> <p>20 <b>not an expert.</b></p> <p>21 Q. But somebody who calls for regular</p> <p>22 independent reviews, would you agree that</p> <p>23 that does not indicate they are closed to</p> <p>24 criticism?</p> <p>25 <b>A. It's - I don't know what that implies.</b></p> <p style="text-align: center;">Page 197</p>	<p>1 <b>the internal briefing note, I wasn't included</b></p> <p>2 <b>because we didn't have a role, I don't think.</b></p> <p>3 Q. Sure, so they might have known but you</p> <p>4 did not ask?</p> <p>5 <b>A. I didn't ask.</b></p> <p>6 Q. You trusted them?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Turning to the second point, the Governor</p> <p>9 told you he had been misled about the incident</p> <p>10 at sea. He was accusing the Commissioner of</p> <p>11 Police of dishonesty, was he not?</p> <p>12 <b>A. He was.</b></p> <p>13 Q. And that is a very serious allegation, is it</p> <p>14 not?</p> <p>15 <b>A. I can't say No.</b></p> <p>16 Q. No. And serious enough for him to have</p> <p>17 lost confidence. You said that the Governor</p> <p>18 did not share any evidence of his concerns.</p> <p>19 Did you ever see any emails or text messages</p> <p>20 or other documents that were his evidence for</p> <p>21 the dishonesty?</p> <p>22 <b>A. No, I - he didn't show it to me but I know</b></p> <p>23 <b>he had a dossier of the incident and he seemed</b></p> <p>24 <b>to be very confident that he could prove that</b></p> <p>25 <b>Mr McGrail had been keeping certain things</b></p> <p style="text-align: center;">Page 199</p>
<p>1 Q. Returning to the incident at sea, when you</p> <p>2 heard about how central the incident at sea was</p> <p>3 to the loss of confidence, did you ask about the</p> <p>4 independent report and where it was?</p> <p>5 <b>A. No.</b></p> <p>6 Q. You did not?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Did you wonder at all why the Governor</p> <p>9 and Chief Minister appeared to have reached</p> <p>10 hard conclusions about responsibility for the</p> <p>11 incident at sea without the independent report</p> <p>12 being available?</p> <p>13 <b>A. It didn't cross my mind, but it wasn't - what</b></p> <p>14 <b>convinced us was the gravity of the incident at</b></p> <p>15 <b>sea, but also the allegation that Mr McGrail</b></p> <p>16 <b>had been keeping certain information away</b></p> <p>17 <b>from the Governor.</b></p> <p>18 Q. We will come to that in a minute, but the</p> <p>19 gravity of the incident at sea, I am just asking</p> <p>20 whether you thought - you did not think to ask</p> <p>21 and did not think it was curious that they</p> <p>22 would reach that conclusion without the</p> <p>23 independent report?</p> <p>24 <b>A. They might have known something that I</b></p> <p>25 <b>hadn't because, if you saw the briefing notes,</b></p> <p style="text-align: center;">Page 198</p>	<p>1 <b>away from him, and I think it was the exact</b></p> <p>2 <b>location or something along those lines.</b></p> <p>3 Q. So, when did he tell you he had this</p> <p>4 dossier?</p> <p>5 <b>A. I can't recall.</b></p> <p>6 Q. You only spoke to him once about this, did</p> <p>7 you not? So, it must have been on the 18th?</p> <p>8 <b>A. No, I don't think it was on the 18th. I think</b></p> <p>9 <b>it was after that, but I really can't recall.</b></p> <p>10 Q. Did you ever ask to see the dossier?</p> <p>11 <b>A. No, that question I have answered already,</b></p> <p>12 <b>we didn't try to investigate.</b></p> <p>13 Q. Did the Governor tell you whether, sorry,</p> <p>14 the Interim Governor tell you whether he had</p> <p>15 run his suspicion by Mr McGrail before</p> <p>16 making the serious allegation of dishonesty?</p> <p>17 <b>A. He didn't say one way or another but I</b></p> <p>18 <b>don't think he did.</b></p> <p>19 Q. No, and you did not ask?</p> <p>20 <b>A. No.</b></p> <p>21 Q. You came to learn a few days after the</p> <p>22 incident at sea, I think on the 13th of March,</p> <p>23 that the whole incident, so the chase and the</p> <p>24 collision, took place in Spanish waters. You</p> <p>25 were taken to that earlier, were you not?</p> <p style="text-align: center;">Page 200</p>

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<p>1 <b>A. Yes, I can't recall exactly when I found out</b>  2 <b>but if that's what the evidence shows, then that</b>  3 <b>is the case.</b>  4 Q. It was a text message that Mr McGrail sent  5 to the Maritime Incident Group.  6 <b>A. Yes.</b>  7 Q. Were you aware why the Governor was  8 not included in the Maritime Incident Group?  9 <b>A. No, I wasn't even aware why I was</b>  10 <b>included in it.</b>  11 Q. Was it your understanding, and if you do  12 not remember say, that the Governor's concern  13 was that he had not been told early enough that  14 the whole incident took place in Spanish  15 waters?  16 <b>A. I think that's possibly what he said.</b>  17 Q. And just go to B1748, just because it was  18 referred to before but I do not think it was  19 shown. Maybe it is C1748. This is an email  20 that Mr Pyle sent the day after the incident  21 took place, early in the morning, or earlyish,  22 7.57: "There may be complications around  23 yesterday's incident, it may have happened as  24 much as 6 miles inside Spanish waters."  25 Would it be fair to say that you did not see this</p> <p style="text-align: center;">Page 201</p>	<p>1 <b>A. Yes.</b>  2 Q. The HMIC report. When it was used by  3 the Governor and the Chief Minister, the  4 Interim Governor and the Chief Minister as a  5 justification for the loss of confidence, did you  6 consider getting in touch with the Inspectors to  7 ask them whether in their opinion the report  8 justified removing the Commissioner?  9 <b>A. Not at all.</b>  10 Q. No.  11 <b>A. And I don't think they would have</b>  12 <b>commented on that, or expected that a report</b>  13 <b>would lead to this, but I'm not sure because I</b>  14 <b>didn't get in touch with them.</b>  15 Q. You do not think they would have  16 expected the report?  17 <b>A. No, I said I don't think. I'm not sure.</b>  18 Q. You now say and you said in evidence  19 today that you were concerned it would  20 damage the reputation of the RGP and that you  21 were concerned for that reason about  22 publishing the report. Is that what you said?  23 <b>A. That's correct.</b>  24 Q. And you also said that you responded to  25 Mr McGrail's text message about the reporting</p> <p style="text-align: center;">Page 203</p>
<p>1 email or anything like it until the inquiry?  2 <b>A. Until now.</b>  3 Q. Looking back now, would you have  4 expected to have been presented with evidence  5 about the allegation of dishonesty?  6 <b>A. If an allegation had been made and I had</b>  7 <b>known that there was evidence, and I'm not</b>  8 <b>sure, and I'm not saying that this is evidence, I</b>  9 <b>don't want to get involved in that, possibly,</b>  10 <b>quite possibly. Whether I would have</b>  11 <b>understood what it means, you know, "6 miles</b>  12 <b>inside Spanish waters" - as we know, that's</b>  13 <b>been a bit of a controversy, trying to explain</b>  14 <b>exactly what that meant.</b>  15 Q. It would have taken quite a detailed  16 exercise to get to the bottom of whether he had  17 been dishonest, is that fair?  18 <b>A. Possibly.</b>  19 Q. And is it fair to say, dealing with the  20 Interim Governor, you trusted him to have  21 done that exercise before making the  22 allegation?  23 <b>A. To be honest, I trusted both.</b>  24 Q. I am asking about the Interim Governor. I  25 will come to the Chief Minister.</p> <p style="text-align: center;">Page 202</p>	<p>1 from Panorama being sensationalist, that you  2 sort of agreed, just to make him feel better? Is  3 that what you said?  4 <b>A. Chronicle, yes. To make him feel better.</b>  5 <b>That's me trying to avoid people getting hurt,</b>  6 <b>quite frankly.</b>  7 Q. And you also said you felt that Mr McGrail  8 initially said it was not - it was the previous  9 Commissioner who had not implemented  10 recommendations. That is what you said?  11 <b>A. That's what I was told.</b>  12 Q. You submitted, I think, is it four statements  13 to this inquiry, three or four?  14 <b>A. I think so.</b>  15 Q. It is five. Did you mention any of those  16 points in your statements?  17 <b>A. Which points?</b>  18 Q. Well, about your concern about the report  19 damaging the reputation of the RGP? About  20 Mr McGrail not taking responsibility? And all  21 of that?  22 <b>A. No, I haven't mentioned Mr McGrail not</b>  23 <b>taking responsibility, I don't think. What</b>  24 <b>concerned me most about the report is what I</b>  25 <b>put there, that I didn't think it should have been</b></p> <p style="text-align: center;">Page 204</p>

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<p>1 <b>published, and also that we weren't really, I</b></p> <p>2 <b>wasn't convinced that we were all really alive</b></p> <p>3 <b>to how serious the report was because, as I</b></p> <p>4 <b>said, as lay-people, we read the report and we</b></p> <p>5 <b>felt - well, I mean, it's fixable, but that's</b></p> <p>6 <b>separate to actually publishing.</b></p> <p>7 Q. Sorry, so you do not know whether you</p> <p>8 were alive to the seriousness. Is that what you</p> <p>9 came to think after the Governor and the Chief</p> <p>10 Minister said, "Actually, this is really, really</p> <p>11 serious and we're going to ..."</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So, it was their opinion that swayed you in</p> <p>14 that sense?</p> <p>15 <b>A. They didn't tell me, "You guys aren't alive</b></p> <p>16 <b>to how serious this is." They told me, "This is</b></p> <p>17 <b>very serious."</b></p> <p>18 Q. Yes, your initial thought was, "It's fixable,</p> <p>19 it's damaging but fixable"?</p> <p>20 <b>A. My initial feeling was that it was, and I</b></p> <p>21 <b>think it's written somewhere, that it made</b></p> <p>22 <b>extremely uncomfortable reading,</b></p> <p>23 <b>uncomfortable for the police and for us.</b></p> <p>24 Q. But you did not - yes, I think you have</p> <p>25 made the point. So, you did not want the</p> <p style="text-align: center;">Page 205</p>	<p>1 taking responsibility for the report, he would</p> <p>2 not have said, "Let's publish it and I'm going to</p> <p>3 take questions from the public"?</p> <p>4 <b>A. Yes, in spite of him initially telling me,</b></p> <p>5 <b>"It's not my fault, this is the previous</b></p> <p>6 <b>Commissioner." I can't say No.</b></p> <p>7 Q. He took public responsibility and he</p> <p>8 answered questions to the public, is that fair?</p> <p>9 <b>A. Yes, yes.</b></p> <p>10 Q. I just want to ask you about what you were</p> <p>11 told by Mr McGrail when you met - I am not</p> <p>12 going to ask you about when exactly you met</p> <p>13 between the 12th and the 15th, because I do</p> <p>14 not think you recall, but if we go to - so, your</p> <p>15 evidence this morning was that Mr McGrail</p> <p>16 spoke to you and it was primarily about James</p> <p>17 Levy's phone?</p> <p>18 <b>A. And in fact I think I remember asking,</b></p> <p>19 <b>"Where is it?" and he said, "In my safe." That</b></p> <p>20 <b>is what stuck in my head.</b></p> <p>21 Q. That is what stuck in your head, but is it</p> <p>22 not ...</p> <p>23 <b>A. I really didn't understand why there would</b></p> <p>24 <b>be a phone in his safe.</b></p> <p>25 Q. Well, it would have been a very odd thing</p> <p style="text-align: center;">Page 207</p>
<p>1 report to be published, and the Interim</p> <p>2 Governor did not want the report to be</p> <p>3 published either, did he?</p> <p>4 <b>A. I wasn't sure about that. I didn't ask.</b></p> <p>5 Q. I think you were shown an email where he</p> <p>6 said that.</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Did Mr McGrail want the report to be</p> <p>9 published?</p> <p>10 <b>A. At first he was also very uncomfortable but</b></p> <p>11 <b>then I think after meeting with the Minister for</b></p> <p>12 <b>Justice, we felt, well, it's Covid, people are</b></p> <p>13 <b>going to be preoccupied more with the Covid.</b></p> <p>14 <b>And, to be honest, it was in the public ...</b></p> <p>15 Q. That is what he says in the text message, is</p> <p>16 it not? To paraphrase, he says, "We're in a</p> <p>17 good place with the public now, and now is a</p> <p>18 good time to publish it." And was it Mr</p> <p>19 McGrail who said that he would publish, once</p> <p>20 the report as published he would immediately</p> <p>21 answer questions at the regular Covid press</p> <p>22 conference about the report?</p> <p>23 <b>A. Yes, that's why I said, "Okay, let's go</b></p> <p>24 <b>ahead."</b></p> <p>25 Q. Is it not fair to say that, if he had not been</p> <p style="text-align: center;">Page 206</p>	<p>1 for him to just and say, "Dr Britto, I've come to</p> <p>2 tell you, James Levy's phone's in the safe. I'm</p> <p>3 going now."</p> <p>4 <b>A. It wasn't just that. He said, "The Chief</b></p> <p>5 <b>Minister is very upset with me" and then he</b></p> <p>6 <b>said, "Because I've got the phone in the safe."</b></p> <p>7 Q. And did he not also say that he was</p> <p>8 concerned, and the reason he was seeing you</p> <p>9 was because he was concerned about</p> <p>10 interference with an operational matter by the</p> <p>11 Chief Minister?</p> <p>12 <b>A. He possibly mentioned that. I'm not saying</b></p> <p>13 <b>that I - at that moment in time I believed that</b></p> <p>14 <b>this could possibly be happening.</b></p> <p>15 Q. I will come back to that. I just want to go</p> <p>16 to A517 and paragraph 14. This is Mr</p> <p>17 Carreras' statement and he is referring to the</p> <p>18 meeting on the 22nd: "Dr Britto made an</p> <p>19 incidental reference to a conversation which he</p> <p>20 had with Mr McGrail prior to the 18th of May</p> <p>21 meeting during which Mr McGrail alleged that</p> <p>22 they were trying to interfere in an investigation</p> <p>23 being carried out by the RGP which involved a</p> <p>24 senior partner in a law firm." Do you agree</p> <p>25 that, if Mr Carreras remembers you saying that</p> <p style="text-align: center;">Page 208</p>

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<p>1 at a meeting, that it is highly likely that you 2 were actually told that by Mr McGrail? 3 <b>A. Yes, we haven't discussed as a GPA, so it 4 is his recollection.</b> 5 Q. Yes, but there is no other way he would 6 have known that, is there? I suppose you 7 cannot answer that. 8 <b>A. So, would you agree, and I will not take 9 you back to the minute, but would you agree 10 that it is highly likely you were told by Mr 11 McGrail that Mr Picardo was trying to 12 interfere with an investigation?</b> 13 <b>A. Maybe not quite in those words, but he led 14 me to believe that that was his perception, yes.</b> 15 Q. You say you believed it could not possibly 16 be happening, or you could not possibly 17 believe it would be happening. Why were you 18 so skeptical in relation to what Mr McGrail 19 was telling you? 20 <b>A. Because it seemed like something out of 21 fiction, to tell you the truth, and I'm not used to 22 that.</b> 23 Q. Yes. 24 <b>A. I'm not saying it wasn't true, what I'm 25 saying is that at that moment in time I just</b></p> <p style="text-align: center;">Page 209</p>	<p>1 not had it. 2 <b>A. Would you mind repeating the question, 3 please?</b> 4 Q. I asked whether the skepticism that you 5 had towards Mr McGrail - and I am not 6 casting any aspersions because it is just how 7 you felt - do you think that skepticism 8 impacted on the way you dealt with the whole 9 issue? 10 <b>A. Skepticism, possibly, about how could that 11 be happening in Gibraltar, rather than what Mr 12 McGrail was telling me, if you see the 13 distinction?</b> 14 Q. I do not because ... 15 <b>A. I'm not trying to say that I distrusted him. 16 It's just that maybe he feels that they're trying 17 to interfere with him.</b> 18 Q. Does it go back to the fact that you trusted 19 the Chief Minister? 20 <b>A. Yes.</b> 21 Q. And ... 22 <b>A. I trusted the office of the Chief Minister 23 and the office of the Governor.</b> 24 Q. And you did not believe that what Mr 25 McGrail was telling you, that he was</p> <p style="text-align: center;">Page 211</p>
<p>1 <b>couldn't quite fathom it and I just ...</b> 2 Q. Because you have mentioned a few times 3 that when - I think you said early in your 4 evidence, you said you just could not believe 5 this could be happening in Gibraltar. 6 <b>A. Yes.</b> 7 Q. That was one thing you said. And then 8 you said a few times that you did not quite 9 believe what Mr McGrail was telling you. 10 Would it be fair that that is quite a big contrast 11 with the fact that you fully believed what you 12 were being told by the Chief Minister and the 13 Governor? 14 <b>A. It is a contrast, yes.</b> 15 Q. And do you think your skepticism about 16 what Mr McGrail was telling you may have in 17 some way impacted the way you dealt with the 18 whole situation? 19 <b>A. Excuse me, my nose is dripping.</b> 20 Q. No, take a minute. Shall we take a break? 21 <b>A. I think it's pollen or whatever.</b> 22 Q. I am just aware that we have not had a - no, 23 we had a break, did we not, before? 24 THE CHAIRMAN: We had a break. 25 MR WAGNER: Sorry, it feels like we have</p> <p style="text-align: center;">Page 210</p>	<p>1 interfering with an investigation, could be 2 true? 3 <b>A. I think that's what was going through my 4 mind at that time.</b> 5 Q. The 18th of May meeting with Mr Picardo 6 and Mr Pyle. You have already explored with 7 Mr Santos what Mr Picardo did and did not 8 tell you, but is it fair to say he did not tell you 9 anything about the Op Delhi investigation? 10 <b>A. He didn't mention Op Delhi and said that 11 he didn't like the way we do things and I 12 believe, I understand he mentioned something 13 to do with the AG and misleading the AG - I 14 don't want to use the word "lying", but I'm 15 pretty certain that that's what I told Mr 16 McGrail.</b> 17 Q. But he did not mention any detail about the 18 investigation? 19 <b>A. Not that I remember. I would have 20 remembered that.</b> 21 Q. You would have remembered that. And is 22 it fair that you are likely to have remembered 23 that because it would have chimed with what 24 Mr McGrail had been telling you about James 25 Levy's phone and the warrant?</p> <p style="text-align: center;">Page 212</p>

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<p>1 <b>A. Possibly, and that's probably why he told</b> 2 <b>me.</b> 3 Q. Yes, because you did not make the 4 connection, did you? And you have given 5 that evidence. 6 <b>A. Not at that time.</b> 7 Q. No. 8 <b>A. Certainly not at that time.</b> 9 Q. Do you agree that, in order for you and the 10 GPA to make a fair decision, make the fair 11 decision that you were being asked to make, 12 that you needed to know the background to the 13 investigation, at least in broad strokes? 14 <b>A. With hindsight, yes.</b> 15 Q. It was vital context, was it not, to what Mr 16 McGrail was being accused of? 17 <b>A. Yes, but could I add something to that?</b> 18 Q. Yes, of course. 19 <b>A. But I still think that the facts, that both had</b> 20 <b>lost confidence in Mr McGrail made it very</b> 21 <b>difficult for him to carry on, but we were</b> 22 <b>willing to listen to him in case we had to go</b> 23 <b>back and say, "Look ..." either, "We can't do</b> 24 <b>this" or, "You shouldn't be doing this", which I</b> 25 <b>didn't even envisage.</b></p> <p style="text-align: center;">Page 213</p>	<p>1 of hindsight now, that whilst often loss of 2 confidence is going to make it very difficult 3 for a Commissioner to continue, there will be 4 some situations where it is necessary to dig 5 into the background to the loss of confidence 6 to see if it is reasonable? 7 <b>A. Yes, and we decided that we weren't the</b> 8 <b>ones to do that because of that flawed process,</b> 9 <b>but with hindsight ...</b> 10 Q. But you agree that in the end the 11 responsibility to decide whether to do that and 12 to do that is the GPA's? 13 <b>A. Had we started the process properly, which</b> 14 <b>we didn't.</b> 15 Q. Yes, but you agree that is your 16 responsibility to look at, to understand the 17 background to the loss of confidence, not just 18 accept it? 19 <b>A. If I am understanding what you are saying,</b> 20 <b>then Yes.</b> 21 Q. You were in very regular communications 22 with Mr Picardo during that period, were you 23 not? 24 <b>A. I think I was, especially in asking for help</b> 25 <b>for writing the letters and then asking for what</b></p> <p style="text-align: center;">Page 215</p>
<p>1 Q. But the Chief Minister and the Governor 2 coming along and saying, "We've lost 3 confidence" is not - it cannot be just the sort of 4 magical code word that requires you to trigger 5 s.34, can it? 6 <b>A. It was for me at that time.</b> 7 Q. But looking back now, it cannot be, can it? 8 <b>A. Looking back now, with hindsight,</b> 9 <b>possibly the first thing I would have done is</b> 10 <b>seek legal advice, as I have said.</b> 11 Q. Because for it to be the magical code word, 12 it would need to be in the legislation, would it 13 not, in the Police Act, it would need to say, "If 14 the Chief Minister and the Governor (or one of 15 them) loses confidence then the Commissioner 16 has to retire"? Is that fair? 17 <b>A. I can't say it's fair or unfair, what I can say</b> 18 <b>is, my limited knowledge of the law is that, if</b> 19 <b>confidence is lost, then there's quite a few</b> 20 <b>areas of policing that simply can't be</b> 21 <b>undertaken, not locally, anyway.</b> 22 Q. But would you agree, and with the benefit 23 ... 24 <b>A. It was mentioned.</b> 25 Q. I know. Would you agree, with the benefit</p> <p style="text-align: center;">Page 214</p>	<p>1 <b>I think we're going to need as a GPA and</b> 2 <b>personally me, legal representation, but I can't</b> 3 <b>remember the sequence.</b> 4 Q. So, he had a whole range of opportunities - 5 the meeting, calls, text messages - to give you 6 the vital context behind the investigation, is 7 that fair? 8 <b>A. To be fair, yes, but I didn't ask. It didn't</b> 9 <b>even dawn on me.</b> 10 Q. That is because you trusted him, is it not, 11 that you did not ask? 12 <b>A. I trusted the office of the Chief Minister.</b> 13 Q. You trusted the office and you trusted him? 14 <b>A. I go back to, if I may, to what I said</b> 15 <b>originally. I mean, I started in 1983 working</b> 16 <b>for Government and for me whatever the Chief</b> 17 <b>Minister says, how can I not trust? Or the</b> 18 <b>Governor, both of them, how can I not trust</b> 19 <b>them? But that's me. I'm not saying that that</b> 20 <b>should be the norm, quite frankly.</b> 21 Q. What about, leaving aside Dr Britto the 22 person, what about Dr Britto the Chair of the 23 GPA? Is it your responsibility to have a 24 healthy skepticism about anything you are told 25 in these kind of situations by anyone?</p> <p style="text-align: center;">Page 216</p>

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1 **A. The next Chairman of the GPA, when I**  
 2 **hand over, I will make sure that I will tell them**  
 3 **because I find it very difficult to separate the**  
 4 **person who I am from whatever role I**  
 5 **undertake.**  
 6 Q. When you read the 29th of May Gomez  
 7 letter and it contained all of this, well, quite a  
 8 bit of the context, did that concern you given  
 9 what you had not been told by the Chief  
 10 Minister?  
 11 **A. It concerned me so much that - and I**  
 12 **remember that I was still expecting Mr**  
 13 **McGrail to come to give us his**  
 14 **representations, and we took that document as**  
 15 **his representations and there were things there**  
 16 **that clearly I didn't know anything about. So, I**  
 17 **sent it to, I think it was the Chief Minister and**  
 18 **the Governor for them to see it and, "Look,**  
 19 **this is what he is saying."**  
 20 Q. I am going to take you to that.  
 21 **A. But I was alarmed by what I read.**  
 22 Q. And you then later saw the 5th of June  
 23 letter from the Chief Minister where he said,  
 24 "Yes, there was this business with the warrant  
 25 and I was misled because the ..."

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1 **hoping that I could get some help, with legal**  
 2 **advice.**  
 3 Q. Do you remember if during the 18th of  
 4 May meeting you were told by the, either by  
 5 the Chief Minister or the Governor that the  
 6 DPP had advised against the search warrant,  
 7 with James Levy's search warrant?  
 8 **A. No, I can't remember the DPP being**  
 9 **mentioned at all, but having said that,**  
 10 **remember the situation where I'd never been**  
 11 **with them and they were talking to each other,**  
 12 **but I think, with all due respect, it's best to ask**  
 13 **them, but I certainly can't recall the DPP being**  
 14 **mentioned at all. They were talking about**  
 15 **international stuff and boats and Spain and,**  
 16 **"What are we going to do?" but that's ...**  
 17 Q. I understand.  
 18 **A. ... the main thing I remember. I was quite**  
 19 **distraught, you have to remember that, it has**  
 20 **never happened.**  
 21 Q. And you have made that, you have raised  
 22 that a number of times. I do understand that. I  
 23 just want to take you to B1777, please. This is  
 24 an email and you may, you have probably not  
 25 seen this email, unless you have seen it in the

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1 **A. Sorry, do you mean the response?**  
 2 Q. The response, exactly. He gave some of  
 3 the detail, did he not, in that letter? When you  
 4 read that, on top of the 29th of May letter, did  
 5 you feel let down that you had not been told  
 6 that information before the GPA made the  
 7 decision?  
 8 **A. I don't know what I felt. I remember**  
 9 **immediately passing these letters on to - I**  
 10 **needed somebody to talk to, and it was Mr**  
 11 **Neish. There was a whole range of - I**  
 12 **wouldn't say let down. Frightened. I don't**  
 13 **know what word to put on my emotions. I**  
 14 **wasn't happy.**  
 15 Q. Were you frightened because the thing that  
 16 you thought could not happen in Gibraltar  
 17 might just be happening in Gibraltar?  
 18 **A. I still tended to believe whatever as being**  
 19 **portrayed by the Chief Minister and the**  
 20 **Governor, especially the Governor.**  
 21 Q. Even then you were still hoping that they  
 22 were telling the truth?  
 23 **A. Yes, to tell you the truth, I really did think**  
 24 **this is not, this is a huge misunderstanding, but**  
 25 **then, as soon as I got the letter, and I was**

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1 inquiry, this is an email from Nick Pyle to his  
 2 superiors on the 21st of May, and he says, in  
 3 the second paragraph, three lines down, he is  
 4 describing the meeting between you and the  
 5 Chief Minister and the Governor and he says,  
 6 "At my request the Chief Minister set out the  
 7 issues of concern, namely the damning HMIC  
 8 report ..." etc. Just pausing there you said in  
 9 your evidence earlier that you remembered the  
 10 Governor taking the lead.  
 11 **A. That's my recollection.**  
 12 **(15.44)**  
 13 Q. Is it possible you are wrong about that  
 14 and that the Governor, writing this three days  
 15 later, saying the Chief Minister set out the  
 16 issues of concern, is that possibly right or do  
 17 you just not remember?  
 18 **A. That was only listening to the Governor,**  
 19 **with all due respect to everybody.**  
 20 Q. Yes.  
 21 **A. Maybe, but my recollection is that the**  
 22 **speaker was the Governor and the Chief**  
 23 **Minister was interjecting.**  
 24 Q. Now, just carrying on, it says:  
 25 "Police Federation allegations of bullying,

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<p>1 the mishandling of a high profile, ongoing 2 investigation in which the Commissioner 3 apparently went against the advice of the 4 Attorney General and the Director of Public 5 Prosecutions." 6 Does that jog your memory at all about 7 whether it was mentioned? 8 <b>A. I remember vaguely the Attorney General 9 being mentioned and something about not 10 being told whatever he had to be told, but not 11 the Director of Public Prosecutions.</b> 12 Q. And then you can see the fourth 13 paragraph down, just to back up what you 14 have been saying, it refers to a clearly 15 shocked chair, he said he took notes. I was 16 just showing that so you know that that 17 accords with what you have been saying. 18 If we can just, please, go to C4302, this is the 19 note of the meeting, the transcript of the 20 meeting, 22 May. And three boxes from the 21 bottom, I will just read from what is being 22 said to you by the Commissioner of Police: 23 "I want to know why the question is not 24 being asked. Why are they not concerned 25 about the way we have handled that</p> <p style="text-align: center;">Page 221</p>	<p>1 you were all together? 2 <b>A. Well, commenting with each other as if I 3 weren't there, quite frankly. But, um, maybe 4 it's my perception.</b> 5 Q. Yes. 6 <b>A. This is four years ago and there are things 7 there that clearly upset them because they 8 have been recorded, but I can't remember 9 saying them.</b> 10 Q. Fair enough. So you either felt they were 11 having a conversation separately from you or 12 they were having a conversation separately 13 from you. 14 <b>A. I felt. I mean, I think you had better ask 15 them, because I might be completely 16 mistaken. It's my perception of something 17 that happened a long time ago.</b> 18 Q. I want to explore with you now a few 19 aspects of the interactions you were having 20 with the Chief Minister and starting at 21 B1435. So this is the text messages you were 22 sending to the Chief Minister. If we can just 23 go a bit further down, please. There, at 24 11.37. No, maybe a little, yes, just up. You 25 text the Chief Minister at 11.37 on the 18th:</p> <p style="text-align: center;">Page 223</p>
<p>1 particular case and provide details because 2 that has serious repercussions?" 3 You said: 4 "The Governor seems to be in the know 5 because at the meeting they were talking 6 about the way that you handled because they 7 mentioned the AG had lost faith in you, so 8 they had that conversation. And they were 9 not talking to me. I did not take a note of 10 what they said." 11 <b>A. I'm sorry, I didn't take a note because 12 they were talking amongst themselves and I 13 had the impression that, you see, it goes 14 together with one of your previous questions, 15 I had the impression that the Governor knew 16 what the Chief Minister, knew about 17 whatever the Chief Minister was telling him. 18 I am assuming it is about the AG.</b> 19 Q. So you have mentioned -- 20 <b>A. I thought about --</b> 21 Q. Sorry. You have mentioned a few times 22 that they had a sort of side conversation or 23 a conversation that was not with you. How 24 did that happen? How were they having 25 a conversation that was not with you while</p> <p style="text-align: center;">Page 222</p>	<p>1 "FYI I am meeting them this Thursday 2 morning." I assume them is the GPA 3 members. 4 <b>A. Yes, I think so.</b> 5 Q. "Some of them work so I have had to 6 allow notice." So you were, I think it is right 7 that the meeting between you and the Chief 8 Minister and the Governor took place on 9 Monday the 18th and then you arranged the 10 GPA meeting for the Thursday. So -- 11 <b>A. As soon as possible.</b> 12 Q. Yes. There was an urgency, was there 13 not? 14 <b>A. There was a certain urgency.</b> 15 Q. And you were being slightly apologetic 16 there: "Some of them work so I have had to 17 allow notice." 18 <b>A. Yes.</b> 19 Q. You are kind of saying, I am sorry it is as 20 late as Thursday. 21 <b>A. Yes, but that's my usual tone with people.</b> 22 Q. Okay. 23 <b>A. With my betters. Well, not my betters, 24 but with governors and chief ministers.</b> 25 Q. I understand. And you referred to the</p> <p style="text-align: center;">Page 224</p>

56 (Pages 221 to 224)



<p>1 meeting in the email as an emergency 2 meeting I think because you said it would 3 probably get more people to respond more 4 quickly. Why the hurry? 5 <b>A. (Sighs). I mean, you can ask, I'm sure 6 you will, ask them, but I'm pretty certain that 7 I was told this has to happen before the new 8 Governor comes in. But what I don't know is 9 if the new Governor had been briefed or 10 knew about what was going on.</b> 11 Q. So, did you know that the new Governor 12 was arriving in, I think it was, 10 June? 13 <b>A. I wasn't told when he was coming.</b> 14 Q. But somebody said to you that this has to 15 happen before the new Governor comes in 16 and he is coming imminently, or something 17 to that effect. 18 <b>A. I don't think I was going to (inaudible), 19 this was do it as quickly as possible because 20 of the new Governor.</b> 21 Q. You must have known that he was 22 coming soon. 23 <b>A. Soon, soon.</b> 24 Q. Because otherwise there would be no 25 reason for urgency.</p> <p style="text-align: center;">Page 225</p>	<p>1 <b>A. Yes, the bit, but not section 34, but 2 section, the bit where the Governor 3 requires --</b> 4 Q. Okay, maybe I have misunderstood. If 5 we can go to C4291, the fourth box from the 6 bottom. (Pause). There it is. Sorry, yes, you 7 are saying: 8 "One is through retirement and the other 9 option is through resignation and that is the 10 nuclear option." 11 Okay, but you saw the nuclear option as 12 coming down the road if you did not get on 13 with the section 34 process. Is that fair? 14 <b>A. I think I was convinced that it would not 15 do it, it was going to be done. But I think 16 you would have to ask them. But that's the 17 impression I had. It wasn't to say that ... I 18 think that in one of the emails that Mr Pyle 19 sent he is more or less telling whoever he is 20 communicating with, the Foreign Office, but 21 I got that impression.</b> 22 Q. Yes. And looking back now, I think your 23 evidence is, rather than speeding towards 24 that, that you should have slowed things 25 down. Is that fair?</p> <p style="text-align: center;">Page 227</p>
<p>1 <b>A. Soon.</b> 2 Q. Did you ever question why that was 3 being asked of you or why that was a factor? 4 <b>A. I'm just trying to recall if they actually 5 explained anything. I don't think I even 6 asked.</b> 7 Q. Did it ever occur to you, did you link the 8 fact that the interim Governor was saying he 9 had lost confidence in Mr McGrail but he 10 would be gone soon and replaced ... well, not 11 gone completely, but he would be replaced 12 by the permanent Governor in a matter of 13 weeks? 14 <b>A. No, because Mr Pyle would still be there 15 advising, whatever the Deputy Governor 16 does. I presume it is to advise the governor.</b> 17 Q. It is very different, the Deputy Governor 18 losing confidence in the Chief of Police 19 versus the actual Governor, is it not? 20 <b>A. You tell me.</b> 21 Q. Yes. I will not take you to the reference, 22 I can if you want to, but you referred in your 23 meeting with Mr McGrail to the triggering of 24 section 34 as the nuclear option. Do you 25 recall that?</p> <p style="text-align: center;">Page 226</p>	<p>1 <b>A. Especially if I had had recourse to or had 2 asked for legal advice, it would certainly 3 have slowed down or not happened, I'm 4 assuming.</b> 5 Q. And if that meant the new Governor 6 coming in, so be it. Is that fair? 7 <b>A. I think so. I hadn't thought about it, to 8 tell you the truth.</b> 9 Q. No. 10 <b>A. But now that you mention it.</b> 11 Q. So that is the first point about the 12 expedited, the timetable and how quickly 13 things were moving. The second point is the 14 relying on Mr Picardo's notes. We can see 15 that at B1435, at 11.52. There it is 16 Mr Picardo who offers the note and he says: 17 "I am happy to prepare a note for you if you 18 think that would be helpful." You say: 19 "Would you? If it is no trouble." And then 20 he does not provide it for a couple of days 21 and you remind him on the morning of the 22 20th. You can see there: 23 "Fabian, do you remember the notes you 24 were going to send me either via WhatsApp 25 or email. I do not want to get this wrong,</p> <p style="text-align: center;">Page 228</p>

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<p>1 please. Thanks, meeting my colleagues 2 tomorrow." 3 And then a little bit further down. (Pause). 4 He then sends the notes at 16.40. It did not 5 end up being a completely contemporaneous 6 note, did it? It was a couple of days later that 7 he sent it. 8 <b>A. It seems like that, yes.</b> 9 Q. Did that cause you any concern at the 10 time, why there had been a delay? 11 <b>A. I didn't think about it at the time, but ... I</b> 12 <b>didn't think about it at the time. But now</b> 13 <b>things might be slightly different. I can only</b> 14 <b>assume he was discussing it with the</b> 15 <b>Governor or something. I really don't know.</b> 16 Q. And while we are on that, just at B1442, 17 he also at the same time sends that note to the 18 Attorney General: 19 "This is the note I sent to Joey. If it needs 20 amending happy to send him a version with 21 charges. [So he is texting the Attorney 22 General here.] Just need to ensure you send 23 it to him before tomorrow. He was having 24 kittens about it so I sent it to him as a prop, at 25 least for now."</p> <p style="text-align: center;">Page 229</p>	<p>1 <b>A. I think so.</b> 2 Q. Yes. 3 <b>A. But at my request. I had to ... because I</b> 4 <b>really hadn't --</b> 5 Q. It was his offer to give you the note, was 6 it not? 7 <b>A. Yes.</b> 8 Q. You did not request that. Did you take 9 some comfort from the fact that you knew 10 the Chief Minister was a lawyer? Yes. 11 <b>A. Primarily, yes.</b> 12 Q. Primarily, yes. And he did help you with 13 some of the steps. So that is the urgency, the 14 note and the steps. The fourth point I want to 15 take you to is about the first letter, which is at 16 1436. I think we are already on ... so it is the 17 bottom of the page. So you have been asked 18 about the second letter which he fed into and 19 I will come to that, but this is about the first 20 letter that was sent, eventually sent, on the 21 22nd. You say at the bottom: 22 "In any case I am sending you text of draft 23 letter I plan on giving him after my meeting. 24 Grateful for your once over." 25 So you ask him there. And if you go a bit</p> <p style="text-align: center;">Page 231</p>
<p>1 Does that surprise you to see that the Chief 2 Minister said you were having kittens over 3 it? 4 <b>A. No.</b> 5 Q. No, because you were having kittens over 6 it. 7 <b>A. I were, I mean, since day one.</b> 8 Q. So, that is two points of contact with the 9 Chief Minister, the timetable and the Chief 10 Minister's notes. Third, I just want to ask 11 you about the message at 1436. On the 21st, 12 just a little bit further down, at 18.30. He 13 says: "Hi." You send him something that has 14 been lost to posterity, I think the media in 15 these text messages. 16 "That is what you will in effect be doing. 17 You come back to us to seek our consent 18 after representations have been received. I 19 will write the sequencing down for you as I 20 see it if you wish. I am just going to finish 21 the note off first." 22 So, he says there: "I am going to set out the 23 sequencing for you." Is it fair to say he was 24 to an extent guiding you through this 25 process?</p> <p style="text-align: center;">Page 230</p>	<p>1 further down: 2 "Perhaps in my letter you should say: you 3 shall be invited to retire unless you wish to 4 make representations as to why you should 5 not within XX days. Please be patient with 6 me. Laugh out loud. Give me a few 7 minutes, I am finishing something." 8 And then he sends you something back, also 9 sent by email: "See references to loss of 10 confidence by me and the Governor." Is this 11 him sending you back the first letter with 12 edits? 13 <b>A. I think so.</b> 14 Q. Yes. 15 <b>A. I'm pretty certain. I don't have the media,</b> 16 <b>but yes, I think so.</b> 17 Q. And then a little bit further down there is 18 a discussion and he says at 21.03 exactly: 19 "I would suggest that you provide seven days 20 at the end. If he considers more time is 21 required he should write to you asking for 22 more time. This is too serious to let it ride." 23 So is it your recollection that it is Mr Picardo 24 that proposes there be a seven-day deadline 25 for representations?</p> <p style="text-align: center;">Page 232</p>

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<p>1 <b>A. I honestly didn't recall until I read the</b>  2 <b>position.</b>  3 Q. Yes. And he says: "It is too serious to let  4 it ride." So would you agree that he there is  5 saying we have got to crack on with this  6 effectively because it is very serious?  7 <b>A. Yes, I actually thought it was me who</b>  8 <b>decided on those seven days.</b>  9 Q. No.  10 <b>A. I was under that impression.</b>  11 Q. We can just back that up with C4290.  12 (Pause). And the fifth box from the bottom,  13 first line, you say to Mr McGrail:  14 "Well, the Act does not say anything but I  15 have been advised that seven days. But why  16 wait? If you need more time you tell me."  17 Q. So you were advised, you were taking  18 advice from the Chief Minister.  19 <b>A. It's clear from there.</b>  20 Q. Yes.  21 <b>A. I really couldn't recall that.</b>  22 Q. Did you stop to consider whether the  23 Commissioner of Police might not have time  24 to respond to the issues in seven days?  25 (Pause).</p> <p style="text-align: center;">Page 233</p>	<p>1 added parts, and I thought your evidence may  2 have been you are not even sure you read  3 them. Am I wrong about that?  4 <b>A. I read them. I'm not even sure what I</b>  5 <b>said. Well, maybe I said that, but what I</b>  6 <b>meant was that I'm not sure I understood</b>  7 <b>everything.</b>  8 Q. Right.  9 <b>A. I'm being honest here. That's possibly</b>  10 <b>what I meant.</b>  11 Q. That is quite a tough position for you to  12 be in, is it not? Because, and correct me if I  13 am wrong here, Dr Britto, the Chief Minister,  14 who you trust and who is an experienced  15 lawyer, is adding things to your letter which  16 you do not understand. Is that a fair  17 description of the --  18 THE CHAIRMAN: I am not sure I  19 understood, he said.  20 MR WAGNER: You are not sure you  21 understood.  22 <b>A. I'm not sure I understood, yes. I may</b>  23 <b>well have ... I didn't question it if that's what</b>  24 <b>you mean.</b>  25 Q. No. You did not suggest any edits to the</p> <p style="text-align: center;">Page 235</p>
<p>1 <b>A. I'm not sure that I did.</b>  2 Q. Yes.  3 <b>A. Possibly. But I can't give a clear answer.</b>  4 <b>I don't think so.</b>  5 Q. Did you think that these are complex  6 issues that are being alleged, he is going to  7 need to look at documentary evidence, he is  8 going to have to really spend some time on  9 this to save his career?  10 <b>A. I think at the time what I was thinking</b>  11 <b>was seven days should be enough. He gets</b>  12 <b>together with the lawyer, says, "Look what</b>  13 <b>they are saying about me", and he comes</b>  14 <b>over to talk to us and, quite frankly, I hadn't</b>  15 <b>thought beyond that.</b>  16 Q. No. So that is the urgency, the Chief  17 Minister's note, the Chief Minister's  18 sequencing, Chief Minister's seven-day  19 deadline. I am going to ask you now about  20 the second letter. This again is you send it to  21 him to consider. You have already been  22 taken to the yellow bits and I am only going  23 to take you to one other bit. It is B1364,  24 please. (Pause). You were asked, I think,  25 whether you considered the yellow, the</p> <p style="text-align: center;">Page 234</p>	<p>1 Chief Minister's edits.  2 <b>A. No.</b>  3 Q. No. You would not have, is that --  4 <b>A. I don't think I would have.</b>  5 Q. No. You would not think it was your  6 place to do that.  7 <b>A. Possibly.</b>  8 Q. Yes. And would it be fair to say ... I am  9 guessing you have read these yellow bits  10 now.  11 <b>A. Now I have.</b>  12 Q. Would it be fair to say that this is not  13 really your style, the language?  14 <b>A. Yes.</b>  15 Q. I mean, for example, if we just go a little  16 bit further down:  17 "The Governor and Chief Minister are very  18 concerned about the findings in the HMIC  19 report. It is clear [I presume that is meant to  20 be clearly] clearly damning in respect of  21 efficiency in the RGP."  22 Would you have said, if it was your text,  23 would you have said the report was clearly  24 damning?  25 <b>A. I don't think I would have used that word.</b></p> <p style="text-align: center;">Page 236</p>

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<p>1 Q. Which one, clearly or damning?</p> <p>2 <b>A. No, no, damning.</b></p> <p>3 Q. Yes.</p> <p>4 <b>A. I would have said it's a bad report, much simpler language, I think.</b></p> <p>5</p> <p>6 Q. Yes.</p> <p>7 <b>A. Or an uncomfortable report.</b></p> <p>8 Q. And a little bit further down, on the next</p> <p>9 page, please. (Pause). There is a point being</p> <p>10 made there at the top: "The position is clear</p> <p>11 as to responsibility. Under section 33 of the</p> <p>12 Act this is ..." sorry, I think this is the</p> <p>13 incident at sea or is it the HMIC report? Just</p> <p>14 go further up. (Pause). Yes, this is the</p> <p>15 report. And it says there, it makes a legal</p> <p>16 point:</p> <p>17 "Under section 33 of the Act the</p> <p>18 Commissioner is responsible for efficient</p> <p>19 administration of the force. That means that</p> <p>20 responsibility in respect of this failing rests</p> <p>21 legally directly with you."</p> <p>22 I am guessing you would not make that point</p> <p>23 in that way.</p> <p>24 <b>A. From what I have said before, I think it's</b></p> <p>25 <b>clear I wouldn't have known that unless I had</b></p> <p style="text-align: center;">Page 237</p>	<p>1 Q. -- the nuances of whether you are</p> <p>2 agreeing to the loss of confidence itself or the</p> <p>3 underlying issues. But the question I want to</p> <p>4 ask you is --</p> <p>5 <b>A. Was it not my language.</b></p> <p>6 Q. Would it be fair to say it is not your</p> <p>7 voice? (Pause).</p> <p>8 <b>A. In as much as I wouldn't have written it</b></p> <p>9 <b>like that, possibly.</b></p> <p>10 Q. Whose voice is it?</p> <p>11 <b>A. Whoever helped me write that.</b></p> <p>12 Q. Which is who?</p> <p>13 <b>A. I think we all know, the Chief Minister</b></p> <p>14 <b>aided me.</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. Because I asked him to.</b></p> <p>17 Q. So, the final point about the ... one</p> <p>18 second. (Pause). I will leave that point.</p> <p>19 So, just to recap, the Chief Minister's</p> <p>20 involvement, he is really pushing you on</p> <p>21 urgency. Is that fair to say?</p> <p>22 <b>A. And the Governor.</b></p> <p>23 Q. And the Governor. He produces the note</p> <p>24 on his suggestion. Is that fair?</p> <p>25 <b>A. Yes, because I told him that I didn't have</b></p> <p style="text-align: center;">Page 239</p>
<p>1 <b>read the Act from page to page.</b></p> <p>2 Q. And then just further down, sorry, further</p> <p>3 down than that. This bit about probity and</p> <p>4 integrity:</p> <p>5 "This is very serious indeed. I think you</p> <p>6 need to reflect carefully on this. The</p> <p>7 situation we are in is where both the</p> <p>8 Governor and the Chief Minister respectively</p> <p>9 have expressed this view. It is not one of</p> <p>10 them that expressed the view, which would</p> <p>11 be bad enough, but both of them."</p> <p>12 Would it be fair to say, Dr Britto, that that is</p> <p>13 not language, that is not the kind of language</p> <p>14 that you would use?</p> <p>15 <b>A. No, it's too forceful for me. But it's not</b></p> <p>16 <b>that I disagree with what was being said and I</b></p> <p>17 <b>think I said it this morning that had one of</b></p> <p>18 <b>them come to me and expressed, "Look, we</b></p> <p>19 <b>need to get rid of the Commissioner", or</b></p> <p>20 <b>whatever, the only recourse I would have had</b></p> <p>21 <b>is I get legal advice or go to the other party.</b></p> <p>22 Q. Yes.</p> <p>23 <b>A. But not both of them.</b></p> <p>24 Q. We have been through --</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 238</p>	<p>1 <b>anything meaty to ... but yes, he offered.</b></p> <p>2 Q. He sets out the sequencing again on his</p> <p>3 offer.</p> <p>4 <b>A. I can't remember if he actually set out the</b></p> <p>5 <b>sequencing. He said he would, but I can't</b></p> <p>6 <b>remember if he set out the sequencing.</b></p> <p>7 <b>Unless the letter is the sequencing.</b></p> <p>8 Q. He proposes the seven-day deadline, does</p> <p>9 he not?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And it is quite substantially his voice in</p> <p>12 that 22 May letter, is it not?</p> <p>13 <b>A. As I have said, if writing it is his voice,</b></p> <p>14 <b>then yes.</b></p> <p>15 Q. And to state the obvious, the Chief</p> <p>16 Minister was not your lawyer, was he?</p> <p>17 <b>A. No, no, he wasn't. But I wasn't thinking</b></p> <p>18 <b>that he wasn't. I knew he is a lawyer and he</b></p> <p>19 <b>should know. But having said that, I have</b></p> <p>20 <b>never said that I didn't agree with the</b></p> <p>21 <b>sentiment. What I've said is that, yes, it's his</b></p> <p>22 <b>voice.</b></p> <p>23 Q. Yes.</p> <p>24 <b>A. I wouldn't have said it possibly like that.</b></p> <p>25 Q. No. You did not say it like that, did you?</p> <p style="text-align: center;">Page 240</p>

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<p>1 Because you wrote the letter and did not have 2 any of those bits in it. 3 <b>A. Plus the transcript of the recording shows 4 that I wasn't talking like that.</b> 5 Q. Yes. And the Chief Minister is not 6 a member of the GPA, is it, ex officio or 7 otherwise? 8 <b>A. I don't think ... not the GPA. Well, he's 9 got an appointee there.</b> 10 Q. But he is not a member. 11 <b>A. No, no.</b> 12 Q. And in fact he has no statutory role in any 13 of this part of the GPA's activities, does he? 14 <b>A. I don't think so.</b> 15 Q. No. 16 <b>A. He's got statutory roles in terms of 17 policing and the Police Act.</b> 18 Q. Yes, but the financing. 19 <b>A. And I should add more than financing, 20 it's to do with the annual policing plan.</b> 21 Q. And the plan, okay. 22 <b>A. So we are consulted.</b> 23 Q. But not this aspect. 24 <b>A. Not this part.</b> 25 Q. No. And yet he was heavily involved in</p> <p style="text-align: center;">Page 241</p>	<p>1 <b>A. Not before, no.</b> 2 Q. No. And you did not communicate them 3 to Mr McGrail. You did not communicate 4 any concerns to Mr McGrail. 5 <b>A. Not me personally.</b> 6 Q. No. Or did any of the GPA members? 7 <b>A. I doubt very much that they had.</b> 8 Q. Well, they have all given evidence and 9 apart from, well, nobody says that they did. 10 <b>A. I don't think anyone had an issue.</b> 11 Q. The 29 May letter, if you just go to 12 B1367. (Pause). You read it, did you not? 13 <b>A. I read it. I can't say that I understood 14 everything.</b> 15 Q. Fair enough. 16 <b>A. But ... which is why I invoked, um, 17 please help me.</b> 18 Q. You can see there at the top, what is 19 written there at the top: "Strictly private and 20 confidential." Do you see that? 21 <b>A. I hadn't noticed, I must admit.</b> 22 Q. And who is the letter addressed to? 23 <b>A. Members.</b> 24 Q. Of what? 25 <b>A. Of the Police Authority.</b></p> <p style="text-align: center;">Page 243</p>
<p>1 the process, was he not? 2 <b>A. It seems like that.</b> 3 Q. And you now accept, I think, he should 4 not have been. 5 <b>A. I'm not sure. I'm hoping for the Inquiry 6 to enlighten everyone.</b> 7 Q. You are the chair of the GPA though, so 8 you must have reflected on this. 9 <b>A. As chair I really didn't know what else to 10 do but to ask him.</b> 11 Q. As chair now, do you -- 12 <b>A. As chair now, I wouldn't approach him.</b> 13 Q. Do you agree that he should not have 14 been involved in this way? 15 <b>A. I suppose. I'm not sure, because I'm not 16 sure if it's happened before or it's going to 17 happen again in the future, but --</b> 18 Q. If it happened again in the future you 19 would not allow that to happen, would you? 20 <b>A. No.</b> 21 Q. Right. Not much more. Just to be clear 22 on what happened before the middle of 23 May 2020, you, the GPA, did not have any 24 concerns, any particular concerns, about 25 Mr McGrail, did you?</p> <p style="text-align: center;">Page 242</p>	<p>1 Q. Yes. Is it addressed to anybody else? 2 <b>A. Well, I'm assuming it's addressed to me 3 as well.</b> 4 Q. But there is no CC list there, is there? 5 <b>A. No, no. Although the Secretary of the 6 GPA, who is not a member, would have got 7 it.</b> 8 Q. Now, if we can just go further down, this 9 letter has been spoken about a lot in this 10 Inquiry, and I just want to show you what is 11 in it. If we go further down. 12 THE CHAIRMAN: It is a very long one 13 though. 14 MR WAGNER: I am not going to go into 15 what is in the whole letter, just a couple of, I 16 think it is two paragraphs. (Pause). Stop 17 there, sorry. (Pause). 18 <b>A. Sorry, because that's the bit I was 19 mentioning, with respect: "Because it just 20 may be prudent for you to take advice from 21 lawyers in the United Kingdom."</b> 22 Q. Yes, exactly. There is a suggestion that 23 you might want to get independent advice 24 outside of Gibraltar. 25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 244</p>

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<p>1 Q. Now, just in paragraph 2, if we go, it is 2 on page 1370. 3 <b>A. This is the same letter, yes?</b> 4 Q. Yes. It says there: 5 "Nick Pyle is named as a member of the 6 GPA appointed by the Governor. He has 7 been the interim Governor since 8 February 2020. He should play no part in the 9 decision making of the Authority. We ask 10 for an assurance from the GPA's chair. He 11 will ensure Mr Pyle is not invited into the 12 GPA's decision making under section 34." 13 So do you agree that there is a concern 14 raised. 15 <b>A. Yes.</b> 16 Q. The lawyers obviously do not know that 17 Mr Pyle has recused himself already. 18 <b>A. No, they didn't know.</b> 19 Q. There is a concern raised about Mr Pyle 20 because he is one of the complainants. And 21 then if we can go, please, to B1380, which is 22 a bit further down, paragraph 35. So 23 paragraph 34 talks about the two matters 24 which are mentioned in the letter, which are 25 the incident at sea and the HMIC report.</p> <p style="text-align: center;">Page 245</p>	<p>1 RGP in this case. They immediately 2 messaged him. He immediately called into 3 a meeting with the Chief Minister and the 4 AG. He was very severely criticised for the 5 action that had been taken. The Chief 6 Minister told him that in his view 7 Mr McGrail had handled the investigation 8 very, very wrongly. He was told by the AG 9 that he had at this point approved his work 10 but from that day he could not entertain him 11 again." 12 And then just one more paragraph below: 13 "This was followed by two subsequent 14 meeting with the AG and the DPP, 13 and 15 15 May [this is now the 20th], where pressure 16 was put on Mr McGrail by the AG to change 17 the RGP's investigative approach to the 18 operation." 19 Now, do you remember reading those 20 allegations? 21 <b>A. No.</b> 22 Q. You do not, but -- 23 <b>A. But I am refreshing my memory now.</b> 24 <b>I'm presuming that Mr Gomez wrote that on</b> 25 <b>the advice of Mr McGrail.</b></p> <p style="text-align: center;">Page 247</p>
<p>1 And the important point made there is: 2 "In respect of both issues at all stages 3 Mr McGrail received no criticism at all about 4 his approach." 5 And then further down. 6 "By contrast in recent months, and 7 particularly in the past fortnight, Mr McGrail 8 has received very significant and at times 9 intemperate private criticism from the Chief 10 Minister and Attorney General about 11 a separate matter, namely how the criminal 12 investigation referred to above has been 13 handled." 14 And it says: 15 "The AG has been trying unsuccessfully to 16 persuade Mr McGrail to change his and the 17 RGP's approach. Mr McGrail has rebuffed 18 those attempts and operational decisions 19 should be taken by the individual officers 20 below Mr McGrail." 21 And then if we go further down: 22 "Then on 12 May out of courtesy 23 Mr McGrail notified the Chief Minister, the 24 AG and the Minister of Justice of a certain 25 operational action which was taken by the</p> <p style="text-align: center;">Page 246</p>	<p>1 Q. Yes. 2 <b>A. Because there's no way Mr Gomez would</b> 3 <b>know that.</b> 4 Q. And there at paragraph 39 is the fig leaf 5 point: 6 "It is relevant to your decision that we submit 7 to you the timing and the use of the section 8 34 process which was triggered by the Chief 9 Minister and Governor, we understand, came 10 as a complete surprise to the GPA. The chair 11 strongly suggests the incident at sea and 12 inspection report are fig leaves. For 13 (inaudible) reasoning Mr McGrail is being 14 pressured to retire, i.e. his proper and 15 reasonable handling of a live criminal 16 investigation." 17 Now, you were asked, and a number of 18 witnesses have been asked, would that letter 19 make you think the Commissioner's position 20 is more untenable? And I just want to ask 21 you this question. What if those allegations 22 were true? Would you consider the 23 Commissioner's position was more untenable 24 because he sent it? 25 <b>A. Possibly. I don't think so because what</b></p> <p style="text-align: center;">Page 248</p>

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<p>1 <b>you're asking me is if everything in the letter</b></p> <p>2 <b>is proven to be true. Then he's got a shield</b></p> <p>3 <b>there with which to protect himself. But I</b></p> <p>4 <b>mean ...</b></p> <p>5 Q. And can you just unpack that? What do</p> <p>6 you mean by he has a shield, will not protect</p> <p>7 himself?</p> <p>8 <b>A. Because what he is saying is, I mean, this</b></p> <p>9 <b>is pure conjecture on my part, I mean, I</b></p> <p>10 <b>wasn't aware of all this, but if everything</b></p> <p>11 <b>there is true, then Mr McGrail would be in</b></p> <p>12 <b>the right. That's what I mean.</b></p> <p>13 Q. Yes.</p> <p>14 <b>A. That's the only thing I can say. If</b></p> <p>15 <b>everything, assuming everything in the letter</b></p> <p>16 <b>is correct, 100 per cent, then he would be in</b></p> <p>17 <b>the right.</b></p> <p>18 Q. And if he was in the right, could the GPA</p> <p>19 then trigger the section 34 process and force</p> <p>20 him to retire?</p> <p>21 <b>A. Well, it's a moot point, and I've used legal</b></p> <p>22 <b>language. I'm sorry. It is a moot point I</b></p> <p>23 <b>think because we, as soon as we saw the</b></p> <p>24 <b>letter, we were advised the process ... it is</b></p> <p>25 <b>regardless of what it says in the letter, we had</b></p> <p style="text-align: center;">Page 249</p>	<p>1 from Bicholas Gomez",</p> <p>2 which you correct later to Nicholas,</p> <p>3 "who is representing him. Naturally I shall</p> <p>4 share with GOA", it must be "GPA,</p> <p>5 colleagues for their views, but I am going to</p> <p>6 forward to you, Nick, and Michael as well.</p> <p>7 Is that okay?" Fabian Picardo at the same</p> <p>8 moment, "Yes please." You then correct</p> <p>9 Nicholas. That letter was headlined "Private</p> <p>10 and confidential", wasn't it?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And it was only addressed to the GPA, is</p> <p>13 that fair?</p> <p>14 <b>A. It's a fair comment, yes.</b></p> <p>15 Q. Did you ask Mr Gomez for permission?</p> <p>16 <b>A. No, I didn't.</b></p> <p>17 Q. To send it to the Commissioner?</p> <p>18 <b>A. I didn't. I did the Chief Minister and the</b></p> <p>19 <b>Governor, and the Attorney General, I didn't,</b></p> <p>20 <b>but if you're interested, I can tell you why I</b></p> <p>21 <b>did. It's because -- shall I?</b></p> <p>22 Q. You've actually already covered it. You</p> <p>23 said you sent it to them to find out what their</p> <p>24 views were. But looking back now, can you</p> <p>25 see there might -- again I am asking you, just</p> <p style="text-align: center;">Page 251</p>
<p>1 <b>to withdraw.</b></p> <p>2 Q. Yes.</p> <p>3 <b>A. So what could have happened is pure</b></p> <p>4 <b>hypothesis. Which I'm sure the Inquiry will</b></p> <p>5 <b>make up its mind if it deems it fit. But I</b></p> <p>6 <b>don't think I'm the right person to ask that.</b></p> <p>7 <b>(16.19)</b></p> <p>8 Q. You forwarded the letter to the Attorney</p> <p>9 General, the Governor and the Chief</p> <p>10 Minister. And if we just go to B1438.</p> <p>11 (Pause). That is at the bottom half the page,</p> <p>12 29 May at 17.52. You say, now you can take</p> <p>13 it from me and if the inquiry does not have</p> <p>14 the email we can send it, but the email is sent</p> <p>15 at 17.21. So the email from Mr Gomez is</p> <p>16 sent at 17.21 to you. So exactly half an hour</p> <p>17 later and one minute:</p> <p>18 "I have just received ..." now you can take it</p> <p>19 from me, and if the Inquiry hasn't got the</p> <p>20 email we can send it, the email sent at 17.21.</p> <p>21 So the email from Mr Gomez is sent at 17.21</p> <p>22 to you. So exactly half an hour later and one</p> <p>23 minute:</p> <p>24 "I have just received a letter from the</p> <p>25 Commissioner of Police as well as a letter</p> <p style="text-align: center;">Page 250</p>	<p>1 assuming the allegations were true, can you</p> <p>2 see a problem with sending it straightaway,</p> <p>3 unedited, unredacted, to the Chief Minister,</p> <p>4 the Governor and the Attorney General?</p> <p>5 <b>A. I felt no matter what it says there, that</b></p> <p>6 <b>they deserved to know what Mr McGrail was</b></p> <p>7 <b>saying about them in much the same way as</b></p> <p>8 <b>he found out what they were saying about</b></p> <p>9 <b>him.</b></p> <p>10 Q. Well, we will leave that. The point is,</p> <p>11 Mr McGrail was alleging the Chief Minister</p> <p>12 and the Attorney General were interfering,</p> <p>13 not only interfering with the criminal</p> <p>14 investigation, but doing so for, potentially in</p> <p>15 the Chief Minister's case, ulterior private</p> <p>16 motives. Is that correct?</p> <p>17 <b>A. According to what it says here, yes.</b></p> <p>18 Q. If that was true, can you not see it</p> <p>19 shouldn't have been forwarded without</p> <p>20 permission to the very person who was being</p> <p>21 accused essentially of being corrupt?</p> <p>22 <b>A. I didn't think about that.</b></p> <p>23 Q. No.</p> <p>24 <b>A. I really didn't.</b></p> <p>25 Q. And you actually then say, "I will email it</p> <p style="text-align: center;">Page 252</p>

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<p>1 to these three." "Thanks. Got it", says  2 Fabian Picardo. Then say, "Can I call you?"  3 "Hang on, cos in Platinum now." "Oh, thank  4 you." Why did you also want to call Mr  5 Picardo?  6 <b>A. I really don't recall.</b>  7 Q. Do you recall speaking to him?  8 <b>A. No, not on that day, no, no. In fact, I</b>  9 <b>don't think I did. No.</b>  10 Q. Do you think on reflection that would  11 have been a moment to reflect and potentially  12 put some distance between you and the Chief  13 Minister?  14 <b>A. With hindsight, I mean, I can't say no.</b>  15 <b>But everything is with hindsight at this stage.</b>  16 Q. No. A couple more small points. The 1  17 June GPA meeting, the minutes are at C4654.  18 So if you go further down, "It was also  19 agreed that not only did the Authority  20 categorically refuse that the Chair introduced  21 the issue of the investigation into the  22 conversation with IM, but also that he should  23 have subsequently opted to omit in his letter  24 for the surreptitious reason alleged by IM's  25 lawyer." That was clearly something that</p> <p style="text-align: center;">Page 253</p>	<p>1 Q. Yes.  2 <b>A. I wrote it and Mr Picardo added.</b>  3 Q. You wrote it together, didn't you?  4 <b>A. Well, yes.</b>  5 Q. So, would it be fair to say that that  6 allegation was not, although Mr McGrail's  7 lawyers wouldn't have known it, they did say  8 those writing the letters excluded the reason  9 deliberately. Do you accept that that may  10 actually be accurate.  11 <b>A. May. May, but I don't think I can give a</b>  12 <b>clear yes or no.</b>  13 Q. Yes. Just about the withdrawal of the  14 process, withdrawal, C4743. The bottom  15 paragraph, middle bit, "However, we are also  16 advised that the complaint by you and the  17 Chief Minister remain live and have to be  18 determined." You have been asked if that  19 language, which was also sent to the  20 Governor, possibly opened the door to the  21 section 13 process. I want to ask you, was  22 there any consultation between the GPA, the  23 GPA's lawyer, Government, Government  24 lawyers, about that language?  25 <b>A. No.</b></p> <p style="text-align: center;">Page 255</p>
<p>1 offended you. Is that reasonable, or offended  2 someone?  3 <b>A. No, I don't think it's offence. It's just that</b>  4 <b>it was becoming a series of allegations and</b>  5 <b>counter-allegations and more allegations and</b>  6 <b>counter-allegations and quite frankly we</b>  7 <b>were getting a bit tired of it.</b>  8 Q. I am just going to show you -- well, it  9 was very tiring for Mr McGrail as well. Can  10 I show --  11 <b>A. No, I understand. I understand.</b>  12 Q. -- 4634. This is the Gomez letter. If you  13 go to the very bottom of paragraph 40, you  14 can see what the allegation was, just to get it  15 exactly right, this is six lines from the  16 bottom, "It is wholly unclear why this matter  17 is then omitted", so the matter being Op  18 Delhi, "from the letters sent to Mr McGrail  19 on 22 May, although a simple explanation is  20 that it was obvious to those writing the letters  21 that, if it were included it would invalidate  22 the entire process." Who wrote those letters?  23 <b>A. Which ones?</b>  24 Q. Well, who wrote the second letter?  25 <b>A. The ones I sent?</b></p> <p style="text-align: center;">Page 254</p>	<p>1 Q. You don't think so?  2 <b>A. No, not as far as I am concerned. What</b>  3 <b>do you mean, collusion between lawyers?</b>  4 Q. Well, that's putting a bit of a taint on it,  5 but just was there any conversations about  6 what would go in that letter?  7 <b>A. Not to my knowledge and I very much</b>  8 <b>doubt it.</b>  9 Q. Okay. B1426.  10 THE CHAIRMAN: You were going to be an  11 hour and-a-half, Mr Wagner. We have Mr  12 Neish to go. I think you were allowed an  13 hour.  14 MR WAGNER: I think I started at 3.15 after  15 the break.  16 THE CHAIRMAN: Okay.  17 MR WAGNER: I am a little over and I am  18 very nearly done. B1426, you mention that  19 there is an ex officio member of the  20 government on the GPA.  21 <b>A. Not ex officio. Not ex officio. I</b>  22 <b>recommend that there would be if ever there</b>  23 <b>is a change, but they are not ex officio. It</b>  24 <b>just says there are two members, one</b>  25 <b>appointed by the Chief Minister and one</b></p> <p style="text-align: center;">Page 256</p>

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<p>1 <b>appointed by the Governor and, in effect,</b>  2 <b>effectively they had been the Chief Secretary</b>  3 <b>and the -- the role has been the Chief</b>  4 <b>Secretary and the Deputy Governor.</b>  5 Q. At the time it was Darren Grech who was  6 the Chief Secretary?  7 <b>A. That's right.</b>  8 Q. Go further down, please. I do not know  9 if you have seen these messages before, but  10 this is 4.45 pm, 20 May. This is Fabian  11 Picardo, "Darren, when Joey speaks  12 tomorrow at the GPA, he is going to explain  13 my views on a sensitive subject. Your  14 support for me on this is key. I have grave,  15 grave concerns." Darren Grech, "I know and  16 they are my concerns too for a whole range  17 of reasons. You have this support." Fabian  18 Picardo thumbs up, and they both give  19 thumbs up. Then he says afterwards, "Made  20 my position very clear this morning. His  21 position untenable with a massive loss of  22 confidence all over. Here if you need me."  23 Did Mr Grech communicate any of that to  24 the GPA?  25 <b>A. No.</b></p> <p style="text-align: center;">Page 257</p>	<p>1 <b>A. Yes.</b>  2 Q. -- by the Police Complaints Board, and  3 then they were appeal --  4 <b>A. To me.</b>  5 Q. -- to you directly. So, was it you who  6 made the decisions?  7 <b>A. Yes, because we -- well, I reviewed</b>  8 <b>everything that the PCB had and the first</b>  9 <b>question -- you can only lodge an appeal if</b>  10 <b>you consider that the decision of the PCB is</b>  11 <b>perverse somehow.</b>  12 Q. Yes.  13 <b>A. Or if there's new information and we</b>  14 <b>realised that there was no new information</b>  15 <b>and there was no perverse reason from a</b>  16 <b>group of volunteers who give up their time to</b>  17 <b>look at the complaint.</b>  18 Q. So you dismissed those appeals?  19 <b>A. Yes, yes, yes, I did.</b>  20 Q. Was it you and someone else?  21 <b>A. No, no, no. I told the rest of the GPA,</b>  22 <b>because normally Mr Carreras reports at --</b>  23 <b>normally at every meeting he reports on</b>  24 <b>complaints and we did say there's no grounds</b>  25 <b>for an appeal here. We all agreed.</b></p> <p style="text-align: center;">Page 259</p>
<p>1 Q. Did he express an express an interest that  2 he had been in touch with the Chief Minister  3 about this?  4 <b>A. No, no.</b>  5 Q. Would you have expected him to declare  6 an interest at that point that he had been in  7 touch?  8 <b>A. We haven't asked him, but yes. Well, I</b>  9 <b>am not sure. I don't know what to do. I am</b>  10 <b>surprised.</b>  11 Q. He'd already agreed to -- first of all, he  12 had been in touch with one of the  13 complainants and second of all, he had  14 already agreed to support the complainant.  15 Would you agree that is an interest he should  16 have declared?  17 <b>A. I suppose, yes. Yes, but I wasn't aware of</b>  18 <b>that.</b>  19 Q. I don't know if you know this or not,  20 C5143. There was a complaint -- in fact,  21 there were two complaints to the Police  22 Complaints Board about Mr McGrail and Mr  23 Tunbridge about their conduct during the  24 arrests at the airport incident. Those  25 complaints were dismissed --</p> <p style="text-align: center;">Page 258</p>	<p>1 Q. So it was just you who made the  2 decision?  3 <b>A. Yes, yes.</b>  4 Q. Was Mr Pyle on the board at the time, 2  5 September 2020?  6 <b>A. I'd have to check. I am not sure. I don't</b>  7 <b>think he -- no, I am not sure. I'm not sure.</b>  8 <b>But certainly I checked with everybody else</b>  9 <b>and everybody agreed, look, he might not</b>  10 <b>even have seen this. But we were adamant</b>  11 <b>that it was to be dismissed.</b>  12 Q. Yes. So to be clear, complaints were  13 made about Mr McGrail's conduct in the  14 airport incident in the arrests. They were  15 dismissed by the Police Complaints Board.  16 They then went to appeal and they were  17 dismissed, the appeals were dismissed by the  18 GPA and it was you who made the decision?  19 <b>A. Yes. The other reason was because this</b>  20 <b>has happened quite a bit of time ago, and</b>  21 <b>people were having issues finding the right</b>  22 <b>documentation and all that. But what I got</b>  23 <b>was the same that the PCB had considered.</b>  24 Q. Yes.  25 <b>A. There was nothing new.</b></p> <p style="text-align: center;">Page 260</p>

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<p>1 Q. You don't have your WhatsApp messages 2 between you and the Chief Minister 3 anymore? 4 <b>A. No. No, I don't have -- I really don't have 5 it.</b> 6 Q. Is there a reason for that? 7 <b>A. I don't back up my WhatsApps. I don't.</b> 8 Q. They don't come back onto your phone 9 when -- 10 <b>A. No, because I don't back them up. I don't 11 back them up when I change my phone, 12 nothing comes up.</b> 13 Q. Right. 14 <b>A. And I do clear my --</b> 15 Q. Have you discussed the Inquiry with the 16 Chief Minister since it was -- 17 <b>A. Never.</b> 18 Q. -- announced in July 2020? 19 <b>A. Never. Never.</b> 20 Q. No messages or anything? 21 <b>A. No. Never, never, ever. It would be like 22 again colluding with a co witness. No. No, 23 sir.</b> 24 MR WAGNER: Thank you, and sorry for 25 going over my time.</p> <p style="text-align: center;">Page 261</p>	<p>1 <b>comfort, when he said, "I still have to meet 2 the AG to sort things out."</b> 3 Q. Yes, but different words have been used. 4 For example, Mr Wagner mentioned a search 5 warrant. Was a search warrant mentioned to 6 you? 7 <b>A. Not -- the only way I'd recall that is if 8 he's recorded me and I can have a transcript.</b> 9 Q. Then at one point you used the word 10 "brief". What did you mean by that? 11 <b>A. That it was brief, a brief that was brief. I 12 didn't exactly get details and I wouldn't want 13 details quite frankly.</b> 14 Q. So basically what were you told? 15 <b>A. He intimidated that --</b> 16 Q. The Chief Minister was annoyed with 17 him? 18 <b>A. Was very, very annoyed with him.</b> 19 Q. And he had James Levy's telephone in his 20 safe? 21 <b>A. That's right, because of an investigation 22 he was undertaking.</b> 23 Q. And is that what you construed as 24 interference? 25 <b>A. I think so.</b></p> <p style="text-align: center;">Page 263</p>
<p>1 Questioned by MR NEISH 2 MR NEISH: I will be as brief as possible, 3 Mr Chairman. But first of all, may I say that 4 I found Mr Wagner's suggestion of collusion 5 between lawyers to produce the result to be 6 quite unfounded and really out of order. Mr 7 Wagner as a public lawyer should be aware 8 that there is ample authority for the 9 proposition that if a decision of a Board is so 10 manifestly wrong, that that Board should be 11 precluded from considering the matter afresh 12 in those circumstances, and that is precisely 13 what happened in this case. The fact that it 14 opened the door to section 13, which in fact 15 was not exercised, is neither here nor there 16 nor the concern of the GPA. 17 (To the witness) Mr Britto, I would just like 18 to clear a few points as briefly as possible, 19 we are late in the day. When you saw Mr 20 McGrail on 15 May, what exactly did he tell 21 you about Operation Delhi? 22 <b>A. I think he said ... at some point he 23 mentioned having a phone in a safe. He 24 mentioned Mr Levy's name and I think he 25 mentioned as well, which gave me a bit of</b></p> <p style="text-align: center;">Page 262</p>	<p>1 Q. Now, shall we move on. When you were 2 called to a meeting on the 18th, you have 3 said in evidence that you did not know what 4 the purpose of the meeting was. Now, can 5 we refer to B1441 please and the entry at 6 13.58. This is the Deputy Governor to the 7 Chief Minister, "Thinking about it quite a lot. 8 Need to discreetly bring Joey Britto into our 9 thinking. I am happy to do that on Monday." 10 Then the response from the Chief Minister is, 11 "Yes, agreed. Shall we do so Monday. 12 Morning coffee, the three of us in my or 13 yours?" The Deputy Governor, "Let's do 14 mine." The Chief Minister, "Agreed. Shall I 15 ask him or will you?" Then the Governor 16 says, "I've just asked him. I'll also try to 17 speak to our OT Police Adviser based in 18 Miami. I'll update you on my thinking 19 before we meet." Now, what is the 20 significance of the OT Police Adviser based 21 in Miami? 22 <b>A. I have no idea.</b> 23 Q. Is he the man who advises on overseas 24 recruitments? 25 <b>A. He's -- I forget his name now but I can</b></p> <p style="text-align: center;">Page 264</p>

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<p>1 <b>get it for you. He's based in Miami and he</b>  2 <b>does the advising to the Overseas Territory</b>  3 <b>Police Forces.</b>  4 Q. On recruitment?  5 <b>A. On recruitment and on policing matters in</b>  6 <b>general. A Mr Munday, I forget his first</b>  7 <b>name. Mr Munday.</b>  8 Q. Okay. So, were you aware of this  9 exchange of WhatsApps?  10 <b>A. No, no. No.</b>  11 Q. Have you seen that exchange? Does  12 anything strike you about it?  13 <b>A. I know that Mr Pyle spoke to Mr Munday</b>  14 <b>when deciding whether or not Mr Ullger</b>  15 <b>should stay on or not and how to do it, but I</b>  16 <b>mean, vaguely, because I wasn't involved in</b>  17 <b>that, but --</b>  18 Q. But Mr McGrail had not yet been  19 dismissed.  20 <b>A. No. No, no. I honestly don't --</b>  21 Q. Or had resigned.  22 <b>A. You've got a point there, yes.</b>  23 Q. So were they already thinking about his  24 removal?  25 <b>A. No. No. I haven't seen that.</b></p> <p style="text-align: center;">Page 265</p>	<p>1 the Force to discuss matters under his  2 responsibility or in respect of which he has  3 powers under this Act." So it is perfectly  4 proper for the Governor, would you agree, to  5 call you on any matter relating to the police  6 force?  7 <b>A. I mean, for sure.</b>  8 Q. And if that related to the ability of the  9 Commissioner of Police to carry on his  10 functions because of loss of confidence in  11 him, that would fall fairly and squarely  12 within that provision.  13 <b>A. Well, it does say "The Governor shall</b>  14 <b>have ultimate responsibility for integrity,</b>  15 <b>probity, independence of policing ... and</b>  16 <b>policing aspects of national security ..."</b>  17 Q. And section 15 says --  18 <b>A. 15, professional standards I think.</b>  19 Q. Section 15(1)(d) provides, "The Chief  20 Minister may exercise any of the following  21 powers ... require factual assessment reports  22 from the Force or the Authority ..." so the  23 Chief Minister can hold you to account. And  24 he can call for and hold meetings with the  25 Chairman, Commissioner, et cetera. So, it is</p> <p style="text-align: center;">Page 267</p>
<p>1 Q. Another question just on that . What do  2 you make of the word "need to discreetly  3 bring Joey Britto into our thinking"?  4 <b>A. That I didn't tell anyone about it, that I</b>  5 <b>kept a secret, I'm not sure.</b>  6 Q. Well, let's move on. My learned friend  7 Mr Cruz questioned you at some length or  8 with some vigour about improper  9 interference by the Chief Minister and the  10 Deputy Governor. Did you consider that a  11 call to meet the Deputy Governor and the  12 Chief Minister was in any way improper?  13 <b>A. Not at all, because they have both got</b>  14 <b>powers under the Act to summon the</b>  15 <b>authority.</b>  16 Q. In fact, section 11 says, "The Governor  17 shall have overall responsibility and ultimate  18 responsibility for the integrity, probity, and  19 independence of policing in Gibraltar and the  20 policing aspects of national security,  21 including internal security." Then section  22 12C specifically provides, "The Governor  23 shall have power to call for and hold  24 meetings with the Chairman, the  25 Commissioner and other senior officers or</p> <p style="text-align: center;">Page 266</p>	<p>1 nothing untoward for the Chief Minister to  2 call you to a meeting?  3 THE CHAIRMAN: Well, it depends why he  4 was doing it, doesn't it?  5 MR NEISH: Just finally, Dr Britto, my  6 learned friend Mr Wagner has referred you to  7 the Gomez letter of 29 May and taken issue  8 with you on your copying those letters to the  9 Attorney General, the Chief Minister and the  10 Deputy Governor. Now, Mr Wagner himself  11 put to you that there were allegations in those  12 letters about these persons to which you  13 replied that you did not know -- you had not  14 known about this before.  15 <b>A. Yes.</b>  16 Q. So, would it have been possible for you  17 to consider the merit of those allegations  18 much less to reply to them without copying  19 that letter to those individuals?  20 <b>A. Not with the resources that the police</b>  21 <b>authority has -- I don't think it would have</b>  22 <b>been possible.</b>  23 Q. But how would you have acquired the  24 knowledge other than by putting the  25 allegations to those individuals?</p> <p style="text-align: center;">Page 268</p>

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1 **A. That's what I thought. That's how I felt.**  
2 MR NEISH: Thank you. Thank you, Mr  
3 Chairman.  
4 THE CHAIRMAN: Thank you very much  
5 indeed. It is a long day. Thank you for  
6 coming.  
7 THE WITNESS: Thank you. Thank you  
8 very much, sir.  
9 MR SANTOS: Thank you. Monday at 10  
10 am?  
11 THE CHAIRMAN: Monday. We have two  
12 days to deal with the Chief Minister's  
13 evidence. I am certain that we must keep to  
14 the timetable or else we are going to run out  
15 of time.  
16 MR SANTOS: Yes, I think we have already  
17 been in contact about that, if not, then we  
18 will be very sure --  
19 THE CHAIRMAN: We have to finish in  
20 time and I am going to keep people to time  
21 limit, Mr Wagner. (Laughter)  
22 MR SANTOS: Thank you.  
23 (Adjourned until 10 am, Monday, 6 May  
24 2024)  
25 (16.43)

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<b>A</b>				
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