

<p>1 (Tuesday, 7 May 2024) 2 (10.00) 3 MR SANTOS: Good morning, sir. Good 4 morning, Chief Minister. 5 MR PICARDO, Resumed 6 QUESTIONED BY MR SANTOS 7 (Resumed) 8 Q. I just want to pick up on one thing 9 relating to the incident at sea, yesterday, that 10 I did not get a chance to ask you yesterday. 11 Your disclosed WhatsApp exchanges with 12 Mr Pyle only go as far as 30 April 2020, so 13 we do not seem to have your exchanges with 14 Mr Pyle at the time of the incident at sea. Do 15 you know why that is? 16 A. So, when you say, "as far as April 2020", 17 you seem to be going forward, but you are 18 asking me about -- 19 Q. Far backwards. As far back. The earliest 20 we have. Sorry, let me be clear. The earliest 21 messages we have are on 30 April 2020. 22 A. I do not know whether I have the 23 WhatsApp messages which go back to that 24 time, but I mean, my team would have - my 25 legal team would have checked and would</p> <p style="text-align: center;">Page 1</p>	<p>1 office of the most senior elected official in 2 the land - or politician in the land - and have 3 him lie to you, not once but twice, in my 4 office to my face, as I said yesterday, was 5 really quite remarkable. I was just this 6 morning watching breakfast tv and I heard 7 Andy Burnham, the re-elected Mayor of 8 Manchester, say, "We cannot live in a 9 country in which public servants are not 10 wholly truthful with politicians", and that 11 resonated greatly with me, and for that 12 reason that was the thing that most led to my 13 loss of confidence, but in Mr McGrail, it is 14 fair to say he had a fairly bad week, because 15 less that 48 hours later, I was reading in a 16 newspaper about claims made against in 17 effect, the Government of Gibraltar which I 18 had not been alerted to, and all of those 19 things came together in that week to make 20 this, as I told you yesterday I think, suddenly 21 from being something that was an issue with 22 the RGP, and the HMIC report was there and 23 it was an issue - to suddenly this became, 24 what I called, the crocodile nearest the canoe. 25 The thing that most quickly needed to be</p> <p style="text-align: center;">Page 3</p>
<p>1 have disclosed anything that is within scope 2 of the requirement of the Inquiry for 3 disclosure. I mean, I do not know whether 4 there were WhatsApp exchanges at that time, 5 or whether in fact Mr Pyle were speaking on 6 the phone or meeting about these issues, or 7 whether there are some messages which have 8 been deemed not to be in the scope of the 9 inquiry, and I -- 10 Q. Perhaps we can clarify that with your 11 team. 12 A. I can do that in the break if you wish. 13 Q. Thank you. Yes. One other question 14 about the matters we covered yesterday. Is it 15 fair to say that in terms of your loss of 16 confidence in Mr McGrail that everything 17 changed on 12 May, and that from your 18 perspective the other reasons pale into 19 insignificance compared to your exchanges 20 with Mr McGrail on that day? 21 A. That is overwhelmingly the most 22 important aspect of what led me to lose 23 confidence in Mr McGrail. As you can 24 imagine, having the most senior law 25 enforcement official in the land come to the</p> <p style="text-align: center;">Page 2</p>	<p>1 dealt with. 2 Q. We were talking about your meeting with 3 Mr Pyle and your subsequent email 4 exchanges on 17 May, and of course on 18 5 May you and Mr Pyle met with Dr Britto. If 6 we can go to A207, your witness statement -- 7 A. Is that in the paginated bundle? 8 Q. It probably is in your witness statements 9 bundle, because I am going to your evidence 10 at paragraph 89 of your first witness 11 statement. 12 A. Yes. 13 Q. You say that you, "...recall that Mr Britto 14 was very concerned, but not surprised, when 15 the Governor and I shared our concerns with 16 him." Why did you get the impression that 17 he was not surprised? 18 A. Well, because of what Mr - I think I 19 referred to him as Mr Britto, I should refer to 20 him as Dr Britto - Dr Britto was sharing with 21 us also his impressions of Ian McGrail and 22 the relationship that he felt Ian McGrail had 23 with his staff, with his officers, and even the 24 relationship with the GPA. 25 Q. There is no mention of what Dr Britto</p> <p style="text-align: center;">Page 4</p>

1 (Pages 1 to 4)

1 said to you in your witness statement.
 2 **A. Yes. There isn't.**
 3 Q. Is it mentioned --
 4 **A. I can recall, but not enough to attest to it**
 5 **what it was that Mr Britto said. I can recall**
 6 **what I said enough to attest to it, and I**
 7 **produced a note of what I and Nick Pyle**
 8 **were saying as a result of that meeting, but I**
 9 **mean, I would be delving into the realms of**
 10 **memory to tell you what Dr Britto said and I**
 11 **am a little uncomfortable in saying that on**
 12 **oath and confirming that it is a hundred per**
 13 **cent the truth.**
 14 Q. You are on oath now.
 15 **A. I am, but what I am saying is, that I am**
 16 **telling you the impression of what he gave**
 17 **me. I can't tell you exactly the words that he**
 18 **used. For example, I can recall Dr Britto**
 19 **saying at some stage in this process, whether**
 20 **it was on that day or on later days, before the**
 21 **GPA process, or after the GPA process, or**
 22 **indeed in relation to the period after inquiry**
 23 **evidence has been provided, that at very**
 24 **different times when he was with Ian**
 25 **McGrail he felt bullied in the way that Ian**

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1 **McGrail dealt with him and that he felt as if**
 2 **his conversations with Ian McGrail were**
 3 **being recorded. I can't tell you he told us**
 4 **that on that day, I can tell you he has said**
 5 **that to me, but I don't know when, in the**
 6 **space of the last four years, he told me about**
 7 **that. But I do believe in fact that it was**
 8 **before we saw that Ian McGrail had recorded**
 9 **a certain number of meetings.**
 10 Q. Dr Britto's evidence to this inquiry was
 11 that he had no concerns in relation to Mr
 12 McGrail, so do you remember it differently
 13 to how he remembers it?
 14 **A. Yes, I do. I remember the image very**
 15 **vividly. We were sitting around the**
 16 **Governor's table having a discussion.**
 17 Q. Do you accept that Dr Britto might have
 18 felt nervous or overwhelmed in the presence
 19 of both you and the Governor?
 20 **A. Of course. Absolutely. I mean, I told**
 21 **you that even in the context of the meetings I**
 22 **had with Mr McGrail at the Wessex Lounge,**
 23 **even the meeting I had with Mr McGrail on**
 24 **12 May, and I absolutely accept that Dr**
 25 **Britto might have felt that he had the**

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1 **Governor and the Chief Minister in front of**
 2 **him addressing him on a seminal issue, and**
 3 **that that might have made him nervous.**
 4 **Indeed, as Her Majesty herself said once, you**
 5 **know, "recollections may vary"; that doesn't**
 6 **mean that they are wrong about what**
 7 **happened on that day, but I am very clear**
 8 **about what I recall happened on that day.**
 9 Q. At C3988, we have a note that you
 10 prepared of the meeting. Am I correct that
 11 this note was prepared on 20 May, two days
 12 after - sorry, I will let you get to it.
 13 **A. Yes. I would be happy if you tell me that**
 14 **that is what we have indicated and that's**
 15 **when it was sent.**
 16 Q. That is what the document seems to
 17 show.
 18 **A. Yes.**
 19 Q. Was this note prepared on the basis of
 20 any contemporaneous note, or were you
 21 relying on memory?
 22 **A. I was relying on the fact that I had taken**
 23 **into the room with His Excellency and Dr**
 24 **Britto, I think, a print out of the email I had**
 25 **sent the acting Governor, Mr Pyle, on the**

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1 **night of the 17th in preparation for this**
 2 **meeting; that I had used that as my aide**
 3 **memoire; that I had taken Dr Britto through**
 4 **it at the Governor's invitation, and that is**
 5 **why I told you yesterday, I had used that as**
 6 **the template for this note.**
 7 Q. At C3991, there is the second paragraph,
 8 that is paragraph (c), there is reference to
 9 what appears to be the meeting of 12 May
 10 where you say the Chief Minister also shared
 11 another event occurring last week which had
 12 left him also in a situation where the
 13 Commissioner had expressly misled him, and
 14 which left him unable to believe the
 15 Commissioner. That is presumably a
 16 reference to the meeting with Mr McGrail.
 17 Correct?
 18 **A. That is actually a reference to the meeting**
 19 **of 12 May with Mr McGrail where he lied to**
 20 **me twice.**
 21 Q. Did you explain to Dr Britto how Mr
 22 McGrail had misled you?
 23 **A. Yes.**
 24 Q. Did you set out the detail about Operation
 25 Delhi and the search warrants and Mr Levy's

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<p>1 involvement?</p> <p>2 A. I believe I did. I can't tell you in what</p> <p>3 level of detail, but I believe I did.</p> <p>4 Q. Why did you not set that out in the note?</p> <p>5 A. Probably because I was needing to</p> <p>6 prepare the note and get it out to Dr Britto as</p> <p>7 soon as possible. I think at one stage he was</p> <p>8 pressing me for it, and I was - I would have</p> <p>9 had to write a lot more, and I don't have a lot</p> <p>10 of time to produce file notes etcetera. As you</p> <p>11 can imagine, for me, having to produce the</p> <p>12 material that I had produced over those days</p> <p>13 and start to actually deliver written work,</p> <p>14 when I rely principally on others to produce</p> <p>15 written work as I go from meeting to</p> <p>16 meeting, required a lot of time to be spent,</p> <p>17 and I am sorry to refer to it again, but as you</p> <p>18 know, in this period there was a lot going on.</p> <p>19 This is before New Year's eve agreement,</p> <p>20 with a lot of negotiations going on. This is</p> <p>21 still in the period of the beginning of the first</p> <p>22 post-Covid lockdown. So, this is a very, very</p> <p>23 difficult time to be having to deal with</p> <p>24 everything else, and this, and to boot,</p> <p>25 produce a note.</p> <p style="text-align: center;">Page 9</p>	<p>1 there is precious little there, would you</p> <p>2 agree?</p> <p>3 A. Well, show me the rest of the note and</p> <p>4 let's look at how much of the facts there are</p> <p>5 in respect of the other matters. I think here,</p> <p>6 what I am doing in this note and what I was</p> <p>7 doing in the meeting, was explaining</p> <p>8 consequence of facts in respect of</p> <p>9 confidence. So, I haven't got the full note,</p> <p>10 and you have taken me to --</p> <p>11 Q. It is on --</p> <p>12 A. It is on the screen.</p> <p>13 Q. On the screen. If we go to 3988, that is</p> <p>14 the introductory wording.</p> <p>15 A. Yes.</p> <p>16 Q. Then the second one, "The first criteria is</p> <p>17 efficiency..."</p> <p>18 A. Yes.</p> <p>19 Q. And we have the HMIC FRS report there.</p> <p>20 A. Yes, and that does not set out all of the</p> <p>21 facts in the HMIC report, but it set out the</p> <p>22 consequence as far as I and Nick Pyle are</p> <p>23 concerned.</p> <p>24 Q. It does refer to page 7 of the report.</p> <p>25 Well, would you accept that there are more</p> <p style="text-align: center;">Page 11</p>
<p>1 Q. You did manage to produce a five page</p> <p>2 note though and --</p> <p>3 A. Yes, well - it might have been six or</p> <p>4 eight, if I had been required to put even more</p> <p>5 detail in it. This five page not is not a</p> <p>6 transcript of what happened on the day. I</p> <p>7 mean, I did not adopt Mr McGrail's</p> <p>8 approach, which was to covertly record</p> <p>9 without advising others that I was doing so,</p> <p>10 in which case I might have had a more</p> <p>11 detailed transcript of what happened. It is</p> <p>12 not purporting to be a transcript.</p> <p>13 Q. This was, in your evidence, the most - by</p> <p>14 far, the overwhelmingly most important</p> <p>15 reason, and you give it four lines on the</p> <p>16 fourth page.</p> <p>17 A. I am afraid that's not true.</p> <p>18 Q. This --</p> <p>19 A. Because if you carry on reading, the next</p> <p>20 paragraph deals with it also.</p> <p>21 Q. The next paragraph --</p> <p>22 A. So --</p> <p>23 Q. - explained why it is of concern --</p> <p>24 A. Exactly.</p> <p>25 Q. - but as far as the facts are concerned,</p> <p style="text-align: center;">Page 10</p>	<p>1 specifics, for example, about the HMIC</p> <p>2 report than there are about the incident that</p> <p>3 you say is the most important one in that</p> <p>4 note?</p> <p>5 A. In the way that does not affect the fact</p> <p>6 that I referred to it fully, and explained it</p> <p>7 fully, but of course, the HMIC report is a</p> <p>8 written document to which it is easy to cross</p> <p>9 refer. The other is something which I explain</p> <p>10 viva voce, and what is important is the</p> <p>11 consequence of that, and what this note is</p> <p>12 dealing with is what we were telling him</p> <p>13 were the consequences of those facts when</p> <p>14 applied to the principles that we believed</p> <p>15 were relevant, the five principles that I think</p> <p>16 I deal with in the note, and the effect of that</p> <p>17 on our ability, respectively and separately, to</p> <p>18 have confidence in Ian McGrail. It is not</p> <p>19 always the case that the Governor and the</p> <p>20 Chief Minister are exactly ad idem, on the</p> <p>21 same page, in respect of matters, let alone</p> <p>22 matters as consequential as this.</p> <p>23 A. But this is an informal record of a</p> <p>24 meeting.</p> <p>25 THE CHAIRMAN: I have got the point.</p> <p style="text-align: center;">Page 12</p>

3 (Pages 9 to 12)

1 MR SANTOS: Can we go to C4234, please?
 2 This is an email from Mr Pyle to several
 3 individuals at the FCO, and the second
 4 paragraph he says, "At my request, the CM
 5 set out the issues of concern, namely the
 6 damming HMIC report, the fatal collision,
 7 Police Federation allegations of bullying and
 8 the mishandling of a high-profile ongoing
 9 investigation in which the Commissioner
 10 apparently went against the advice of the
 11 Attorney General and Director of Public
 12 Prosecutions." Had the Attorney General
 13 corrected his misquoting of the DPP by this
 14 point to you?
 15 **A. Yes, he had.**
 16 Q. Had you corrected the position with the
 17 Governor by this point?
 18 **A. I don't think I ever communicated to the**
 19 **Governor the misquoted position.**
 20 Q. Well, he seems to be quoting it to the
 21 FCO, so how did he learn of it?
 22 **A. Well, the way that he is quoting it is**
 23 **incorrect.**
 24 Q. Well, it is incorrect in the sense that he
 25 says, "...went against the advice of the

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1 Attorney General and Director of Public
 2 Prosecutions", but the --
 3 **A. So --**
 4 Q. - part that refers to the Director of Public
 5 Prosecutions is wholly consistent with Mr
 6 Llamas' message to you.
 7 **A. But I am unable to give evidence of why**
 8 **Nick Pyle is expressing it in that way. He**
 9 **may have been left with that impression after**
 10 **speaking --**
 11 Q. My question to you was --
 12 **A. - to me.**
 13 Q. Sorry, my question to you was not why
 14 he said it in that way. My question to you
 15 was whether you had corrected the position
 16 with him?
 17 **A. I answered that question.**
 18 Q. Is it answer that you never spoke to him
 19 about that --
 20 **A. I don't think I - sorry?**
 21 Q. Is your evidence that you did not speak to
 22 him about what the alleged lie was?
 23 **A. No, that is not my evidence. My**
 24 **evidence is, and I hope I have corrected this**
 25 **clearly, that I never, I believe, told Nick Pyle**

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1 **the strongly advised language which the**
 2 **Attorney General later resiles from. By the**
 3 **time I am talking to Nick Pyle, I am talking**
 4 **about: he lied to me because he said the DPP**
 5 **had advised to proceed by way of a search**
 6 **warrant. I don't think, with Nick Pyle, I have**
 7 **ever got to the stage with talking about**
 8 **"strongly advised" and having to correct that.**
 9 **This is a week and a half later.**
 10 Q. I understand. I am just trying to get the
 11 communications right. So your evidence is,
 12 you told him that there was a lie about the
 13 DPP having advised but you did not tell him
 14 whether the DPP had advised against, or had
 15 not advised? That is your evidence?
 16 **A. No. Hang on. I told him - let's look at**
 17 **what I told him. I told him: he told me, Ian**
 18 **McGrail told me that they had proceeded by**
 19 **way of search warrant because the DPP had**
 20 **advised that they should. Right. I didn't say**
 21 **to him, at any stage, because the DPP had**
 22 **strongly advised that they should. Right. So,**
 23 **that is my evidence. That's what I told Nick**
 24 **Pyle the first time that I had an opportunity to**
 25 **talk to him about it. The change in degree of**

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1 **the position of the DPP, if I can describe it as**
 2 **that, which the Attorney General**
 3 **Communicates to me, because he feels he has**
 4 **misquoted the DPP, is not something which I**
 5 **think is, in the context of my conversations**
 6 **with Nick Pyle, relevant because I can't recall**
 7 **using the "strongly advised" language with**
 8 **Nick Pyle. Now --**
 9 Q. There is no reference to - I think there is
 10 some confusion. There is no reference to
 11 "strongly advised" -- to strong advice there.
 12 **A. Yes.**
 13 Q. The difference is between advising
 14 against it and not advising at all. The
 15 position that Mr Llamas reports to you about,
 16 is advising against --
 17 **A. Yes.**
 18 Q. - and his misquotation is on the basis that
 19 the DPP did not advise against, but rather
 20 simply did not advise.
 21 **A. Yes.**
 22 Q. But the Governor seems to be reporting
 23 to the FCO. The initial position reported by
 24 Mr Llamas - that is why I am just trying to
 25 get to the bottom of why the Governor is

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<p>1 reporting that to the FCO, and why --</p> <p>2 A. But to the extent, as you can imagine, that</p> <p>3 is more a question for him than it is for me.</p> <p>4 Q. Thank you.</p> <p>5 A. It might be, but I am happy to assist you</p> <p>6 further if you feel that I can.</p> <p>7 Q. I think we will move on. Your file note</p> <p>8 was later read out to the GPA by Dr Britto as</p> <p>9 part of their meeting. Do you think that it</p> <p>10 provided sufficient detail in respect of your</p> <p>11 primary reason for losing confidence in Mr</p> <p>12 McGrail?</p> <p>13 A. I do. I believe it provided the key issue,</p> <p>14 which is that I have been misled by Mr</p> <p>15 McGrail, and the consequences of that key</p> <p>16 issue on my confidence.</p> <p>17 Q. If we go to C4234 - sorry, we are on</p> <p>18 C4234.</p> <p>19 A. Correct.</p> <p>20 Q. The end of that paragraph Mr Pyle says,</p> <p>21 "The CM reminded the chair that should this</p> <p>22 not happen..." -- i.e, the section 34 calling</p> <p>23 upon the Commissioner to retire - "... should</p> <p>24 this not happen, the Act gave the Governor</p> <p>25 powers to call for the resignation of the</p> <p style="text-align: center;">Page 17</p>	<p>1 whether to exercise section 34?</p> <p>2 A. He didn't have to make any decision</p> <p>3 there. We were sharing with him why we</p> <p>4 thought they should engage that level of</p> <p>5 scrutiny of the actions of the Commissioner,</p> <p>6 and invite him to explain, but they were</p> <p>7 perfectly free to do otherwise. Indeed, Mr</p> <p>8 Britto is not - Dr Britto is not the GPA, he is</p> <p>9 the chairman of the GPA, so what was</p> <p>10 happening there was not a GPA process. It</p> <p>11 was us informing the chair of the GPA. The</p> <p>12 GPA process could only begin when Dr</p> <p>13 Britto met with the GPA and they started</p> <p>14 their independent deliberations which would</p> <p>15 of course, have to reflect upon the things that</p> <p>16 we had said.</p> <p>17 Q. Dr Britto's evidence was that he</p> <p>18 interpreted this as you saying that he would</p> <p>19 not be doing his duty if he did not invite Mr</p> <p>20 McGrail to retire. Do you understand that he</p> <p>21 might have interpreted it in that way? Do</p> <p>22 you understand why he might have</p> <p>23 interpreted it like that?</p> <p>24 A. Absolutely.</p> <p>25 Q. If we go to B --</p> <p style="text-align: center;">Page 19</p>
<p>1 Commissioner." Then jumping over about</p> <p>2 five lines, "I said should the GPA determine</p> <p>3 that the call to retire was not appropriate, I</p> <p>4 would consider using the powers available to</p> <p>5 me under section 13.1(f) which allowed me</p> <p>6 to call for the resignation of the</p> <p>7 Commissioner and that as things stood, I</p> <p>8 would need strong and persuasive arguments</p> <p>9 not to do so. I said whilst I was not looking</p> <p>10 to prejudge the deliberations of the GPA and</p> <p>11 was mindful that the Commissioner is</p> <p>12 allowed to make representations as section</p> <p>13 34 allows, the GPA should be in no doubt as</p> <p>14 to the strength of my feelings. I concluded</p> <p>15 by saying the powers I have under section</p> <p>16 13.1(f) only come into play in default by the</p> <p>17 authority and as such, the GPA was under</p> <p>18 some scrutiny." You would be aware - are</p> <p>19 you aware that under section 48 of the</p> <p>20 constitution that the GPA has an obligation to</p> <p>21 carry out its functions independently?</p> <p>22 A. Of course, and I don't believe that this in</p> <p>23 any way effects its independence.</p> <p>24 Q. Do you think you gave Dr Britto a fair</p> <p>25 opportunity to decide independently as to</p> <p style="text-align: center;">Page 18</p>	<p>1 A. I think it is important to understand the</p> <p>2 consequences of what was happening here.</p> <p>3 The Governor, who is appointed by the</p> <p>4 United Kingdom, the Chief Minister, who is</p> <p>5 directly elected by universal suffrage of the</p> <p>6 people of Gibraltar, together have lost</p> <p>7 confidence in the senior law enforcement</p> <p>8 official in Gibraltar for the reasons that we</p> <p>9 have set out. That is quite seminal, and that</p> <p>10 is why we were communicating vehemently</p> <p>11 to the chairman of the GPA how we felt. For</p> <p>12 the GPA process as you see, because</p> <p>13 actually, you know, if has a life of its own, is</p> <p>14 a matter of the GPA. But their independence</p> <p>15 does not preclude us from being forceful in</p> <p>16 the expression of our views as to how we feel</p> <p>17 about the Commissioner of Police.</p> <p>18 Q. Can we go to B1426, please? Towards</p> <p>19 the bottom of the page there are messages on</p> <p>20 20 May between you and the Chief Secretary</p> <p>21 Darren Grech, where you say, at 445,</p> <p>22 "Darren. When Joey speaks tomorrow at the</p> <p>23 GPA he is going to explain my views on the</p> <p>24 sensitive subject. Your support for me on</p> <p>25 this key. I have grave grave concerns." Mr</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 Grech responds, "I know, and they are my 2 concerns too for whole range of reasons. 3 You have the support." He then reports to 4 you the following day, "Made my position 5 very clear this morning. His position 6 untenable with a massive loss of confidence 7 all over. Here is you need me, although..." I 8 will not go into the rest of that message. Did 9 you consider it was appropriate to seek to 10 influence the actions of a GPA member? 11 A. I don't think I'm seeking to influence the 12 actions of a GPA member by telling him how 13 I feel. 14 Q. "Your support for me on this is key". 15 A. Absolutely it's key. He is my appointee 16 in the GPA. 17 Q. Is he -- 18 A. I told you what happened the very day I 19 became Chief Minister, the very day I 20 became Chief minister in the context of the 21 application process and the GPA then for 22 Commissioner of Police. 23 Q. Was that exchange consistent with the 24 GPA exercising its functions independently? 25 A. Yes, it was, and indeed with Darren</p> <p style="text-align: center;">Page 21</p>	<p>1 you and Dr Britto at 11:58 where he says, 2 "Fabian. Could I possibly see you this 3 afternoon when Ernest goes to see you at 4 four, or around that time?" "Yes, sure, see 5 you then." "Thanks, see you at four". Then 6 he sends you some media, and you say, "Hi. 7 Yes, that is what you will in effect be doing. 8 You come back to us to seek our consent 9 after the representations have been received. 10 I will write the sequencing down for you as I 11 see it, if you wish. I am just going to finish a 12 note first." It appears from those messages 13 that you had exchanges and made 14 amendments to the first letter to Mr McGrail. 15 A. Yes. 16 Q. Do you recall what those amendments 17 were? 18 A. It's impossible for me, without seeing the 19 media, what it was. I don't know whether 20 there's been, in the other disclosure, if there 21 is any ability to get those, maybe from Joey's 22 devices. 23 Q. I do not think we have been able to do so. 24 A. I mean at that time, WhatsApp tended to 25 delete attachments, or indeed messages when</p> <p style="text-align: center;">Page 23</p>
<p>1 Grech, it is exercising his functions 2 independently in the fact that somebody is 3 exercising their functions independently does 4 not prevent somebody else from telling them 5 their views as to why one or another better 6 course is to be preferred. 7 Q. The GPA met on the following day. 8 When did you learn of the result of the 9 meeting? 10 A. I am unable to tell you that. I don't know 11 when they finished and when they told me 12 but there may be a record. 13 Q. Do you remember who reported it to 14 you? 15 A. Well, certainly you can see here that 16 Darren Grech reported something to me, if 17 you call that a report. I mean, he certainly 18 told me, I wouldn't say its reporting, and I 19 don't know whether Dr Britto may have 20 communicated officially with the Governor 21 and with me also. There may have been 22 another meeting. 23 Q. If we go to B1436 now, please. 24 A. Yes. 25 Q. There is an exchange on that day between</p> <p style="text-align: center;">Page 22</p>	<p>1 you transferred phones, which it doesn't do 2 now if you back-up, but at that time, it did. 3 Q. Do you agree that under section 34 the 4 order of events is that the GPA seeks 5 representations, considers the 6 representations, then consults the Governor 7 and the Chief Minister and obtains the 8 agreement of at least one of them, and then 9 the GPA invites the Commissioner of Police 10 to retire. 11 A. Yes, and that if he - and that if they do, 12 he shall retire. 13 Q. The letter invites Mr McGrail to retire, 14 the first letter, but also invited 15 representations to allow the Governor, the 16 Chief Minister and the authority to express a 17 firm and final view. Was that, in your view, 18 consistent with the scheme of section 34? 19 A. Look, I don't think I'm here to give you 20 opinions as to whether letters were consistent 21 with the statutory provisions. I would have 22 to consider that carefully as a lawyer. I was 23 being asked by the GPA here to assist them 24 with their language of their letter and that's 25 how I did it. I wasn't providing legal advice</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 to the GPA.</p> <p>2 Q. If we go to B1437, please? There are</p> <p>3 further exchanges on 22 May, and there</p> <p>4 looks to be - it looks like you have another</p> <p>5 meeting at 2pm. He says, "Can I see you</p> <p>6 today before close of play. I've given him</p> <p>7 letter but he's asking for details in writing</p> <p>8 alone about getting a lawyer etc, I need to</p> <p>9 discuss a couple of issues he's raised, please."</p> <p>10 You say, "Hi. Sure. Shall we meet at 2?"</p> <p>11 "See you then, thanks". Then you say,</p> <p>12 "Media is sent", "Please see main point I felt</p> <p>13 were the most relevant to put in writing."</p> <p>14 Was it to discuss the letter that you met with</p> <p>15 Dr Britto on that day?</p> <p>16 A. I think it's very likely it was. In fact, I</p> <p>17 think at this stage there is also a reference to</p> <p>18 my saying that he needs to have as much</p> <p>19 information so that he can meet the case that</p> <p>20 he has to meet. At some point somewhere I</p> <p>21 say that. It may be in one of the emails</p> <p>22 sending him the letters.</p> <p>23 Q. It is on the following page. 1438, your</p> <p>24 third entry there --</p> <p>25 A. "I've added a little more so that he knows</p> <p style="text-align: center;">Page 25</p>	<p>1 the Governor and I felt, what the Governor</p> <p>2 and I had discussed, what the Governor and I</p> <p>3 had said together to Dr Britto, if we had not</p> <p>4 said in this letter that we had both already</p> <p>5 lost confidence and had simply put the case</p> <p>6 without that to allow Mr McGrail to reply,</p> <p>7 the allegation against us would be that we</p> <p>8 had failed to disclose that we had already</p> <p>9 reached the conclusion that we could not</p> <p>10 have confidence in him. So, I think we were</p> <p>11 putting as much information as possible into</p> <p>12 the communication that was to go to Mr</p> <p>13 McGrail, to give him the benefit of all that</p> <p>14 information so that he understood the case he</p> <p>15 had to meet.</p> <p>16 Q. The third - well, the second highlighted</p> <p>17 paragraph on the first page says,</p> <p>18 "Additionally, the authority itself has agreed</p> <p>19 with the matters raised by the Governor and</p> <p>20 the Chief Minister." How did you consider</p> <p>21 yourself in a position to confirm what the</p> <p>22 authority itself had agreed?</p> <p>23 A. Because Mr Britto had told me.</p> <p>24 Q. If you can see --</p> <p>25 A. You just took me a moment ago, by the</p> <p style="text-align: center;">Page 27</p>
<p>1 the case he has to meet." Yes.</p> <p>2 Q. Then --</p> <p>3 A. "We must get it right as he deserves to be</p> <p>4 given the picture he has to address."</p> <p>5 Q. Yes. The letter is a C4282.</p> <p>6 A. Yes.</p> <p>7 Q. I think I am right in saying that the parts</p> <p>8 that are highlighted in yellow are the ones</p> <p>9 that you added. Is that correct?</p> <p>10 A. Added or amended?</p> <p>11 Q. Added or amended.</p> <p>12 A. Yes.</p> <p>13 Q. There are quite substantive additions to</p> <p>14 the letter in those yellow areas. Do you think</p> <p>15 that that was consistent with the authority's</p> <p>16 independence?</p> <p>17 A. Well, if the authority independently asked</p> <p>18 me to provide them with that additional</p> <p>19 material, because I didn't ask them to ask me,</p> <p>20 they independently decided to ask me</p> <p>21 through their chair, to provide this material, I</p> <p>22 do believe it is in keeping with the view that</p> <p>23 they are independently pursuing this process.</p> <p>24 Additionally, for example, given the</p> <p>25 sequencing that you have put out, given what</p> <p style="text-align: center;">Page 26</p>	<p>1 way, to a WhatsApp message from the then</p> <p>2 Chief Secretary which told me exactly that as</p> <p>3 well, by the way.</p> <p>4 Q. Well, he --</p> <p>5 A. He is said specifically, "Agreed. Totally</p> <p>6 untenable. Everyone agrees."</p> <p>7 Q. Did you consider getting - advising Dr</p> <p>8 Britto to get independent legal advice, rather</p> <p>9 than make those amendments yourself?</p> <p>10 A. I think at some stage he says to me he</p> <p>11 wants to get independent legal advice and I</p> <p>12 say he should go ahead and do so.</p> <p>13 Q. That was after this letter though.</p> <p>14 A. It may be.</p> <p>15 Q. In your witness statement, paragraph 92,</p> <p>16 A211 --</p> <p>17 A. Sorry? A-2-1....</p> <p>18 Q. 1-1. Just picking up paragraph 92 from</p> <p>19 half way down. You say, "As I said in the</p> <p>20 exchange of WhatsApp messages at the time,</p> <p>21 I believed it was important that the procedure</p> <p>22 was properly followed and that Mr McGrail</p> <p>23 had the information necessary for him to see</p> <p>24 the picture he had to address in responding to</p> <p>25 what was being put to him, as he is entitled to</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 do under section 34(2). In this respect, by 2 adding allusion also to the views of the 3 Attorney General, I ensured that in the letter 4 from the Authority to Mr McGrail he was 5 aware that the events of the 12th May were 6 important in the context of the loss of 7 confidence in him." So, you thought it was 8 important that Mr McGrail understood the 9 allegations against him. Is that so that he 10 was able to make representations? 11 A. As I expressly say, in order to ensure 12 compliance with the statutory provisions of 13 section 34, which of course requires the 14 authority to be quorate when it kicks it off. 15 Q. Should you not have spelled out your 16 complaint in relation to Operation Delhi and 17 12 May, rather than merely adding allusion 18 to the Attorney General's views? 19 A. Well, I obviously didn't feel I should, 20 because I didn't. 21 Q. Do you reflect now - well, reflecting 22 now, do you think that you should have 23 spelled out your concerns as to 12 May? 24 A. Well look, an inquiry of this sort is a little 25 bit like a legal VAR. We are looking at</p> <p style="text-align: center;">Page 29</p>	<p>1 matter that is perhaps probably better 2 addressed in the transcripts that he has 3 produced of the conversations he covertly 4 recorded. 5 Q. You liken this to a VAR, but I do not 6 think it is a case of being wise after the event, 7 is it? This was your key issue and you only 8 referred to it in the vaguest terms. Do you 9 not -- 10 A. Well, I don't -- 11 Q. - think that you could have done more? 12 A. I don't accept that I do, because you see, 13 the key and fundamental issue is the 14 misleading. He could have misled me about 15 anything else about the price of eggs. It's the 16 misleading that's the issue, and we cannot - 17 and I come back to the phrase I heard this 18 morning which resonated with me so greatly 19 - we cannot in this country, have a situation 20 where public officials lie to ministers. 21 Q. Can I take you to C4283. Which is the 22 second page of the letter. 23 A. C4-2.... 24 Q. 8-3. 25 A. I don't have that, Mr Santos. I have got --</p> <p style="text-align: center;">Page 31</p>
<p>1 something that happened in five seconds on 2 the pitch, slowing it down and analysing 3 every frame. If I could go back, would I add 4 in detail, more detail about that? Well, the 5 short answer is, to prevent you having to ask 6 me that question, I would now conclude that 7 perhaps I could have, but at the time I 8 thought it was sufficient for Mr McGrail, 9 who certainly knew what the issues were 10 because by this date, Mr McGrail certainly 11 knew how I felt, and the allusion itself was 12 enough for Mr McGrail to know what it was 13 that I was referring to. At that time, I felt 14 that was sufficient. 15 Q. Did Mr McGrail know at this point that 16 the DPP had told the Attorney General that 17 he had strongly advised against - the 18 warrant. 19 A. I think - I think by this stage - remind me 20 of the date? 21 Q. 22 May. 22 A. That that "...strongly advised..." had 23 already been resolved, and whether Mr 24 McGrail was aware of it, not aware of it, had 25 discussed it with Mr Llamas or not, is a</p> <p style="text-align: center;">Page 30</p>	<p>1 Q. It is one sentence. I am going to show 2 you, if I can, show you on screen. The 3 bottom of C4283. It is the first sentence of 4 that last paragraph. "It was communicated to 5 me that both the Governor and the Chief 6 Minister felt that their dealings with you have 7 left them with the sense that you are lacking 8 in both probity and integrity. The maritime 9 incident is one case in point." That is the 10 extent of what you provide, if anything at all, 11 in relation to 12 May. Do you think that that 12 was sufficient for Mr McGrail to know the 13 case he had to meet? 14 A. You said that the bits I added were the 15 bits in yellow. So, that's not my sentence 16 that you are asking me about. 17 Q. It is not that. It is a letter that you 18 reviewed and made copious amendments to. 19 Did you not think that you could add 20 something that made the position clearer as 21 to 12 May? 22 A. I don't think that Mr McGrail himself 23 needed the position of 12 May to be made 24 clearer. He was fully aware of that. I mean, 25 at some points it almost feels as if you are</p> <p style="text-align: center;">Page 32</p>

<p>1 asking me whether I have added too much 2 and now you are asking whether I didn't add 3 enough. 4 (10.36) 5 Q. Well, it is because you seem to be 6 particularly coy about 12 May in -- 7 A. Coy? 8 Q. -- your note and in the -- 9 A. No, no, no, Mr Santos. I take you back to 10 one of the things I said yesterday. I didn't 11 feel that the information that had been shared 12 with me was privileged, that it was 13 confidential in any way, that it had been 14 shared on the basis of it being privileged or 15 confidential in any way, and I was 16 evangelising to everyone I spoke to about the 17 warrant, which was vox populi in Gibraltar. 18 And therefore many people were talking to 19 me about the warrant, about Mr McGrail's 20 misleading and lying, and the issues that 21 surrounded that. So, I was not being coy 22 about it at all. Whether I added more or less 23 to the letter about that issue does not change 24 the fact that I was not being coy about it, and 25 --</p> <p style="text-align: center;">Page 33</p>	<p>1 Q. On 22 May Mr Pyle sent another update 2 to the FCDO (it may still have been the FCO 3 at the point) and he says, "Very interesting. 4 It's the James Levy angle as well that is 5 interesting. I'm also a touch nervous given 6 that the CM has firmly taken the lead on a 7 competence that is more towards us than 8 them, but we've agreed this approach which 9 on balance is right. It also raises issues about 10 the GPA, who should have been monitoring 11 the CoP, but I can't see it ending well for 12 anyone." Do you agree that you took the 13 lead on this issue? 14 A. Well, I suppose I took the lead in the 15 meetings but, you know, different characters 16 behave in different ways, and anybody who 17 knows me knows that I'm more, perhaps, 18 vehement in the way that I address meetings, 19 and those who know Nick Pyle know that he 20 is more calmly and effectively persuasive, 21 perhaps, than I am. But, that is a matter of 22 perception. 23 Q. Could we go to C4832, please. 24 A. Yeah. 25 Q. Mr Pyle then sets out his view to the</p> <p style="text-align: center;">Page 35</p>
<p>1 Q. Why do you not (?) evangelise about it in 2 the letter? 3 A. Well, why have to? As well, I mean, it's a 4 -- it's an issue where you're asking me to go 5 back into my mind on that day and say: why 6 didn't you add this or that? I mean, it's 7 almost -- if I may say so with respect, you're 8 asking me to draft by committee, except one 9 member of the committee pitches up four 10 years after the event to suggest that 11 something should or should not have gone in 12 the letter. What about Mr -- Dr Britto and the 13 GPA: they produce the first draft, why didn't 14 they put more in? 15 Q. (inaudible) 16 A. But at this date, a lot of these facts are not 17 in any way something that people are not 18 talking about. I would be surprised if the 19 members of the GPA were the only ones who 20 were not aware of what had happened etc. 21 And certainly Mr McGrail, who is the person 22 to whom the letter is addressed and who has 23 to meet the case, is aware. 24 Q. Let us move to C4359 now, please. 25 A. Yeah.</p> <p style="text-align: center;">Page 34</p>	<p>1 FCO. If we go to the bottom of the page first 2 of all, he says in the second paragraph, "My 3 instinct is to allow CoP time to work out a 4 deal, but this then means" -- 5 A. Sorry, where are you? I can't... 6 Q. Sorry, apologies. 7 A. Second sentence of the final...? 8 Q. Yes. 9 A. Yeah. 10 Q. "My instinct is to allow CoP time to work 11 out a deal, but this then means Sir David will 12 have arrived. What we don't want is CoP to 13 withdraw his request and lobby Sir David to 14 keep his position. That is at 11.35 on 7 June. 15 And then if we go to 4845, this is the same 16 evening on 7 June, and the first paragraph. 17 He says, "I've just met with the AG and CM, 18 we agreed that on balance we needed to 19 protect Sir David, and felt that should CoP 20 still be in office after his swearing in he 21 would more likely than not retract his request 22 to retire and appeal to Sir David, thus taking 23 us back to square one. This issue is also in 24 the public domain, with rumours and 25 accusations beginning to circulate. We</p> <p style="text-align: center;">Page 36</p>

9 (Pages 33 to 36)

<p>1 agreed we needed to stop this, and the only 2 way to do so to conclude proceedings before 3 Sir David's swearing in on Thursday. Did 4 you persuade Mr Pyle, contrary to his 5 instinct, that the issue needed to be finalised 6 as soon as possible? 7 A. I don't believe I did. Where... 8 Q. I am referring to the previous email, 9 where he said that his instinct was to allow 10 CoP time to work out a deal. But at the same 11 time, he was saying: we don't want him to 12 withdraw his request and lobby Sir David. 13 A. That's what he was saying, not just me, so 14 I don't think I had to persuade him of 15 anything. 16 Q. If we -- 17 A. I think he's setting out his thinking. 18 Q. At C4879 there is an email of the evening 19 of 8 June, and the second paragraph says, "I 20 then went to see the Chief Secretary, AG and 21 CM. Whilst the AG and CM (?) thought we 22 should look to accommodate the 23 Commissioner to some degree, the CM 24 rejected all terms. The Chief Secretary 25 confirmed this in writing to the</p> <p style="text-align: center;">Page 37</p>	<p>1 think the legal fees claimed were higher than 2 I thought was reasonable. So, payment to the 3 end of the contract is not me involving 4 myself, as you have suggested, in pension 5 matters; it is that we would have had to pay 6 Ian McGrail -- I mean, from memory I don't 7 know what the salary of the Commissioner of 8 Police is but I think it's about £140,000. I 9 think at that stage he would have had over a 10 quarter of a million pounds if we paid out his 11 contract. This was not a situation where we 12 felt that we were doing anything other than 13 properly determining a contract. 14 Q. So, is your evidence that you did not get 15 involved with the pension side of things 16 (inaudible). 17 A. I think there was one element, which is 18 that he wanted his pension to be tax free, 19 which would have required me (as Minister 20 for Finance) to do things to bring that about. 21 The rate of the pension and all the rest of it: 22 that's a matter for the auditor to work out, it's 23 got nothing to do with me. But also in 24 relation to anybody else, that has got nothing 25 to do with me. The question is: if more has</p> <p style="text-align: center;">Page 39</p>
<p>1 Commissioner. With the AG's support, I 2 subsequently advised the CM to try and 3 accommodate the Commissioner in some 4 way." And then, "The CM is now prepared 5 to make an offer." Why were you involving 6 yourself in the conversation about pension 7 rights? 8 A. This was not about pension rights. This 9 was -- the Commissioner's pension, as you 10 know, is the first child of the consolidated 11 fund, I think; it's not something on which I 12 need to or have any, you know, ability to 13 become involved. This was about the terms 14 that have been offered, not about the pension 15 rights. 16 Q. What were the terms that were not 17 agreeable? 18 A. So, first of all the -- I mean, perhaps you 19 should take me to it so that I (inaudible). 20 Q. 4874. 21 A. I recall there was -- 22 Q. It is the bottom of the... 23 A. Yes, exactly. Payment up to the end of 24 the contract, that's what I was getting 25 involved in. Payment of the legal fees, and I</p> <p style="text-align: center;">Page 38</p>	<p>1 to be given, that has to come to me as 2 Minister for Finance, and in the context of 3 paying somebody a tax-free pension before 4 the age of 60 that would -- I don't know 5 whether it even potentially would have 6 required me to take an amendment to the 7 House to permit it. But there may be 8 provision that enables us to do it some other 9 way. 10 Q. Moving on to a new topic. Mr Morello 11 came and gave evidence to the Inquiry, and 12 explained that he was approached by a 13 number of police officers with allegations 14 against Mr McGrail. His account is that first 15 of all they would explain the allegations to 16 him and Mr Crome, then Mr Crome would 17 report to you, and in response you would 18 give a verbal assurance to that individual that 19 they would be given an alternative role if 20 their position became untenable as a result of 21 giving evidence to the Inquiry. Then a 22 witness statement was drafted and signed, 23 and then a letter of assurance was given. 24 Does that general procedure accord with your 25 recollection?</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 A. Not that I would have been familiar with 2 the whole of that procedure. I know that 3 people would be referred as being potential 4 whistleblowers, and that arose after the call 5 for evidence that the Inquiry made. What 6 gave rise to that was the Inquiry making a 7 call for evidence, and if people were to be 8 whistleblowers then they needed to have that 9 protection. That status, to have that 10 protection, sorry. 11 Q. If we go to C6932, please. This is one 12 such letter, dated 9 February 2023. And 13 paragraph two says so-and-so "is not yet of 14 retirement age, and consequently if her 15 position became untenable would require 16 redeployment into the wider public sector for 17 re-employment with the Gibraltar 18 Development Corporation." And then they 19 seek approval of terms and conditions, which 20 you then appear to approve with your 21 signature at the bottom of the page. 22 A. Yes, this was a written procedure that was 23 put in place when the numbers started to be 24 more than a few, so that there could be a 25 written record of how each individual had</p> <p style="text-align: center;">Page 41</p>	<p>1 untenable, to protect those individuals from 2 suffering detriment. 3 Q. Did you speak to any of the 4 whistleblowers directly? 5 A. I don't -- well, yes, I've spoken to one 6 person directly for sure, but I don't think that 7 that person (without disclosing the gender) 8 was a whistleblower. 9 Q. Did you ask Mr Ullger about the person - 10 - 11 A. That person -- 12 Q. -- the relevant individual? 13 A. -- that person has also been in contact 14 with His Excellency the Governor. 15 Q. Did you speak to Mr Ullger about the 16 individuals' positions within the police? 17 A. In some instances, yes; we had meetings 18 about the subject. 19 Q. In Mr Morello's case, he gave evidence 20 that he was offered a pension not just at the 21 level of his 24 years' service, but he was 22 given one that was commensurate with 27 23 years of service. Was it your decision to 24 offer him that? 25 A. I don't think it would have been my</p> <p style="text-align: center;">Page 43</p>
<p>1 been dealt with. 2 Q. Did you make any enquiries as to the 3 person's account before signing the letter? 4 A. No, I wanted to obviously ensure that 5 they were within the whistleblowing class. 6 In some instances I was referred to more 7 detail or less detail; this is something that 8 was happening very incidentally. I have 9 given a number of interviews to the media 10 about this, and explained that things were 11 coming to my office through my then 12 Industrial Relations Officer, who was for that 13 reason the pivot between me and the GPF in 14 the same way as he was the pivot between 15 me and Unite the Union, and the GGCA, and 16 the Teacher's Union. This was the union of 17 police officers, and Mr Crome is the pivot (or 18 was the pivot) for me in that respect. 19 Q. Did you see any evidence as to whether 20 the whistleblower's position had become 21 untenable, before signing those letters? 22 A. No, because the way that I think I 23 understood the provisions, or the way that the 24 provisions had been understood, was that you 25 needed to act before positions became</p> <p style="text-align: center;">Page 42</p>	<p>1 decision, but there would have been the 2 requirement probably for my approval, or the 3 approval of the Financial Secretary and 4 certainly the approval of the Principal 5 Auditor, because remember that the Principal 6 Auditor worked out all pensions for all public 7 officers before they were paid. 8 Q. Did you feel comfortable approving that, 9 effectively in exchange for his evidence to 10 the Inquiry? 11 A. Nothing was transactional in any 12 instance, and it wouldn't be. 13 Q. Do you know anything about the offer of 14 a cash reward referred to by Mr McGrail in 15 his evidence? 16 A. No. That sounds like the wild west. 17 Q. Do you agree that the provisions of the 18 Employment Act do not require 19 redeployment, but rather offer a remedy in 20 the Employment Tribunal for compensation? 21 A. The provisions of the Employment Act 22 provide for compensation in the Employment 23 Tribunal if the individual has not been 24 properly protected from suffering a 25 detriment, but what the Act requires is that</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 the employer act to prevent the individual</p> <p>2 suffering a detriment. And if we don't do</p> <p>3 that, then eventually an individual who has</p> <p>4 suffered a detriment is potentially able to</p> <p>5 take us to the Employment Tribunal (or any</p> <p>6 employer to the Employment Tribunal) and</p> <p>7 there recover damages. But what the statute</p> <p>8 talks about is ensuring that employees do not</p> <p>9 suffer detriment if they are whistleblowers.</p> <p>10 Q. Were you in fact seeking to encourage</p> <p>11 any allegations you could find of wrongdoing</p> <p>12 against Mr McGrail to be made to the</p> <p>13 Inquiry?</p> <p>14 A. Far from it. In fact, what encouraged</p> <p>15 these allegations was the call for evidence by</p> <p>16 the Inquiry itself. The relevance of those is a</p> <p>17 matter for the Inquiry.</p> <p>18 Q. Do you consider it consistent with a fair</p> <p>19 and independent inquiry for a core</p> <p>20 participant to be offering individuals new</p> <p>21 roles, in the light of that person giving</p> <p>22 evidence in the inquiry against another core</p> <p>23 participant?</p> <p>24 A. Well, I consider that in Gibraltar we</p> <p>25 uphold the highest ethical standards; we</p> <p style="text-align: center;">Page 45</p>	<p>1 THE CHAIRMAN: I would, yes.</p> <p>2 MR NEISH: May I confer just one minute</p> <p>3 with Dr Britto, with your leave, sir?</p> <p>4 THE CHAIRMAN: Yes, well of course.</p> <p>5 Questioned by MR NEISH</p> <p>6 Q. Good morning, Chief Minister.</p> <p>7 A. Good morning, Mr Neish.</p> <p>8 Q. I will try to be very brief with you, on</p> <p>9 really what is a peripheral matter, and that is</p> <p>10 the appointment process for the appointment</p> <p>11 of Mr McGrail. You said yesterday in</p> <p>12 evidence that at one point you had exchanged</p> <p>13 emails with Mr Pyle, in the course of which</p> <p>14 Mr Pyle had said that the process was abject.</p> <p>15 You were asked why you think he said that,</p> <p>16 and your explanation was this: "I think that</p> <p>17 he said to me that and I'm - talking from</p> <p>18 memory now, from a conversation. I think</p> <p>19 he said to me that the way that the whole</p> <p>20 thing had been handled was designed to</p> <p>21 avoid the views of the Governor's</p> <p>22 representative on the GPA and the Chief</p> <p>23 Minister's representative on the GPA being</p> <p>24 given at the beginning of the process but</p> <p>25 rather at the end once everyone had spoken</p> <p style="text-align: center;">Page 47</p>
<p>1 uphold the seven principles of public life, but</p> <p>2 we do it in a place where the degrees of</p> <p>3 separation are slightly different to the United</p> <p>4 Kingdom, where there are 60 million people</p> <p>5 to choose from. And therefore, being very</p> <p>6 mindful of what those red lines we were</p> <p>7 talking about yesterday provide for, that you</p> <p>8 make the right decision and ensure that every</p> <p>9 tribunal in Gibraltar has the information</p> <p>10 available to it, that any individual who</p> <p>11 believes that they could be subject to</p> <p>12 detriment as a result of wanting to provide</p> <p>13 truthful evidence to a tribunal is able to give</p> <p>14 that evidence, and then that the tribunal</p> <p>15 should be able to decide the relevance and</p> <p>16 credibility of that evidence.</p> <p>17 Q. Thank you, Mr Picardo. I have no further</p> <p>18 questions. I believe that Mr Neish will have</p> <p>19 some questions for you now.</p> <p>20 A. Thank you very much.</p> <p>21 THE CHAIRMAN: Yes, Mr Neish.</p> <p>22 MR NEISH: (inaudible)</p> <p>23 THE CHAIRMAN: Sorry?</p> <p>24 MR NEISH: Would you like me to start</p> <p>25 now?</p> <p style="text-align: center;">Page 46</p>	<p>1 so that our views did not carry as much</p> <p>2 weight as they might otherwise have". Chief</p> <p>3 Minister, were you aware of the fact that the</p> <p>4 process had been agreed by all nine members</p> <p>5 of the GPA?</p> <p>6 A. The process --</p> <p>7 Q. Yes, the appointment process.</p> <p>8 A. -- at (?) the interview -- of the interview</p> <p>9 stage for --</p> <p>10 Q. No, the whole process for when Mr</p> <p>11 McGrail was appointed was agreed by all</p> <p>12 nine members of the GPA.</p> <p>13 A. I was not aware of that, and I am not</p> <p>14 aware of it now. I -- you're telling me that it</p> <p>15 was, and I -- when I reflected in my answer</p> <p>16 yesterday (as I -- as I think I say in the</p> <p>17 preamble that you read) is what I had been</p> <p>18 told by Mr Pyle.</p> <p>19 Q. Yes, and I am asking you what you were</p> <p>20 aware of. And are you aware that on 30 (?)</p> <p>21 November the candidates were interviewed</p> <p>22 in depth by a panel consisting of Mr Gomez</p> <p>23 (that is, the Chief Secretary), Reverend</p> <p>24 Patron, Mr Pyle and Mr Gonçalves, in the</p> <p>25 presence of all other members of the GPA?</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 So, both the Chief Secretary and the Deputy 2 Governor were members of the panel which 3 interviewed the candidates. Does that not 4 render a nonsense the suggestion that the 5 representatives of the Governor and the Chief 6 Minister were denied a say in the process? 7 A. That is one view that you express, but not 8 the view that was expressed to me by Nick 9 Pyle whilst he was Governor on what his 10 view was of what the process was, which is 11 what I reflected here yesterday. You might 12 say that what I reflected here yesterday was 13 hearsay, but it was exactly what Nick Pyle 14 told me that he felt. Perhaps it is something 15 you should put to him. 16 Q. Yes, I will do. The other point, and I 17 quote, also in relation to the appointment of 18 Mr McGrail. You said yesterday, "And Ed 19 Davis and I were very, very surprised, we 20 discussed at the time, that it was Ian McGrail 21 who became commissioner and not Richard 22 Ullger. And subsequently, when I discussed 23 it with Nick Pyle it was clear that he was just 24 as surprised." And then counsel asked you, 25 "Why were you surprised?", "Because we</p> <p style="text-align: center;">Page 49</p>	<p>1 meeting of the GPA that was to happen the 2 following week, I believe, or that afternoon, 3 in respect of the then appointment of a new 4 Commissioner. 5 Q. Yes. 6 A. And my attitude was to say to that 7 individual: well, you're going to go to the 8 interviews, you choose who you think is the 9 right person to choose. 10 Q. Yes. 11 A. And that was my attitude also in the 12 context of Mr Ernest Gomez, who was my 13 Chief Secretary at that time, and that's why 14 he will have voted whatever he felt, because 15 he was at the interview. 16 Q. Yes, that is so far so good, as far as Mr 17 Gomez is concerned. 18 A. Yes. 19 Q. But insofar as Mr Pyle is concerned, it is 20 true that he wrote against Mr McGrail 21 because he favoured Mr Ullger, but are you 22 aware that Mr Pyle has stated in his affidavit 23 that he considered both Mr McGrail and Mr 24 Ullger to be suitable candidates? 25 A. I am not aware, because as I told the</p> <p style="text-align: center;">Page 51</p>
<p>1 believed that the -- I believed, and it turned 2 out Ed Davis also believed, and it turned out 3 that Nick Pyle also believed, that Ian 4 McGrail should not be commissioner of 5 police, because he did not have the 6 temperament to be commissioner of police 7 and he was not the right candidate." 8 Question, "What was that belief based on?", 9 "On our experience of him at the time, what 10 we'd seen -- what each of us had seen o him, 11 and on the publicly available". So, that was 12 your contemporaneous view at the time of 13 the appointment process? 14 A. Yes. It carried no weight of course, 15 because Ian McGrail became Commissioner 16 of Police (inaudible). 17 Q. Are you aware that the Chief Secretary 18 voted in favour of Mr McGrail's 19 appointment? 20 A. I am aware, yes. You will recall, Mr 21 Neish, that I told the Inquiry (I think now 22 twice) that one of the first things I was 23 consulted on when I became Chief Minister 24 on 9 December 2011 was who the then 25 Acting Chief Secretary should vote for at the</p> <p style="text-align: center;">Page 50</p>	<p>1 tribunal I haven't had an opportunity to read 2 all of the statements. But if I had read the 3 statements, Mr Neish, it would not have 4 changed my evidence, because I'm telling 5 you what happened at the time and Nick Pyle 6 told me those things at the time, that's why 7 I'm reflecting that. Ed Davis told me those 8 things at the time, and I said those things at 9 the time. And with the very greatest of 10 respect, we have known each other many 11 years, I am entitled to have held that view 12 and to hold that view, and the fact that I was 13 not the party that was carrying out the 14 interviews and that Ian McGrail did become 15 Commissioner of Police shows that that 16 process was entirely independent of my 17 views, not having watched him in interview. 18 Q. Thank you, Chief Minister. 19 A. Thank you very much indeed. 20 Questioned by MR CRUZ 21 Q. Good morning. 22 A. Good morning. 23 Q. Mr Picardo, I think it is fair to say that it 24 is in your evidence that you seem to give a 25 lot of importance to the rule of law.</p> <p style="text-align: center;">Page 52</p>

<p>1 A. A huge amount of importance to the rule 2 of law. 3 Q. A huge amount of importance. 4 A. Before this case, during it, and I will 5 after; I consider it's one of the thing that 6 marks us out from other nations around us. 7 Q. Yes. Unrecognisable as a nation if that is 8 offended in some way, shape or form. 9 A. Absolutely. 10 Q. In your messages to Mr Pyle, you 11 mention that the Commissioner of Police is 12 the head of an organisation that is 13 institutionally the guardian of the rule of law. 14 Do you remember that? 15 A. Yes, it is; it is one of the guardians of the 16 rule of law, it is not the guardian of the rule 17 of law. 18 Q. Of course. 19 A. It's one of the guardians -- 20 Q. One. 21 A. -- of the rule of law. 22 Q. That would extend to, for example, the 23 Police Authority? 24 A. The courts -- 25 Q. Of course.</p> <p style="text-align: center;">Page 53</p>	<p>1 independence of the RGP, that is the point. 2 And Mr Lavarello in describing it said "The 3 Authority is there to, I suppose, act as an 4 independent party so that the Chief Minister 5 and the Governor cannot exercise undue 6 influence over the Commissioner". Do you 7 agree with that statement? 8 A. I don't agree with that statement; I don't 9 think that is the role of the GPA. The 10 Governor and the Chief Minister would not 11 be seeking to exercise undue influence over a 12 Commissioner, whether there was or was not 13 a GPA. 14 Q. Well, do you disagree that the GPA is a 15 buffer to undue influence from the Governor 16 or the Chief Minister? 17 A. I might agree with you that one of the 18 effects of the GPA is to create a de facto 19 buffer between a Governor and a Chief 20 Minister, but I think it's a -- it's a flawed legal 21 analysis to believe that that is what the 22 statutory body that is the GPA is set up to be. 23 Q. When my learned friend the Counsel to 24 the Inquiry referred you to the constitution, I 25 think section 48, about the independence of</p> <p style="text-align: center;">Page 55</p>
<p>1 A. -- and the Government. The Police 2 Authority, the Courts and the Government, to 3 name but a few. 4 Q. Yes. The Governor? 5 A. Absolutely. 6 Q. And yourself? 7 A. Indeed, I'm also the Government. 8 Q. Yes. When asked about the role of the 9 Gibraltar Police Authority Mr Gonçalves, a 10 former Chairman, explained it in these terms. 11 I am going to ask you if you agree with this. 12 "The overarching mission statement, as it 13 were, was the safeguarding of the 14 independence of the RGP and to protect or 15 ensure the effectiveness, efficiency and 16 probity of RGP. High at the top of the 17 mission statement was our powers to call the 18 Commissioner to account if the need arose." 19 Would you agree with that statement? 20 A. It's not my statement. It doesn't sound to 21 me to be erroneous in any way, but I would 22 have to read it carefully to analyse it before I 23 could tell you that I wholeheartedly agree to 24 it without having the benefit of reading it. 25 Q. Well I suppose the emphasis is on the</p> <p style="text-align: center;">Page 54</p>	<p>1 the GPA, is that not encompassed in that? 2 A. The independence of the GPA does not go 3 to the GPA being a buffer between the police, 4 the Governor and the Chief Minister. The 5 independence of the GPA is something that is 6 and has to be free-standing in order to ensure 7 that the GPA discharges its functions 8 independently of the Governor, the Chief 9 Minister and the police. Because there must 10 also not be any undue influence, of course, 11 from the Commissioner or the senior ranks of 12 the RGP in respect of the actions of the GPA, 13 you will agree. 14 Q. Yes, I think that the buffer, as Mr 15 Gonçalves talked about, is a two-way street. 16 Yes, so we have had your answer -- 17 A. But I think it's a very -- it's a very... I 18 don't think it's an analogy which is legally 19 sound. Even though it may be de facto the 20 effect of one -- or one of the effects of the 21 creation of a GPA, I don't think it's a legally 22 sound analysis to refer to the GPA as a buffer. 23 It has free-standing obligations -- 24 Q. A buffer in the sense of independence, is 25 my point.</p> <p style="text-align: center;">Page 56</p>

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<p>1 A. No, independence is independence.</p> <p>2 Independence is not buttressed.</p> <p>3 Q. Alright Mr Picardo, we have had your</p> <p>4 answer. Would you accept that whatever role</p> <p>5 or function you have, or the Governor had,</p> <p>6 that (and I think you said this yesterday)</p> <p>7 operational control vest in the Commissioner</p> <p>8 of Police and only in the Commissioner of</p> <p>9 Police?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. And everyone's entitled, also, to have</p> <p>13 views in that respect, because we're all</p> <p>14 independent and we all have independent</p> <p>15 views.</p> <p>16 Q. So, it is sort of the same question in a</p> <p>17 different way, but perhaps this might be</p> <p>18 simpler to put. Would you recognise that an</p> <p>19 important function of an independent GPA is</p> <p>20 to block abuse of power, and to hold the RGP</p> <p>21 and the Commissioner of Police to account?</p> <p>22 A. That could be one of the things that you</p> <p>23 could say the RGP -- sorry, the GPA could</p> <p>24 do, and that abuse of power could come from</p> <p>25 any direction.</p> <p style="text-align: center;">Page 57</p>	<p>1 mean, you can check it in the break if you</p> <p>2 want.</p> <p>3 A. It may be that the Chief Justice --</p> <p>4 THE CHAIRMAN: They are both</p> <p>5 authoritative, Mr Cruz. I do not think this is</p> <p>6 going to help us much.</p> <p>7 Q. Yes. No, exactly. And are you aware that</p> <p>8 there were seven challenges, six of which --</p> <p>9 A. Sorry, was it the Chief Justice on appeal</p> <p>10 though, from --</p> <p>11 Q. No. It is a Chief Justice judicial review.</p> <p>12 A. Okay. Well, maybe. The Appeal Court</p> <p>13 decision was certainly in the case of the</p> <p>14 coroner's inquest in respect of the maritime</p> <p>15 matter --</p> <p>16 Q. Yes, that is not what you gave evidence</p> <p>17 on.</p> <p>18 A. Well, I think I did mention it yesterday as</p> <p>19 well.</p> <p>20 Q. Well, let us stick to this one. There were</p> <p>21 seven challenges: six of which were</p> <p>22 dismissed, one which succeeded.</p> <p>23 THE CHAIRMAN: This is not going to</p> <p>24 help, Mr Cruz. I can read the judgement.</p> <p>25 Q. I understand, I just want to put to the</p> <p style="text-align: center;">Page 59</p>
<p>1 Q. Indeed.</p> <p>2 A. It could come from below, as well as</p> <p>3 from above. There is a proposed Complaints</p> <p>4 Board, also, that is designed to deal with</p> <p>5 what you might call abuses of power by a</p> <p>6 uniformed officer.</p> <p>7 Q. Yes, there is. Moving on to Operation</p> <p>8 Delhi. Well before I do, you gave some</p> <p>9 evidence yesterday which I think is (I am</p> <p>10 sure inadvertently) incorrect, but perhaps we</p> <p>11 can address it. You mentioned a case, the</p> <p>12 Veralls and Miles case that has had a recent</p> <p>13 judgment. Now, this is a case that dealt with</p> <p>14 similar issues: tension between search</p> <p>15 warrants and production orders. You said it</p> <p>16 was before the Court of Appeal, are you</p> <p>17 aware that it was not? It was before the</p> <p>18 Supreme Court. You said it twice. Maybe</p> <p>19 you just did not read it.</p> <p>20 A. I believe that it was before the Court of</p> <p>21 Appeal; I still take that view. If you like, in</p> <p>22 the recess I will check and I will tell you</p> <p>23 whether it is or whether it isn't.</p> <p>24 Q. It is a judicial review to the Supreme</p> <p>25 Court, Chief Justice made a judgment. I</p> <p style="text-align: center;">Page 58</p>	<p>1 witness if he is aware that the benefit or the</p> <p>2 validity of the warrant was not dismissed or</p> <p>3 in any way challenged. Well, it was</p> <p>4 challenged but it was not deemed to be</p> <p>5 unlawful. Are you aware of that?</p> <p>6 A. I've read the judgment, and I don't think</p> <p>7 it's helpful in the context of today that you</p> <p>8 carry out a viva examination of my</p> <p>9 understanding of my judgment, but you're</p> <p>10 right that the warrant is thrown out on its</p> <p>11 execution rather than its obtention, but the</p> <p>12 facts are completely different.</p> <p>13 Q. Right, thank you.</p> <p>14 A. But what I was talking about, you will</p> <p>15 recall, Mr Cruz, was the exposure to damages</p> <p>16 by the Exchequer as a result of a failure to</p> <p>17 obtain or execute search warrants properly.</p> <p>18 Q. And just having allowed you to clarify</p> <p>19 that matter, can I ask you a question. Should</p> <p>20 Operation Delhi have been treated differently</p> <p>21 in constitutional terms because Mr Levy was</p> <p>22 a suspect, or because of the Hassans</p> <p>23 connection?</p> <p>24 A. Of course not, and it wasn't.</p> <p>25 Q. Well, it is a matter for this Inquiry to</p> <p style="text-align: center;">Page 60</p>

<p>1 consider. The DPP --</p> <p>2 A. No, this Inquiry is constituted to consider</p> <p>3 the circumstances leading to the early</p> <p>4 retirement of Ian McGrail.</p> <p>5 Q. Yes. Issue five is a matter that they will</p> <p>6 look at. The DPP on Friday 26th made clear</p> <p>7 the distinction between what were operation</p> <p>8 matters and prosecutorial matters, and he was</p> <p>9 very clear about that. That was also, when</p> <p>10 put to him, confirmed by the Attorney</p> <p>11 General. Do you accept that: the difference</p> <p>12 between prosecutorial matters and</p> <p>13 operational matters?</p> <p>14 A. As I -- as I've told the tribunal, I haven't</p> <p>15 had an opportunity to read all the transcripts</p> <p>16 or watch all of the evidence, so you will find</p> <p>17 it difficult if not impossible to persuade me to</p> <p>18 agree to something that I have not had the</p> <p>19 opportunity to read or watch.</p> <p>20 Q. Well, it is not a difficult question. Do</p> <p>21 you accept that there is a difference between</p> <p>22 operational matters and prosecutorial</p> <p>23 matters?</p> <p>24 A. Just because a question might be difficult</p> <p>25 might not mean I would not be able to</p> <p style="text-align: center;">Page 61</p>	<p>1 the police are the ones who need to decide</p> <p>2 for themselves whether they're going to go</p> <p>3 down the route of a search warrant or a</p> <p>4 production order, but that they may of their</p> <p>5 own volition seek guidance in cases which</p> <p>6 may be borderline cases, about whether they</p> <p>7 should go down one route or another.</p> <p>8 Q. Okay. Now --</p> <p>9 A. You do recall, Mr Cruz, that it was Mr</p> <p>10 McGrail who first raised the issue of a search</p> <p>11 warrant with me, and it wasn't the one --</p> <p>12 Q. Yes.</p> <p>13 A. -- in relation to James Levy that he</p> <p>14 subsequently raised with me on 12 March.</p> <p>15 He raised with me the issue of the search</p> <p>16 warrant that is the one referred to in the case</p> <p>17 that is either in the Court of Appeal or before</p> <p>18 the Chief Justice --</p> <p>19 Q. Yes.</p> <p>20 A. -- that you were -- that you referred me to</p> <p>21 a minute ago.</p> <p>22 Q. I am sorry to cut across you, but time is</p> <p>23 very limited. Yesterday, on numerous</p> <p>24 occasions (and it is indeed in your witness</p> <p>25 statement) you made accusations that the</p> <p style="text-align: center;">Page 63</p>
<p>1 answer it, of course, but what I'm saying to</p> <p>2 you is that you've asked me to agree to the</p> <p>3 things said by the DPP and the AG.</p> <p>4 Q. No --</p> <p>5 A. Of course there are differences between</p> <p>6 operation matters and prosecutorial matters, I</p> <p>7 have always understood that.</p> <p>8 Q. You have always understood that, good.</p> <p>9 A. What did you say, sorry?</p> <p>10 Q. I said, "You have always understood that,</p> <p>11 good."</p> <p>12 A. Yes.</p> <p>13 Q. The DPP explained that search warrants</p> <p>14 and interviews under caution would fall</p> <p>15 under operational matters, would you agree</p> <p>16 with that?</p> <p>17 A. Not because the DPP might say it,</p> <p>18 although I have a very high regard for him. I</p> <p>19 think we would all understand that it's set out</p> <p>20 clearly in Archibald.</p> <p>21 Q. Right. He said he would not dream of</p> <p>22 telling the police what to do because they</p> <p>23 would have the evidential knowledge.</p> <p>24 Would you agree with that?</p> <p>25 A. I would agree that in most circumstances</p> <p style="text-align: center;">Page 62</p>	<p>1 RGP's investigation and its process was an</p> <p>2 abuse, flimsy evidence, improperly obtained.</p> <p>3 Do you recall all that?</p> <p>4 A. I do.</p> <p>5 Q. Yes. Are you aware that the DPP and his</p> <p>6 assistant Mr Zamitt had an opportunity to</p> <p>7 consider the charging advice and the</p> <p>8 information before they discussed the matter</p> <p>9 with the RGP on 8 April 2020?</p> <p>10 A. Well, I told you I have not had an</p> <p>11 opportunity to see all of the evidence, to</p> <p>12 watch all of the evidence or read all of the</p> <p>13 evidence, but I have read the public reports</p> <p>14 that there have been, and I am aware from</p> <p>15 the public reports that that is the case.</p> <p>16 Q. Okay. And the DPP described the</p> <p>17 investigation as thorough and good, and the</p> <p>18 officers as good officers. Any reason to</p> <p>19 disagree with that?</p> <p>20 A. How could I disagree with somebody</p> <p>21 else's view of it being his view. Whether it</p> <p>22 might be my view or not would only be</p> <p>23 possible once I had reviewed all of the</p> <p>24 evidence and given you my view.</p> <p>25 Q. Precisely. Had you at any stage been</p> <p style="text-align: center;">Page 64</p>

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<p>1 given by the DPP, or Mr Zamitt, or Mr 2 Richardson, or Mr Wyan, or the Stipendiary 3 Magistrate, the evidence? 4 A. When? 5 Q. At any stage before 12 May. 6 A. Of course not. 7 Q. You had not? 8 A. No, but I had been referred by Mr 9 McGrail to another search warrant that they 10 were going to be dealing with. 11 Q. Yes. 12 A. You might think that that was a little 13 remarkable, given where you seem to be 14 going with your questioning. 15 Q. Well, my questioning -- 16 A. And secondly, I'd been referred by Mr 17 McGrail to this search warrant on 12 May. 18 Q. Yes. So, my questioning is very simple: 19 you had no evidential basis to form a view on 20 12 May, is that correct? 21 A. No, you're wrong. 22 Q. You had evidence given to you? 23 A. I had a view, and the view I had was not 24 based on that evidence, it was based on my 25 view of how you would deal with an</p> <p style="text-align: center;">Page 65</p>	<p>1 that you cannot necessarily control -- 2 A. Mm. 3 Q. -- is it not really what happened, you 4 were upset about a close friend being 5 uncomfortably disturbed and actually, 6 without any evidence, without information, 7 you took it upon yourself to question 8 something which you had no evidential 9 knowledge on? Is that not really what 10 happened? 11 A. Absolutely not. That a friend might be 12 uncomfortably disturbed is absolutely 13 irrelevant to my consideration in this respect. 14 I've given detailed evidence of why I felt I 15 had to act in that way and indeed I refer you 16 again to the fact that in relation to another 17 search warrant, in relation to a much more 18 junior member of the bar, Mr McGrail had 19 seen fit to come and brief me himself 20 because he understood the potential 21 jurisdictional consequences for the execution 22 of a search warrant in the context of a legal 23 practitioner. So I -- 24 Q. I understand that -- 25 A. -- say that the evidence points against</p> <p style="text-align: center;">Page 67</p>
<p>1 individual who holds privileged material in 2 relation to others, unless you had evidence -- 3 Q. Yes. 4 A. -- of what was very likely to be an 5 attempt to destroy (inaudible). 6 Q. I understand that, and -- 7 A. I say so with respect: the little I have 8 been able to see points me to be able to say 9 the things that I've said, because although I 10 didn't have that evidence before 12 May 11 (which is when you've asked me the 12 question) I have seen it now -- 13 Q. Yes. 14 A. -- and that's why I've reached the 15 conclusions: to share my view, now -- 16 Q. Now. 17 A. -- based on what was available. 18 Q. I am just talking about 12 May. Mr 19 Picardo, on the basis of your evidence -- 20 A. On 12 May, Mr Cruz, I didn't say to Mr 21 McGrail: you didn't have evidence, you 22 didn't have this. I've said that here. 23 (11.10) 24 Q. On 12 May when you get the WhatsApp 25 you said yesterday that anger is an emotion</p> <p style="text-align: center;">Page 66</p>	<p>1 what you are proposing. 2 Q. I understand that and I am not suggesting 3 you are filibustering, but we do need to 4 progress and I only have a few minutes. 5 A. All I am trying to do is give full answers. 6 Q. Yes. 7 A. If you want me to answer yes or no I 8 won't be able to give you the ... this is 9 an inquiry, it is not a trial. 10 Q. I understand that. Given that the 11 operational control was vested in the police, 12 you have accepted that, given you had no 13 evidential knowledge, you have accepted 14 that, even if you had concerns, really was it 15 your business to get involved? 16 A. Was it my -- 17 Q. Your business to get involved? 18 A. Was it my business to receive 19 a WhatsApp telling me? I mean, if I had 20 been told by -- 21 Q. On a reputational basis alone you would 22 say it is your business. 23 A. On a what? 24 Q. On the reputational basis that you have 25 just alluded to you would say it is your</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 business.</p> <p>2 A. That's exactly the point, Mr Cruz. That's</p> <p>3 exactly the point.</p> <p>4 SIR PETER CARUANA: (Inaudible)</p> <p>5 arguing with the witness or asking questions</p> <p>6 and give him an opportunity to answer, but</p> <p>7 he cannot really do both.</p> <p>8 THE CHAIRMAN: No, I agree.</p> <p>9 MR CRUZ: Understood. Yesterday you</p> <p>10 said to the chairman in an exchange that you</p> <p>11 were not sure if Mr Levy was a suspect. But</p> <p>12 at the same time earlier you had said that</p> <p>13 when you realised it was a search warrant it</p> <p>14 had to be a suspect. Now, you were then</p> <p>15 asked whether it was inappropriate if you had</p> <p>16 known he was a suspect. I see that as</p> <p>17 an inconsistent position. If you had</p> <p>18 understood by the 12th, whether it had been</p> <p>19 the WhatsApp or the subsequent meeting</p> <p>20 with Mr McGrail or the conversation with</p> <p>21 Mr Levy, that it was a suspect, then given</p> <p>22 your answer to the chairman, was it not</p> <p>23 entirely inappropriate everything else you did</p> <p>24 after that?</p> <p>25 A. There was a lot of inconsistency in this</p> <p style="text-align: center;">Page 69</p>	<p>1 way that you demonstrate that what you are</p> <p>2 saying is wholly incorrect is by using the</p> <p>3 characterisation that you have used in the</p> <p>4 context of Dr Britto's in my view absolutely</p> <p>5 appropriate reference to the respect that he</p> <p>6 has to the office of Governor, we should all</p> <p>7 have, and the respect that he has to the office</p> <p>8 of Chief Minister, which everyone should</p> <p>9 have, and I have myself, because these are</p> <p>10 important constitutional officers of state in</p> <p>11 Gibraltar. Far from being an assailant in</p> <p>12 respect of the rule of law, I have made it one</p> <p>13 of my purposes to defend the rule of law in</p> <p>14 Gibraltar and to ensure that Gibraltar is</p> <p>15 a place that stands out as a beacon of the</p> <p>16 defence of the rule of law. So I don't accept</p> <p>17 what you have said for one moment.</p> <p>18 Q. Understood. One last point of</p> <p>19 clarification. You said yesterday that</p> <p>20 information in terms of the investigation that</p> <p>21 the RGP refused to provide you with</p> <p>22 information. Just for your information, are</p> <p>23 you aware that it was the DPP who refused</p> <p>24 that information to be provided and actually</p> <p>25 RGP were very happy for that information to</p> <p style="text-align: center;">Page 71</p>
<p>1 also on the part of the RGP. For example,</p> <p>2 the reference was to Mr Levy's search</p> <p>3 warrant being obtained in the context of</p> <p>4 a case that does not name him as a defendant.</p> <p>5 If you are a suspect you are going to become</p> <p>6 a defendant. So it is also of course possible</p> <p>7 to execute search warrants against</p> <p>8 individuals to obtain evidence from them in</p> <p>9 respect of third parties, I assume. But it's</p> <p>10 some time since I practised criminal law. So</p> <p>11 I don't necessarily agree with you that there</p> <p>12 is an inconsistency just in what I said. There</p> <p>13 is also an inconsistency in what I was told by</p> <p>14 Mr McGrail.</p> <p>15 Q. If I can just finish off by saying this to</p> <p>16 you. Given the process that happened, and I</p> <p>17 mean the process, the interaction with the</p> <p>18 GPA after and the information that they were</p> <p>19 able to consider, and we heard evidence</p> <p>20 about Mr Britto's reverence to the office of</p> <p>21 Chief Minister and Governor, would it be fair</p> <p>22 to say that actually rather than facilitating</p> <p>23 your guardianship of the rule of law you</p> <p>24 became an assailant?</p> <p>25 A. I think that's wholly incorrect and the</p> <p style="text-align: center;">Page 70</p>	<p>1 be provided?</p> <p>2 A. In what case, Mr Cruz?</p> <p>3 Q. We talked yesterday about the issue of</p> <p>4 Mr Sanchez and the request for information</p> <p>5 and you suggested yesterday that the RGP</p> <p>6 had refused to produce evidence. And I am</p> <p>7 explaining to you that in fact the RGP did not</p> <p>8 refuse --</p> <p>9 THE CHAIRMAN: That sounds like you</p> <p>10 giving evidence.</p> <p>11 MR CRUZ: Sorry. In Mr Wyan's witness</p> <p>12 statement, his second witness statement, he</p> <p>13 makes the point with reference to exhibits</p> <p>14 that it was the DPP who decided that no</p> <p>15 evidence should be given to you or your</p> <p>16 government. Are you aware of that?</p> <p>17 A. I wasn't aware that because, as I have told</p> <p>18 you, I haven't read all of the witness</p> <p>19 statements. I'm really unconcerned about</p> <p>20 whether it was the RGP or the DPP. I mean,</p> <p>21 given your example before, this was now</p> <p>22 passing from the operational to the</p> <p>23 prosecutorial, from the inquiry stage to the</p> <p>24 prosecution stage, and that's why it was so</p> <p>25 important for me and for my government,</p> <p style="text-align: center;">Page 72</p>

<p>1 and I was not alone in this, and for other 2 cabinet members in particular, that we should 3 have that evidence. We were not interfacing 4 with the DPP. We were interfacing with the 5 Royal Gibraltar Police, I believe, through the 6 Commissioner at that time. So the 7 information did not come to us from the 8 RGP. And we were not told by the RGP that 9 we were being told ... I don't believe we were 10 told, we might have been told by the RGP 11 that we were not getting it from the DPP. 12 Q. Yes. 13 A. But that had a consequence and the 14 consequence was that absent that information 15 we were not prepared to go forwards as 16 a complainant. 17 Q. Understood. Mr Chairman, just for your 18 reference, it is A1034. I am not asking for it 19 to be put up, Mark Wyan, paragraph 33 and 20 his exhibits MW74, 72 and 69 will clarify 21 this issue, just for you to have in your own 22 time that information. 23 THE CHAIRMAN: Okay, thank you very 24 much. 25 MR CRUZ: Thank you very much.</p> <p style="text-align: center;">Page 73</p>	<p>1 the page, and the meeting on 27 September, 2 right at the bottom of the screen. But if we 3 look up a little bit we can see that you 4 describe, it is a paragraph beginning: 5 "A further meeting", now at the meeting, 6 another meeting on 13 August 2018 with you 7 at Number 6 Convent Place, Philip Navas 8 and Jonathan Galliano, Bland's employees, 9 and you say you believe that Mr John Paul 10 Payas was also present at that meeting. Have 11 I got this right? John Paul Payas is, or at 12 least was then, another senior Bland 13 employee, OSG? 14 A. Yes, so I understand. 15 Q. So am I right in saying that there was the 16 phone call on 21 July and then in August and 17 September 2018 a total of three meetings 18 between you and Mr Gaggero? 19 A. At least, yes. 20 Q. At least. 21 A. And Mr Gaggero was, what I might say, 22 Gibraltar's equivalent of a captain of 23 industry. He would expect to interface with 24 me, so would a number of others who would 25 be regarded as Gibraltar's captains of</p> <p style="text-align: center;">Page 75</p>
<p>1 THE CHAIRMAN: We will break now. Let 2 us try and start at 25 past. 3 (11.17) 4 (Adjourned for a short time) 5 (11.27) 6 THE CHAIRMAN: One question? 7 Questioned by MR SAREEN 8 MR SAREEN: Just one subject and I will be 9 no more than two minutes, I guarantee it. 10 Mr Picardo, I ask questions on behalf of the 11 former Operation Delhi defendants. The 12 subject I would like to deal with is just your 13 contact with James Gaggero in the summer 14 of 2018. And I think on screen we have 15 already, thank you Mr Triay, your statement 16 you made in the criminal proceedings in 17 June 2021. You told us yesterday that James 18 Gaggero would not expect to interface with 19 anyone except you and you told us in some 20 detail about the phone call when he called 21 you at home on the morning of Saturday, 21 22 July. And then if we scroll down a little on 23 the page, you also referred relatively briefly 24 to the meeting on 3 September, which we see 25 described in the paragraph near the bottom of</p> <p style="text-align: center;">Page 74</p>	<p>1 industry. 2 Q. These meetings were at who's request, his 3 or yours? 4 A. I don't have time to request meetings, 5 even with captains of industry, unless I need 6 them to do something for Gibraltar. They 7 would always be at Mr Gaggero's request, I 8 believe. 9 Q. We have seen some text messages 10 between you and James Levy on the subject 11 of NSCIS. 12 A. Yes. 13 Q. In the summer of 2018 who did you 14 interface with more on the subject of NSCIS? 15 Was it James Levy or James Gaggero? 16 A. Um, in that period very likely James 17 Gaggero because this was what we might call 18 the agreed transition or the agreed handover 19 period which had been agreed between John 20 Perez, I would say, slash Tommy Cornelio. 21 But I would think John Perez was the person 22 doing the agreeing. Um, and James Gaggero. 23 MR SAREEN: I have no more questions and 24 my two minutes is up. Thank you. 25 THE CHAIRMAN: Thank you. Yes,</p> <p style="text-align: center;">Page 76</p>

<p>1 Mr Wagner. You will be able to pace 2 yourself because lunchtime is about halfway 3 through. 4 Questioned by MR WAGNER 5 MR WAGNER: Thank you. Good morning, 6 Mr Picardo. Is it right that before becoming 7 Chief Minister you were a practising lawyer? 8 A. I was. 9 Q. For about 20 years, is that right? 10 A. For, um, it's my 30th anniversary now. 11 Um, I was called to the bar in 12 November 1994. So I think I had been at the 13 bar for just shy of 20 years when I became 14 Chief Minister. 15 Q. And you are a King's Counsel now. 16 A. I am. 17 Q. Are you familiar with the expression the 18 truth, the whole truth and nothing but the 19 truth? 20 A. I've used it in relation to this matter, in 21 Parliament and yesterday here. 22 Q. Have you always told this Inquiry the 23 truth? 24 A. I have endeavoured to do so at every 25 stage. I set up this Inquiry in order to get to</p> <p style="text-align: center;">Page 77</p>	<p>1 dealings I may have had with them in respect 2 of this or any other matter. 3 Q. Have you ever deliberately given a partial 4 account of the truth to protect your private 5 interests? 6 A. I have never done so. 7 Q. You mentioned the quotation from Andy 8 Burnham, we cannot live a country where 9 public officials lie to ministers. Do you 10 agree we also cannot live in a country where 11 ministers lie to public officials? 12 A. I am very clear about that. 13 Q. Sorry, what was the answer to the 14 question? 15 A. The answer is an obvious yes. 16 Q. I want to ask you about what you knew 17 about Mr Levy and the Op Delhi 18 investigation prior to 12 May 2020. And I 19 think it is right to say you did not know he 20 was suspected of any kind of criminal 21 offence prior to 12 May. Is that right? 22 A. Well, I think that in that respect, putting 23 yourself in your mind before 12 May, after 24 12 May, it is all of course a morass of 25 information that you have in your mind, so if</p> <p style="text-align: center;">Page 79</p>
<p>1 the truth. 2 Q. You have endeavoured to do so. Sorry, 3 have you always told the Inquiry the truth? 4 A. I have always endeavoured to tell the 5 Inquiry the truth, which is to say that I have 6 always told the Inquiry that which I believe 7 to the best of my knowledge and belief is the 8 truth. 9 Q. Have you always told this Inquiry the 10 whole truth? 11 A. I have always sought to endeavour to tell 12 this Inquiry the whole truth based on the 13 knowledge and belief that I have available to 14 me and the state of my memory. 15 Q. Have you always told the Royal Gibraltar 16 Police the whole truth? 17 A. I have always endeavoured to tell the 18 Royal Gibraltar Police the truth, the whole 19 truth and nothing but the truth in relation to 20 any matter on which they have required my 21 assistance or co-operation. 22 Q. Have you always told the Gibraltar Police 23 Authority the whole truth? 24 A. I have always told the Gibraltar Police 25 Authority the whole truth in any of the</p> <p style="text-align: center;">Page 78</p>	<p>1 you can assist me in any way with any 2 documentary evidence I would be grateful to 3 you. But what has become clear, and I do 4 not know whether I knew that before 12 May 5 or after 12 May, is that the DPP's view, 6 which I think is the one that has been 7 expressed most frequently, is this concept 8 that he had questions to answer. And neither 9 to, as I said yesterday, neither fish nor foul, 10 neither suspect nor witness, you have just 11 questions and answers. 12 THE CHAIRMAN: Questions to answer 13 under caution was the expression he used. 14 A. Under caution. 15 THE CHAIRMAN: As a suspect. 16 A. Right. 17 MR WAGNER: If we can go to B3198. 18 This is an exhibit of Mark Wyan, one of the 19 investigating officers in Op Delhi. This is his 20 note of the meeting that the DPP had with the 21 investigating officers. 22 A. I do not have B3198. 23 Q. No, you do not. It is on the screen there 24 for you, Mr Picardo. This is his note and I do 25 not think this is disputed by the DPP. The</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 final paragraph: 2 "He agreed [that is the DPP] that Mr Levy 3 should be treated as a suspect as there were 4 questions which needed to be answered." 5 So I am not putting that on the screen 6 because I am suggesting you knew about it, I 7 am just putting it on the screen to be clear 8 what the DPP advised from 8 April 2020. 9 A. Can I read it? (Pause). Which part are 10 you saying relates to Mr Levy? The top part 11 or the bottom part? 12 Q. The third paragraph that I just read out: 13 "He agreed --" 14 A. Right. 15 Q. -- that is the DPP "that Mr Levy should 16 be treated as a suspect." 17 A. Yes. This is all in the context of this 18 offence, conspiracy to defraud, which we 19 were later told did not exist in law at the 20 time. 21 Q. Well, that is a moot point, Mr Picardo. 22 That is not the -- 23 A. The Gibraltar Parliament (inaudible) 24 legislated for it. 25 Q. That is not the point that the DPP was</p> <p style="text-align: center;">Page 81</p>	<p>1 were sure the investigation would exonerate 2 him, he must have said to you that he was 3 concerned he was suspected of something. 4 A. No, um, he was telling me that he 5 believed that this investigation was 6 fundamentally flawed, that it was a case of 7 competition being elevated to a criminal 8 conspiracy and that it was very unfair. 9 Q. Yes, but you would not have said, "I am 10 sure the investigation will exonerate you, 11 James", unless he was saying to you, "I am 12 worried that they are going to accuse me of 13 X, Y or Z." 14 A. No, I'm afraid that you are suggesting 15 that that is the only thing he could have said 16 to me for me to give this answer. He could 17 have said things like, for example, "I think 18 they are going to want to talk to me." And I 19 could have said this too. 20 Q. But if they wanted to talk to him it could 21 be in any capacity, as a witness or just as 22 someone who had information. Why would 23 he need exoneration if that is all he was 24 saying? 25 A. Because exoneration is something that</p> <p style="text-align: center;">Page 83</p>
<p>1 considering. 2 A. I'm sure it wasn't. 3 Q. About whether it was an offence or not. 4 The point is that the DPP advised Mr Levy 5 was to be treated as a suspect from 8 April. 6 Now, if we go to A233 -- 7 A. Sorry, you are saying he advised 8 Inspector Wyan or Chief Inspector Wyan. 9 Q. And Mr Richardson. 10 A. And Mr Richardson, not me of course. 11 Q. A233 and paragraph 5. This is your 12 statement to the Inquiry, I think your third 13 statement. You say there: 14 "I recall that I discussed with Mr Levy on 15 a very large number of occasions the fact that 16 the RGP had suggested he might be a person 17 of interest in the investigation. He raised this 18 with me constantly. I constantly replied to 19 him I was sure the investigation would 20 exonerate him." 21 Exonerate him from what? 22 A. From any wrongdoing. 23 Q. Do you accept that this, when you put 24 this in your statement that you recall telling 25 Mr Levy that he would be exonerated, you</p> <p style="text-align: center;">Page 82</p>	<p>1 you talk about with somebody who you are 2 convinced is not guilty of anything, whether 3 or not the police want to talk to them. But I 4 think you have set up your question, if I may 5 say so with respect, a little unfairly. You 6 have suggested that the only thing he could 7 have said to me to have elicited this response 8 is the thing that you have suggested and I 9 think that is not logically right. 10 Q. No, I am suggesting the only thing 11 logically he could have said to you, not the 12 only thing he could have said to you. 13 A. And I don't agree. 14 Q. C4748. 15 A. Should I look for these in the bundle or -- 16 Q. No, no. That bundle there has been 17 created by counsel to the Inquiry. 18 A. I see. 19 Q. It was I presume in the order of his 20 questions. 21 A. So I will not have the written versions. 22 Q. You have whatever the other witness had, 23 which is once you get to the 24 cross-examination it is on the screen. 25 A. So none of the witnesses would have had</p> <p style="text-align: center;">Page 84</p>

<p>1 the benefit of the written versions.</p> <p>2 Q. Some of them might be. Some of them</p> <p>3 might be there.</p> <p>4 A. Okay.</p> <p>5 Q. So C748. If we just go to the top of this</p> <p>6 page so you can see what it is. This is the</p> <p>7 letter of 5 June that you sent to the Gibraltar</p> <p>8 Police Authority. Do you recall this letter? I</p> <p>9 think you said your lawyers drafted it.</p> <p>10 A. Yes, I do, 5 June.</p> <p>11 Q. Presumably they drafted it on</p> <p>12 instructions.</p> <p>13 A. Yes.</p> <p>14 Q. And you checked it before it was sent.</p> <p>15 A. Yes.</p> <p>16 Q. Now, at C748, the penultimate paragraph.</p> <p>17 So, just for context, you are responding now</p> <p>18 to Mr McGrail's lawyer's letter of 29 May</p> <p>19 where the lawyers have said, and we will</p> <p>20 come to it later, but they brought up Op</p> <p>21 Delhi and they said this is the vanishing</p> <p>22 reason, it is described as. And then you say:</p> <p>23 "The text message said the warrant obtained</p> <p>24 and executed against Mr Levy was in relation</p> <p>25 to the case against Perez, Cornelio and</p> <p style="text-align: center;">Page 85</p>	<p>1 factually or logically. And certainly not in</p> <p>2 law by the way.</p> <p>3 Q. Do you agree that at that time on 5 June it</p> <p>4 would benefit you for the GPA to think that</p> <p>5 when you called Mr McGrail into that</p> <p>6 meeting with the Attorney General you</p> <p>7 simply did not know what was going on in</p> <p>8 this investigation?</p> <p>9 A. No, I did not think it would benefit me. I</p> <p>10 think I would have been made to look like</p> <p>11 a fool if I suggested that I was not aware</p> <p>12 what had happened on 12 May, how I had</p> <p>13 felt so misled by Mr McGrail and so let</p> <p>14 down. They had to be aware of that, of</p> <p>15 course they did.</p> <p>16 Q. But I am talking about what you knew</p> <p>17 about the investigation. Did you deliberately</p> <p>18 exclude the fact that you knew about the</p> <p>19 investigation from Mr Levy to make it seem</p> <p>20 like you had not been aware and therefore</p> <p>21 make your actions seem less inappropriate?</p> <p>22 A. Certainly not.</p> <p>23 Q. Is this an example of a statement you</p> <p>24 have made to a public official which is not</p> <p>25 the whole truth?</p> <p style="text-align: center;">Page 87</p>
<p>1 Sanchez. So when I expressed the view that</p> <p>2 I did nine minutes later at 12.34, I had no</p> <p>3 reason to believe the investigation was of</p> <p>4 Mr Levy."</p> <p>5 But you did have reason to believe it was of</p> <p>6 Mr Levy because you had had constant</p> <p>7 conversations with him and told him he</p> <p>8 would be exonerated. Is that not right?</p> <p>9 A. No, because I don't think that the</p> <p>10 conversations were about investigation.</p> <p>11 They were about the police wanting to talk to</p> <p>12 him. So I don't agree that you can bridge</p> <p>13 from one thing to another in the way that you</p> <p>14 are proposing. I think that is quite, also</p> <p>15 again, not a logical consequence of what you</p> <p>16 are saying.</p> <p>17 Q. Did the police want to talk to him</p> <p>18 separately from the Op Delhi investigation</p> <p>19 about something entirely unrelated?</p> <p>20 A. The police wanting to talk to him does</p> <p>21 not mean that there was an investigation of</p> <p>22 Mr Levy. That is the point I am making to</p> <p>23 you. That is what I am suggesting to you, is</p> <p>24 the bridge that you are trying to create, which</p> <p>25 is not one that I accept you can make,</p> <p style="text-align: center;">Page 86</p>	<p>1 A. No, for the reasons I have already told</p> <p>2 you, I did not agree with the premise of your</p> <p>3 question. The second part is one with which</p> <p>4 I also cannot agree.</p> <p>5 Q. You said yesterday that Mr Levy was</p> <p>6 accusing Mr Richardson of having secured</p> <p>7 future employment with Bland Limited on</p> <p>8 very, very generous terms. Do you recall</p> <p>9 that?</p> <p>10 A. I do and I also recall saying that I thought</p> <p>11 that that was fanciful.</p> <p>12 Q. I will come to that. That was</p> <p>13 an incredibly serious allegation, would you</p> <p>14 agree?</p> <p>15 A. Yes.</p> <p>16 Q. It would have been misconduct in public</p> <p>17 office.</p> <p>18 A. Absolutely.</p> <p>19 Q. And in fact the person making the offer</p> <p>20 would potentially also be subject to criminal</p> <p>21 sanctions.</p> <p>22 A. Quite right.</p> <p>23 Q. In that case Mr Gaggero, right?</p> <p>24 A. Yes. That's why I thought it was</p> <p>25 absolutely fanciful.</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 Q. When you heard that allegation did you 2 report it to the police? 3 A. No. 4 Q. Why did you not report it to the police? 5 A. Because it was fanciful. 6 Q. Now, Mr Levy, you said many times 7 yesterday, is Gibraltar's most senior silk, the 8 only star performer in Chambers and 9 Partners. Why would he make such 10 an accusation without basis? 11 A. Well, for the reasons that I think Mr Levy 12 very candidly told the Inquiry. You might 13 have been here on the day that he said that he 14 was severely affected by the execution of the 15 search warrant and that at that time he was, I 16 mean he didn't use these words, but I might 17 use these words, wasn't thinking straight. I 18 think he used the particular words about his 19 state of mind at the time. 20 Q. Yes. Lots of people have spoken about 21 how emotional they were on the day. But 22 that -- 23 A. Emotions are normal things to have. 24 Q. They are. 25 A. We do not all work as automatons,</p> <p style="text-align: center;">Page 89</p>	<p>1 A. No. I knew that there was 2 correspondence and that therefore it would 3 have content and I knew of course that it 4 would relate to the search warrants because 5 that was, the search warrant, because that's 6 what it related to. 7 Q. Did you think, did you sort of stop and 8 pause for a moment and think -- 9 A. I am going to turn -- 10 Q. No, no. 11 A. I will get a crick in my neck. 12 Q. Of course, and excuse me if I am not 13 always looking at you. Did it concern you 14 that Gibraltar's most senior silk, star 15 performer in Chambers and Partners, would 16 be making such a serious allegation without 17 basis? 18 A. At that time I understood that this very 19 senior silk, who was finding himself in the 20 very difficult situation, for the reasons that 21 are obvious and which he explained to the 22 Inquiry in what I thought was a moment of 23 great candour, because when somebody 24 explains how they are feeling and how their 25 mental capacity is affected by something, I</p> <p style="text-align: center;">Page 91</p>
<p>1 however much we might wish to, when we 2 look at things four years later. 3 Q. One of the ways to mitigate against 4 emotional reactions is having lawyers. Is it 5 not right that Hassans then accused 6 Mr Richardson, without I do not think 7 particularisation of misfeasance, in their 8 litigation letters to the RGP. 9 A. I don't know about that. I didn't see 10 those. 11 Q. Do you know about the fact that that 12 allegation was going to be made in the 13 Hassans letters? 14 A. I know that there was correspondence. I 15 don't recall what I knew was going to be in it, 16 but certainly, as I have said throughout, I 17 thought the allegation was fanciful. I thought 18 it then and I think it now. Well, now I have 19 the benefit of hindsight and I am able to rely 20 on the fact that it was fanciful because it 21 didn't happen. 22 Q. You say you recall there was 23 correspondence. You do not recall what you 24 knew was going to be in it. Did you know 25 some of the content of that correspondence?</p> <p style="text-align: center;">Page 90</p>	<p>1 think it is worthy of respect and to take note 2 of. 3 Q. So you just put it down to, you put this 4 elaborate but false allegation down to 5 emotions. 6 A. It was hardly elaborate, Mr Wagner. It 7 was just a fanciful allegation. 8 Q. Did not concern you that Mr Levy may 9 not be completely on the level about other 10 things? 11 A. Not at all. I mean, this is somebody who 12 I have known for longer than I have been 13 a member of the bar. He is well known to 14 most people in Gibraltar. But I would ask 15 you to perhaps particularise your question 16 and tell me what on the level means in your 17 lexicon. What is it that you are asking me? 18 Q. If he was prepared to make what you 19 considered to be spurious but extremely 20 serious allegations against a police officer 21 who was investigating him, he might not be 22 as trustworthy as you first assumed. 23 A. Not at all. I think that you judge what 24 happened in that period by regard to what 25 was happening in that period and the fact that</p> <p style="text-align: center;">Page 92</p>

<p>1 Mr Levy has very candidly explained how he 2 was feeling as a result of the abusive 3 execution of the search warrant. 4 Q. I suppose you accept that when someone 5 is very emotionally affected they might make 6 allegations which turn out to be spurious. 7 A. Exactly, and you do not judge them and 8 their record and their relationship with you or 9 anything else based on what happens in that 10 period of heightened emotions. 11 Q. Yes. And I suppose also do not judge the 12 person against whom the allegations are 13 being made. 14 A. Exactly the point. That's why I have 15 always maintained that I thought that the 16 allegation was fanciful. 17 Q. I want to ask you a few questions, please, 18 about your statement to the police in 2021. If 19 we can just pull up B1111, please, all the 20 ones. You have been shown this a few times 21 and I am going to take you to a couple of 22 sections that you have seen and a couple of 23 sections that you have not. Presumably this 24 statement was made on the advice of 25 lawyers.</p> <p style="text-align: center;">Page 93</p>	<p>1 summer of 2018 when you gave your support 2 to the new venture subject to the Op Delhi 3 founders regularising their position with 4 Mr Gaggero. That is just in the sort of 5 middle of the paragraph. You then had 6 conversations with Mr Levy about Hassans 7 supporting Perez and Cornelio through 8 an investment. You have been shown that 9 already. You then describe the conversation 10 you had with Mr Gaggero on 21 July, if you 11 could just go a little bit further down, please. 12 Which we have seen that you kept a note of. 13 And then just picking it up on the final 14 paragraph of B1112, so just the bottom of 15 this page. (Pause). There. You say: 16 "Additionally, as I set out above, given that 17 the new entity that had been established by 18 Messrs Perez and Cornelio included 19 an investment by the partners of Hassans 20 Limited, of which I am a partner on 21 sabbatical and of which I was aware, I 22 therefore did not want to become involved in 23 any aspect of a relationship between Bland 24 Limited and 36 North which were 25 contentious."</p> <p style="text-align: center;">Page 95</p>
<p>1 A. This statement? 2 Q. Yes. 3 A. No. 4 Q. You just wrote it yourself. 5 A. I didn't write it myself. Mr Wyan came 6 to my office and we worked on it together. 7 Q. So you see you signed every page. I 8 suppose you checked every word of it to 9 make sure it was accurate. 10 A. Insofar as one is able to ensure accuracy 11 in anything that one checks. I mean, I look 12 back on these things now and I find syntax 13 errors which I am embarrassed about in 14 everything that I have written some years 15 ago. 16 Q. I am not asking whether it was accurate. 17 I am asking whether you checked to make 18 sure it was accurate. 19 A. Insofar as I was able to. This again was, 20 as it is now of course, a very difficult period 21 and discharging the office of Chief Minister 22 means you cannot give anything as much 23 time as you would quite like to give it. 24 Q. No. The bottom paragraph of B1111, 25 please. You are discussing here the early</p> <p style="text-align: center;">Page 94</p>	<p>1 So very clear there you knew you had 2 an interest, you therefore did not want to get 3 involved in any of the contentious issues 4 between ... you would let them fight it out for 5 themselves. That is the point there, is it not? 6 A. Well, I mean, it is a characterisation of 7 which I think is relatively accurate, but I 8 think there is a full statement which sets out 9 exactly what I thought. 10 Q. Then picking up at B1117, please. End 11 of the second paragraph, you say again, 12 sorry, this is, I think it is, seven lines up: 13 "Given in particular the interest that Hassans 14 Limited had in 36 North, I was not prepared 15 to enter the fray of that commercial dispute 16 as it was becoming more and more 17 acrimonious." 18 A. Sorry, I can't find that. 19 Q. Sorry, it is right in the middle of the 20 paragraph where the cross is on the right. 21 Can you see that? 22 A. Yes. 23 Q. "Given in particular the interest that 24 Hassans Limited had in 36 North, I was not 25 prepared to enter the fray of that commercial</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 dispute as it was becoming more and more 2 acrimonious." 3 So a similar statement. And then 1119. So 4 the question being asked here is the defence 5 is drawing our attention to a text message 6 sent from Mr Cornelio to Mr Levy dated 30 7 August 2018 in which he stated: 8 "Yes, please tell him if we meet I will be able 9 to discuss in person as I feel sometimes the 10 information he is getting is not correct. If he 11 knew my solution in detail, it would make 12 any decision he makes easier also." 13 And then seven lines down in the large 14 paragraph you say: "At that stage". I will just 15 wait for us to find it. Can you see there, it is 16 where the cross is? 17 A. "I have no difficulty with either of the 18 two companies maintaining the platform." 19 Q. Yes, so again you were ... and then you 20 say, I have just lost it. Yes. "As stated 21 previously, I did not want to become 22 involved in the commercial dispute." So you 23 were not expressing a preference. So would 24 you agree there are various statements made 25 there, including:</p> <p style="text-align: center;">Page 97</p>	<p>1 North is upsetting a few people and 2 presumably Bland. Is that fair? Is that a fair 3 reflection of what those two messages are 4 about? 5 A. Yes. 6 Q. And you respond on 9 August 2018: 7 "Honestly, you were with me. Do you 8 imagine I would ever be on Gaggero's side?" 9 Would you agree that there you are 10 expressing a clear view to Mr Levy that you 11 would be favouring 36 North over Bland? 12 A. As to the tittle-tattle that he is referring to 13 me, yes. 14 Q. Well, it is not just tittle-tattle, it is the 15 concern, it is relating the concern that Bland 16 have about 36 North. Would you agree that 17 you are expressing a view that you -- 18 A. I am afraid not, Mr Wagner. Nothing in 19 the messages before relates to anything that 20 Mr Gaggero is alleged to have said. 21 Q. Yes. 22 A. It's all the other parties are alleged to be 23 saying. So there is no expression there about 24 Bland's taking one view and me taking the 25 other. So I don't accept what you are saying.</p> <p style="text-align: center;">Page 99</p>
<p>1 "I did not want to become involved in any 2 aspect of the relationship between Bland 3 Limited and 36 North which were 4 contentious. I repeatedly emphasised both 5 my desire to assist both sides and given in 6 particular the interest that Hassans had in 36 7 North, I was not prepared to enter the fray of 8 the commercial dispute." 9 Does that fairly reflect what you were trying 10 to put across to the police? 11 A. And not just the police. I think I said that 12 elsewhere as well. 13 Q. You have. If we go to C7020, please. So 14 these are the text messages that your lawyers 15 accidentally did not provide to the Inquiry until 16 a couple of days ago. And this is from 9 17 August 2018. So this is about a month after 18 36 North has been ... well, after the founders 19 have left Bland. And James Levy, it looks 20 like, forwards you a couple of messages 21 because both of them refer to him in the third 22 person. So they probably, I assume, must be 23 forwarded. But I will give you a moment to 24 read them, but they are effectively saying, 25 people texting, somebody saying that 36</p> <p style="text-align: center;">Page 98</p>	<p>1 Q. There was only one issue at the time 2 between Bland and 36 North, which was that 3 36 North had left Bland and wanted to take 4 over the NSCIS contract. Is that not right? 5 A. That is one way of looking at what was 6 happening generally at the time. 7 Q. Yes. 8 A. But not reflecting the messages that I was 9 commenting on and your question is about 10 my message which relates to the two 11 messages immediately above, not to what 12 was happening generally at the time. 13 Q. Yes. 14 A. So if you want the answers to be truthful 15 in the context of the question, then you have 16 to go back to what the question was about, 17 which was about those two previous 18 WhatsApps. 19 Q. Yes. And then you say -- 20 A. And let me say that was not mentioned in 21 those WhatsApps as somebody who was 22 saying anything. 23 Q. And then you say on the 9th, the same 24 day, 9 August, you say to Mr Levy: 25 "Indeed, all that is clear in my head, but I</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 want to support John and the programmer 2 guy. I think Gaggero is riding their backs as 3 usual." 4 A. It's almost exactly what I had said to 5 James Gaggero himself. 6 Q. Who is the programmer guy? Is that 7 Tommy Cornelio? 8 A. Who I have never met, as I have told the 9 tribunal. 10 Q. No, you said that. But are you, I think 11 you -- 12 A. I think you went in your opening 13 statement you say that I know all three of 14 them and, you know, far from it. I knew 15 John who came to see me. I have never met 16 Tommy Cornelio and the third person, whose 17 name I constantly forget, um, his name starts 18 with an E and I think his surname starts with 19 an A. 20 (11.56) 21 Q. Asquez. 22 A. Yes, is not somebody I've ever met and 23 wouldn't recognise in the street. 24 Q. Well, you may not have met but, I mean, 25 you were in touch with him, were you not?</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. Yes. What did they want to do? 2 A. They wanted to strike out on their own into 3 36 North. 4 Q. And do what? What was 36 North - what 5 was the opening gambit for 36 North, what 6 were they going to do? 7 A. The raison d'etre for 36 North was the 8 exploitation internationally of the NSCIS 9 platform in order to use that platform to 10 produce profit for Gibraltar, because in 36 11 North it would be clear beyond peradventure 12 that it was 100% owned by the Gibraltarian 13 taxpayer. 14 Q. That may have been the long-term aim, but 15 the short-term aim was for the contract for the 16 maintenance of NSCIS to be transferred to 36 17 North, is that correct? 18 A. No, you characterise it in that way. I 19 would say that that would be, as I think I told 20 the inquiry in my evidence yesterday, that 21 would be the bread and butter of what NSCIS 22 did, or what 36 North did, but the reason for 23 creating it as a separate entity, the reason why 24 they wanted to go, was to be able to exploit it 25 internationally. I think in the discussions I've</p> <p style="text-align: center;">Page 103</p>
<p>1 A. Yes, but you say in your opening that I 2 knew them all and was meeting them all in my 3 office. 4 Q. I am not sure that is what we said but, 5 anyway ... 6 A. Well, have a look. 7 Q. Saying there, "I want to support John and 8 the programmer guy" - support them in what? 9 A. Support them in their new venture. It's 10 exactly what I said to James Gaggero. It's 11 exactly what James Gaggero was saying to 12 me. I mean, this is a reflection of what James 13 Gaggero was saying to me. He was saying to 14 me, "They are saying in their discussions with 15 me, why should they, dealing just with the 16 NSCIS, have to carry the whole of the Bland 17 organisation ..." - because obviously the 18 income that they produce goes into the whole 19 of the Bland organisation - " ... when they can 20 do what they want to do? And I sympathize 21 with them and we've just got to agree the terms 22 of this divorce." 23 Q. What did they want to do? 24 A. That was James Gaggero, I'm talking 25 about, yes?</p> <p style="text-align: center;">Page 102</p>	<p>1 had with John Perez at the time, he was 2 sensing a reluctance from the point of view of 3 the Government to become involved in doing 4 that. Governments find it very difficult to 5 commercialise the things that they do. And 6 the reluctance from Blands to pick up and to 7 do that, and he was saying, "We can do this 8 better on our own without having to carry 9 Blands." So, to bring it back to your question 10 and to that WhatsApp, what I am saying in that 11 WhatsApp to James Levy in that exchange is 12 exactly the same thing that James Gaggero and 13 I had discussed together on the phone on the 14 21st of July, and when he had come to see me 15 around that time. So, I don't see how - I can 16 see why - but I don't see how you can suggest 17 it's sinister at all for me to be saying to Mr 18 Levy exactly the same thing that I was saying 19 to Mr Gaggero. 20 Q. I am not suggesting it is sinister. I am 21 suggesting that it does not fit with the police 22 statement you gave in which you said multiple 23 times, "I was not going to support either side." 24 A. No, I think you are conflating "support". 25 In other words, what I was saying was - and I</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 think I have been explicit in this and that there 2 is an element of mischief in the way that 3 you're creating the question for me to answer: 4 if it came to a dispute between them, then I 5 will not be backing either side. If what was 6 happening was that one of them wanted to 7 leave and strike off on their own by way of 8 agreement, I would be happy to see that 9 happen. In particular, I was happy to see it 10 happen in a way that led to 100% ownership of 11 the platform being confirmed to be with the 12 taxpayer, a lower amount of maintenance 13 payable per annum, etc., so there were 14 advantages to the taxpayer, and James 15 Gaggero was not adverse to that also, so long 16 as certain things were dealt with at the time. 17 So, I don't accept the characterisation that you 18 are giving of what I said in my statement being 19 different to what I was saying in these 20 messages. 21 Q. You said in your statement, "I repeated 22 emphasized both my desire to assist both sides 23 on the basis that Mr Gaggero had himself set 24 out on the 21st of July" but here you are 25 saying, "Do you imagine I would ever be on</p> <p style="text-align: center;">Page 105</p>	<p>1 A. Let's go there. 2 Q. Were you concerned when the police 3 obtained Mr Levy's phone on the 12th of May 4 that they would find text messages which 5 showed you were not neutral but intended to 6 support ... 7 A. No. 8 Q. ... the Op Delhi founders in achieving what 9 they wanted to achieve? 10 A. No, no, Mr Wagner, I work on the basis 11 that what I say in writing, whether it's in a 12 WhatsApp or in an email or a letter, is 13 something that I'm happy for the world to see. 14 Q. Sure. 15 A. And what I say, even if it's not in writing, 16 is something that I'm prepared to defend. That 17 doesn't mean that I believe that I'm always 18 right. It means that I'm prepared to defend 19 why I said, wrote or did something either to 20 the Royal Gibraltar Police, to this tribunal of 21 inquiry or indeed to any third party, whether or 22 not they are constituted by law. 23 Q. But if you are happy to defend to anybody 24 what you said in those messages, why did you 25 not disclose them to the police?</p> <p style="text-align: center;">Page 107</p>
<p>1 Gaggero's side? Leave it with me." Is that not 2 the complete opposite of what you told the 3 police? 4 A. But not in the context of a dispute as to 5 public asset like the NSCIS. This - remember 6 that WhatsApps are reflections of 7 conversations, they are not official documents. 8 What I am saying to my very good friend and 9 mentor is that I wouldn't be on James 10 Gaggero's side - and neither, by the way, 11 would James Gaggero expect me to be on his 12 side - when it comes to an issue which is not a 13 contentious issue like this. As I said and as 14 you've seen in some of the exchanges, Mr 15 Gaggero and I come from different political 16 and ideological traditions and that's no secret 17 and it's clear. So, I would never be expected to 18 be on Mr Gaggero's side and neither would Mr 19 Gaggero expect me to be on his side. That's 20 not the potential commercial dispute which 21 might arise which would then have put me in 22 conflict and which I avoided, by the way, 23 because when it did come, it came not 24 commercially but because of the potential ... 25 Q. I will get to that. That is my next area.</p> <p style="text-align: center;">Page 106</p>	<p>1 A. What do you mean? 2 Q. Why did you not provide them? They 3 were not provided with your witness 4 statement. You provided other messages but 5 not these messages. 6 A. I disclosed everything that was relevant at 7 the time. 8 Q. So, are you saying they were not relevant? 9 A. I don't think these are relevant at all. 10 Remember that in this period, in August, I 11 don't think there's anything here that relates to 12 the issues in contention. I mean, are you 13 seriously telling me that the Royal Gibraltar 14 Police are interested in what was said on a 15 Saturday night in Sotogrande at a dinner 16 party? 17 Q. Well, I suppose they never got to decide, 18 did they, because you did not provide the 19 messages to them? 20 A. But it's not something that would have 21 been in the scope of any criminal discovery 22 exercise. 23 Q. Do you have quite a narrow understanding 24 of relevance and scope when it comes to 25 messages?</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 A. I don't accept that that is a question that I 2 have exposed myself to given the very broad 3 approach I have taken to discovery and 4 disclosure and the access I have given to my 5 legal team so that they, applying their own 6 independent mind, could determine what 7 should or should not be disclosed. 8 Q. On the 12th of May 2020 you were 9 concerned about the messages between you 10 and Mr Levy which were on Mr Levy's phone 11 and which the RGP could now access, were 12 you not? 13 A. No, I wasn't. 14 Q. You were not. Could you just go to A192, 15 one of your statements, so you must have it in 16 front of you, paragraph 45? 17 A. Yes. 18 Q. You say there, "I recall telling Mr McGrail 19 that the communications devices of senior 20 lawyers were likely to include legally 21 privileged material ..." - you have already dealt 22 with that. "Additionally, there would be 23 personally sensitive information on such 24 devices. I told Mr McGrail that there would 25 be myriad unrelated conversations between Mr</p> <p style="text-align: center;">Page 109</p>	<p>1 an example that is not the truth before anybody 2 pretends that this is something that happened: I 3 could be saying to James Levy something 4 about a Minister who is not performing and 5 who I am concerned about, right? 6 Q. Yes. 7 A. And that would be something that the 8 Royal Gibraltar Police would then see. I 9 wouldn't be worried or concerned in the 10 context of worry or concern in these 11 proceedings, in criminal proceedings, but I am 12 entitled to have my private conversations 13 private, and so is James Levy. So, I don't 14 agree with you, I don't agree with you that I 15 was worried or concerned, but I was raising 16 the point, which is, I think, a fair point to raise. 17 Remember, Gibraltar has a written 18 Constitution that protects privacy. 19 Q. Yes, so you did not want the Royal 20 Gibraltar Police to have those messages but 21 you were not concerned about them, is that 22 fair? 23 A. It's not a question of whether I wanted 24 them to have them or not. It's about whether 25 they are entitled to have them in these</p> <p style="text-align: center;">Page 111</p>
<p>1 Levy and me. For example, on matters outside 2 the RGP's interest but which would be 3 private." Do you now remember being 4 concerned about your private messages on Mr 5 Levy's phone? 6 A. No. 7 Q. Did you not write this statement? 8 A. I did. It doesn't talk about being worried or 9 concerned. I'm just saying that they're there. 10 They are subject to privilege, they are my 11 private conversations. I might be talking to 12 him about matrimonial difficulties. That 13 doesn't mean I'm worried or concerned, Mr 14 Wagner. 15 Q. Well, they are not. 16 A. They are private. 17 Q. So, you just raised that issue as a matter of 18 interest, not as a matter of concern? 19 A. No, because, as you will no doubt agree 20 with me, privacy is a human right and I don't 21 have to be worried about something being 22 disclosed or concerned about it being disclosed 23 to believe that it should remain private and 24 privileged. There could be other tittle-tattle, 25 there could be - for example, let me give you</p> <p style="text-align: center;">Page 110</p>	<p>1 circumstances or not. 2 Q. What steps did you take to ensure that you 3 were not swayed, even unintentionally, by not 4 wanting the RGP to see your private messages 5 with Mr Levy? 6 A. None whatsoever. 7 Q. I want to ask you now about transfer of 8 business, a topic that I promised I would come 9 to. So, just to be clear on what you have said 10 so far, in the summer of 2018 you assumed 11 that the NSCIS business would be transferred 12 from Blands to 36 North, is that correct? 13 A. By agreement. 14 Q. And you thought that it would happen by - 15 it would be amicably agreed between Bland 16 and 36 North, that was the hope? 17 A. No, I thought it had been amicably agreed 18 between Bland and 36 North and that the 19 mechanism of that would take shape also in an 20 amicable manner. 21 Q. Yes, but the mechanism of that could not 22 be agreed between, could not solely be agreed 23 between Bland and 36 North, it would involve 24 the Government, is that correct? 25 A. It would involve the Government at a</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 technical level and I wanted it to involve the</p> <p>2 Government also at a legal level.</p> <p>3 Q. Well, not just on a technical level because</p> <p>4 would not the Government, if there was some</p> <p>5 sort of contract, a maintenance contract or</p> <p>6 whatever it was, with ...</p> <p>7 A. There wasn't. There was no need to novate</p> <p>8 in writing because there was nothing in</p> <p>9 writing.</p> <p>10 Q. They would have to extricate themselves,</p> <p>11 assuming there was some sort of non-in</p> <p>12 writing agreement, they would have to, the</p> <p>13 Government would have to figure out how to</p> <p>14 extricate themselves from that agreement,</p> <p>15 would you agree?</p> <p>16 A. Well, I would agree except that the process</p> <p>17 was obviously made a lot easier by the fact</p> <p>18 that there was nothing in writing because there</p> <p>19 was no notice to provide, there was no</p> <p>20 novation to create. So, that process would</p> <p>21 require, as I think I later indicate, and I was</p> <p>22 taken to yesterday by counsel for the inquiry,</p> <p>23 the involvement of Government lawyers to</p> <p>24 ensure that, at least when we started again with</p> <p>25 the new entity, we didn't have some of the</p> <p style="text-align: center;">Page 113</p>	<p>1 agreement, is that fair?</p> <p>2 A. Exactly. Hence my reference to</p> <p>3 Government lawyers who might start that</p> <p>4 process.</p> <p>5 Q. And would that process happen</p> <p>6 automatically without anybody doing</p> <p>7 anything?</p> <p>8 A. No, that process would have run its course,</p> <p>9 it would have produced an agreement, that</p> <p>10 agreement would then have had to have been</p> <p>11 approved.</p> <p>12 Q. Who would have produced the agreement?</p> <p>13 A. Well, I indicated in the early stages of this,</p> <p>14 although it then didn't fly, that two Crown</p> <p>15 counsel, that counsel for the inquiry referred</p> <p>16 me to yesterday, in one particular message, I</p> <p>17 believe with Mr Sanchez, and I believe I</p> <p>18 referred to Mr DeVincenzi and Mr Fa, should</p> <p>19 start that process. They might not have been</p> <p>20 the ones ...</p> <p>21 Q. You told them to start the process? You</p> <p>22 asked them start the process? Whatever</p> <p>23 language we use.</p> <p>24 A. Well, I used language which was in writing</p> <p>25 and which I was referred to yesterday by CTI</p> <p style="text-align: center;">Page 115</p>
<p>1 problems we've had with Bland Limited about</p> <p>2 intellectual property.</p> <p>3 Q. Exactly. So, with the new entity, you</p> <p>4 would have to enter into a contract?</p> <p>5 A. But that's not extricating.</p> <p>6 Q. Leaving aside whether it is extricating or</p> <p>7 coming out of or whatever.</p> <p>8 A. That's establishment, yes.</p> <p>9 Q. You would have to create, you would have</p> <p>10 to have a new agreement with 36 North, is that</p> <p>11 correct?</p> <p>12 A. You would have to, if you wished to deal</p> <p>13 with all of the loose ends, establish an</p> <p>14 agreement with 36 North, but I would have to</p> <p>15 point out to you that it was also possible to</p> <p>16 continue with 36 North as we had done until</p> <p>17 that date with Bland Limited without anything</p> <p>18 in writing.</p> <p>19 Q. Well, whether or not it was in writing ...</p> <p>20 A. My preference was not that. My</p> <p>21 preference was to establish something.</p> <p>22 Q. Of course. So, your preference was to</p> <p>23 have a solid, clear agreement that would avoid</p> <p>24 the difficulties you were having at that stage</p> <p>25 with Bland about there not being an</p> <p style="text-align: center;">Page 114</p>	<p>1 that said, "Refer to them."</p> <p>2 Q. Yes, and for that contract to be signed, you</p> <p>3 would have to agree for it to be signed?</p> <p>4 A. Well, it might potentially have been</p> <p>5 brought to me, but when produced that would</p> <p>6 have gone directly to the Chief Secretary, who</p> <p>7 is the person who signs contracts for the</p> <p>8 Government.</p> <p>9 Q. Yes, but you were overseeing that process,</p> <p>10 is that fair?</p> <p>11 A. No, I wasn't overseeing that process.</p> <p>12 Q. You ...</p> <p>13 A. I don't oversee that process, ever.</p> <p>14 Q. You provided the instruction to the Crown</p> <p>15 counsel, did you not?</p> <p>16 A. No, I provided that Crown counsel should</p> <p>17 be instructed. I did not instruct the Crown</p> <p>18 counsel.</p> <p>19 Q. And did you indicate your view that this is</p> <p>20 the way things should proceed, that there</p> <p>21 should be an amicable transfer of Bland to 36</p> <p>22 North?</p> <p>23 A. No, I indicated that that's what had been</p> <p>24 indicated to me.</p> <p>25 Q. Well, it was not up to Bland and 36 North,</p> <p style="text-align: center;">Page 116</p>

29 (Pages 113 to 116)

<p>1 it was up to the Government. So, did you 2 agree with that? 3 A. No, it was only up to Bland and 36 North. 4 If they did not agree to do this amicably, it 5 couldn't happen amicably. 6 Q. No, but if they did agree, do you agree that 7 you then had also to agree? 8 A. Not necessarily me or just me. The 9 Government, that is to say the wider institution 10 of Government, as the counterparty to the non- 11 agreement, would have had to agree. In this 12 context, what I think it is important that you 13 should reflect on is that, I think there was 14 evidence before the tribunal, or at least I recall 15 from the time, that this meant, first of all, that 16 the Government was favourably going to 17 resolve this issue as to ownership of the 18 intellectual property in respect of NSCIS, and 19 would have a lower annual cost of 20 maintenance of NSCIS, and potentially would 21 also have the benefit of the exploitation for the 22 taxpayer of the NSCIS internationally. 23 Q. Yes, and you fairly said yesterday, well, 24 that was something that you were going to do 25 that would benefit Gibraltar.</p> <p style="text-align: center;">Page 117</p>	<p>1 Q. I understand. 2 A. As long as they agreed that they wanted to 3 do it, it seemed like a good idea to me. 4 Q. Okay. And was not the upshot of that that 5 your Government would be transferring the 6 NSCIS business, the maintenance business, 7 away from a company which Hassans knew 8 you did not part own to a company, 36 North, 9 which you did part own? 10 A. So, what was going to happen was that one 11 company would by agreement permit those 12 that had worked within it to go and strike out 13 on their own and that company also had an 14 investment in it from Hassans, as angel 15 investors, as they do in many other entities, 16 and I, because I'm a partner on sabbatical at 17 Hassans, had a small indirect financial interest 18 in it. 19 Q. 2.94%, is that correct? 20 A. It may be. You are much better versed in 21 what my interest in Astelon, I think it's called, 22 is than I am. 23 Q. Correct. But just to be clear, do you own 24 any part of Bland? 25 A. Bland is a family-owned company.</p> <p style="text-align: center;">Page 119</p>
<p>1 A. I was going to do? 2 Q. That the Government was going to do. 3 You are the Chief Minister. Was that not the 4 decision? 5 A. Well, I was not going to be doing any of 6 this. I was going to be allowing others to be 7 doing this. 8 Q. You were going to be allowing them to do 9 it? 10 A. I was asked whether I believed this would 11 be a good idea. 12 Q. Yes. 13 A. And my view was that, so long as it 14 continued to be amicable between Bland and 15 36 North, it seemed like a very good idea for 16 the list of reasons I have given you, which 17 were in part also the issues in dispute between 18 Bland and the Government of Gibraltar as to 19 intellectual properties. 20 Q. So, you were asked for a view and you 21 gave it, and your view was positive? 22 A. I was asked for a view and the view I gave 23 was that, so long as it was something that they 24 agreed - remember that they were coming to 25 us with an agreement.</p> <p style="text-align: center;">Page 118</p>	<p>1 Q. Is the answer Yes or No? 2 A. I am not a relative of Mr Gaggero and 3 therefore I am not a part-owner of Bland. 4 Q. You are not a part-owner. Are you 5 beneficially or were you at the time a part- 6 owner of 36 North? 7 A. In the way that you have now set out by 8 owning 2.94% of Astelon, that owned I don't 9 know how much of 36 North? 10 Q. One third. 11 A. So, I was a 2.94% owner of thirty three and 12 a third percent in 36 North - something that's 13 never been hidden. 14 Q. But Hassans, your firm, owned a third of 15 36 North beneficially, is that correct? 16 A. Yes, but my interest is not in that of 17 Hassans, it is in 2.94 because it's actually 18 broken down by partners, you've helpfully 19 reminded me. 20 Q. All I am trying to establish is, the 21 Government was transferring the business 22 from the company you did not part-own to the 23 company that you did part-own? 24 A. No, that's not right. That's not right. You 25 keep characterising it in this way: the</p> <p style="text-align: center;">Page 120</p>

30 (Pages 117 to 120)

<p>1 Government was transferring a business from 2 a company I didn't own to one that I partly 3 owned. Which, of course, you're trying to do 4 for reasons that I fully understand in keeping 5 with your instructions. But what I am trying to 6 get through to you is that what was presented 7 to me was not that the Government should do 8 anything but that it was going to be agreed 9 between Blands and those people who were 10 leaving that they were going to do this, that 11 they were going to do this. And when it's first 12 presented to me, it is not presented to me as 13 something in respect of which Hassans will 14 have an interest. And I believe that comes 15 later when the investor becomes Hassans. Not 16 at my request or as a result of any of my doing. 17 So, I don't accept the characterisation that you 18 are trying to put, although, of course, I fully 19 understand why you are trying to put it. 20 Q. How can it be appropriate for a 21 Government Minister to be involved in the 22 transfer of a Government contract to a 23 company that he part-owns? 24 A. Well, I don't think that that is a fair 25 characterisation of what I was doing. The</p> <p style="text-align: center;">Page 121</p>	<p>1 THE CHAIRMAN: 14 and above is 2 questionable, but I am delighted to see you. 3 MR WAGNER: I will not ask them to put 4 their hands up. 5 A. I do not know who is going to scare them 6 more, you or me. 7 Q. You said yesterday in your evidence that 8 the investment in 36 North had two years, 9 sorry, had two years before - so, this is from 10 May, you are talking about May 2020 here, 11 "From two years before already been resolved 12 by me giving the contract to Bland." 13 A. I think I said two years, and maybe I then 14 went on to say a year and a half. 15 Q. I was about to read that, "A year and a half 16 before this, I had already resolved the issue of 17 that conflict against my financial interest." 18 You said you resolved the issue. So, it was 19 your decision? 20 A. Of course it was, and you know that it was 21 because I have given evidence that when 22 James Gaggero came to tell me about the 23 potential sabotage, I made the decision then. 24 Probably not a decision I could have made if I 25 was making it in the other direction because</p> <p style="text-align: center;">Page 123</p>
<p>1 contract was being transferred. When the 2 contract was produced, it would have gone to 3 the Chief Secretary, it would have gone 4 through the usual process of approval and it 5 would not have come to me because I had an 6 interest in 36 North. 7 Q. Did you exclude yourself directly from 8 that? 9 A. I had not reached the stage when exclusion 10 would have had to occur. That would have 11 happened later. 12 Q. You said in your evidence yesterday ... 13 THE CHAIRMAN: I am not sure this is a 14 good idea ... 15 MR SANTOS: I understand the rules in 16 Gibraltar are that children from the age of 14 17 can attend. 18 THE CHAIRMAN: That is why I asked their 19 age. 20 MR SANTOS: Do we know what their age 21 is? I think we will get it established. Can we 22 nod if they are 14 and above? Yes. 23 THE CHAIRMAN: 14 and above is fine. 24 MR SANTOS: In that case, as long as they 25 behave they can stay.</p> <p style="text-align: center;">Page 122</p>	<p>1 then I would have been making a decision to 2 favour myself. I don't think there's any rule 3 requiring you not to make a decision that 4 doesn't favour you. 5 Q. No, the rule is that you, if you have an 6 interest, you either dispose of the interest or 7 you dispose of the decision-making ability. 8 You didn't do either of those things, did you? 9 A. We're both referring to it as a rule. It's 10 actually not a rule of law. 11 Q. It is certainly not a rule for your ... 12 A. It certainly is, Mr Wagner, and I don't 13 accept what you are suggesting in that regard. 14 Q. I ... 15 THE CHAIRMAN: If you can speak one at a 16 time? 17 MR WAGNER: Sorry, yes. 18 A. So, as far as I'm concerned, the decision I 19 was able to make, which would not offend 20 any, let's loosely call it a rule with a small "r", 21 in respect of conflicts of interest, integrity, 22 probity or selflessness, and would not offend 23 any of the Nolan principles, is a decision not to 24 favour myself, and that's the decision that I felt 25 free to make. In other words, the decision that</p> <p style="text-align: center;">Page 124</p>

<p>1 the contract should not go to the entity where I 2 would have had a conflict if I had favoured it. 3 Q. Yes, and you made that decision because 4 Mr Gaggero told you that he suspected that the 5 NSCIS system was being sabotaged, is that 6 right? 7 A. Before he had even referred the matter to 8 the Royal Gibraltar Police, something which 9 he said to me - he asked me, "Do you think I 10 should refer it to the Royal Gibraltar Police?" 11 and I said, "Look, I think you should if you 12 think you must." 13 Q. Why did you not refer it to the Royal 14 Gibraltar Police? 15 A. Well, because at that stage I was not the 16 person who dealt with the NSCIS platform. I 17 referred it to those in my office who dealt with 18 the NSCIS platform. I was attended by a 19 private secretary at that meeting, I believe the 20 private secretary has given evidence of what 21 transpired at the meeting, and I took action 22 consequent on that also in respect of my office 23 and who had access to it. 24 Q. Were you shocked to learn that the NSCIS 25 system had allegedly been sabotaged?</p> <p style="text-align: center;">Page 125</p>	<p>1 statement to the Royal Gibraltar Police. So, 2 you were asked here, page number 12, "The 3 defence have argued that you authorised Mr 4 Cornelio to access the NSCIS platform after 5 August 2018. Did you authorise Mr Cornelio 6 to access the NSCIS platform at any time 7 between 31st of August and the 4th of 8 December?" and this is the answer: "No 9 express authority was given by me, at least that 10 I can recall or I can find recorded in writing, 11 for Mr Cornelio to access the NSCIS platform 12 at any time after the termination of his 13 arrangement for accessing with or through 14 Bland. I do not believe that any other 15 communication from me can be considered to 16 be ostensible authority from me for anyone to 17 access the system, although I am unable to 18 comment on whether a communication from 19 me could legitimately be interpreted in a 20 manner that could be considered to convey 21 such ostensible or implied authority." Is that a 22 somewhat long way of saying you could not 23 discount having given Tommy Cornelio 24 authority to access the system? 25 A. No.</p> <p style="text-align: center;">Page 127</p>
<p>1 A. I was shocked to learn that that was 2 potentially the case, yes. 3 Q. Were you very concerned? 4 A. I was very concerned. 5 Q. How did you express your concern to the 6 people in your office? Did you say to them, 7 "We must get to the bottom of this and report 8 it to the police"? 9 A. I said to the people in my office that I 10 wanted to deal with the issue, and you'll be 11 able to refer to the part of my statement where 12 I address that or to the statement of my private 13 secretary who was with me at the time, which 14 sets out the actions that were taken consequent 15 on that, which were based on the fact that Mr 16 Gaggero had told us that he was reporting the 17 matter to the police also. 18 Q. If we can just go to B1120, please. 19 A. And, indeed, if I may, I think by May '19 20 the meeting with Mr McGrail, the first meeting 21 with Mr McGrail on the subject, deals with 22 exactly this issue and the Government's own 23 potential to be a complainant. Where do you 24 want me to go? 25 Q. We are at B1120, we are back in your</p> <p style="text-align: center;">Page 126</p>	<p>1 Q. How is that not? You say there, "I cannot 2 recall or find in writing ..." but you cannot 3 account for, "A communication from me 4 legitimately being interpreted in a manner that 5 could be considered to convey such ostensible 6 or implied authority." Is that not just a way of 7 saying, "I don't really know. Maybe 8 something I said could have been interpreted 9 as that"? 10 A. For the reason that is set out in the next 11 paragraph, that I wasn't the gatekeeper, but the 12 person who was was Caine Sanchez, and you 13 have seen that there is a lot of exchanges 14 between me and Caine Sanchez, and my 15 concern was that, although Caine Sanchez was 16 the gatekeeper, he also wasn't the technical 17 guy, so I may have said something to Caine 18 which Caine may then have instrumentalised 19 through Cornelio. That's what I am saying 20 there. 21 Q. So, you were concerned that ... 22 A. Not concerned. 23 Q. ... you might have said something to Caine 24 which would have been instrumentalised into 25 access for Tommy Cornelio?</p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)

1 **A. I don't use the word "concern" in that**
 2 **paragraph.**
 3 Q. No, you do not.
 4 **A. What I am alluding to is that the potential**
 5 **is that I might have said something to Caine**
 6 **about making sure that things work, which**
 7 **Caine might have interpreted as, "Let me go**
 8 **and get on with making it work" and that**
 9 **might have been, instead of through Galliano**
 10 **at Blands, might have been through Cornelio**
 11 **ex of Blands. That's what I am alluding to.**
 12 **I'm not concerned about it because I don't**
 13 **think I have any reason to be concerned.**
 14 Q. No, but when you found out from Mr
 15 Gaggero that Tommy Cornelio was suspected
 16 of sabotaging the system, did you not worry
 17 that you may have given him access without
 18 Bland knowing?
 19 **A. You are constantly using the words**
 20 **"worry" and "concern" and I don't necessarily**
 21 **agree with those terms being applied.**
 22 Q. I am just asking whether you were worried.
 23 **A. And what I want to be clear about is, if you**
 24 **look at the meetings with Mr Gaggero, before**
 25 **the meeting in relation to the alleged sabotage,**

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1 **I think there's another meeting where we talk**
 2 **about access to the system, etc. and me**
 3 **preventing access to the system. I mean, this**
 4 **happened some time ago. It might have been**
 5 **the same meeting. But I recall that there were**
 6 **various meetings with Mr Gaggero and I think**
 7 **one of them was about access to the system,**
 8 **and in that meeting I think I said to my private**
 9 **secretary, "Make sure, make sure from today**
 10 **that there is no access to the system other than**
 11 **through those that ..."**
 12 Q. That is the end of that period in the
 13 question, is it not, that is the 4th of October
 14 2018 when you made the position clear? They
 15 are asking you about that period between the
 16 31st of August to the 4th of October. James
 17 Gaggero comes to you and says, "I'm
 18 concerned that Tommy Cornelio has been
 19 sabotaging the system." You are here being
 20 asked by the police, because of what he said,
 21 "The Chief Minister gave me access" or,
 22 "Knew that I had access" - are you not worried
 23 at this stage, "Oh, my goodness, I may have
 24 inadvertently assisted a saboteur"?
 25 **A. No, I don't accept that that is what Mr**

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1 **Gaggero has said to the police and what they**
 2 **are asking me about.**
 3 Q. Well, he said you ...
 4 **A. The defence has argued that, "You**
 5 **authorised Mr Cornelio."**
 6 Q. Correct.
 7 **A. I am very clear, I am very clear that I did**
 8 **not authorise Mr Cornelio directly because I**
 9 **don't know him.**
 10 Q. But you may have ...
 11 **A. I have not met him.**
 12 Q. You may have indirectly?
 13 **A. I have not, and the point I am making in**
 14 **answer to that specific question is: first of all -**
 15 **and you paraphrased, so please allow me to**
 16 **paraphrase - first of all, I haven't given direct**
 17 **authority.**
 18 Q. Yes.
 19 **A. But I do not believe that I have given**
 20 **ostensible authority, either. In the context of**
 21 **ostensible authority, I was thinking about**
 22 **Caine Sanchez, who was the gatekeeper, not in**
 23 **my department, in another department but**
 24 **reporting to me also on this subject, and**
 25 **making sure that I expressed that clearly.**

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1 Q. Yes, but you had questions to answer in
 2 this investigation, did you not?
 3 **A. I don't think I had questions to answer,**
 4 **simply because the defence had alleged that I**
 5 **had been involved in granting authority.**
 6 **That's not having questions to answer; that's**
 7 **information to provide which may be relevant**
 8 **to the police investigation. Questions to**
 9 **answer sounds very pejorative and designed to**
 10 **suggest that one is the subject of questions for**
 11 **a purpose that would appear from the**
 12 **construction to be criminal, and I don't believe**
 13 **that I would ever put myself in such a position.**
 14 Q. Well, "Questions to answer" is just the
 15 expression that you used yesterday in a non-
 16 pejorative way about Mr Levy, so I was just
 17 reflecting it back.
 18 **A. No, questions to answer is what I said the**
 19 **DPP had said about Mr Levy. I was adopting**
 20 **somebody else's phraseology, and you're free**
 21 **to adopt my adoption of somebody else's**
 22 **phraseology, but let's be clear, it's not mine.**
 23 Q. If we can just go to C7021, please. These
 24 are the messages which your lawyers provided
 25 to the inquiry over the weekend. There is a

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<p>1 message there, you have seen it, I think you 2 have already been shown it, 30th of August 3 2018, James Levy saying to you, "You should 4 know I have spoken to Tommy. Despite his 5 letter to James Gaggero, he will continue 6 ensuring that the system is kept going until a 7 solution is found acceptable for the 8 Government." This is one of the questions that 9 you were asked to answer by the RGP, was 10 about this text message. Do you accept that in 11 this text message Mr Levy is telling you that, 12 despite what James Gaggero has been told by 13 Tommy Cornelio, Tommy Cornelio is 14 retaining access to the NSCIS system? 15 A. That's what it says, but it doesn't talk about 16 access. 17 Q. Well, how could he continue ensuring the 18 system is kept going without having access? 19 A. By supporting Galliano and others at Bland 20 who would then have access, for example. 21 Q. Is that really what you took from it, that 22 Tommy Cornelio would be giving a sort of 23 moral and technical support to other people? 24 A. I don't think moral support is relevant. It 25 would be technical support because he had</p> <p style="text-align: center;">Page 133</p>	<p>1 A. I don't, I don't think that my conflict of 2 interest ended. That's not how I think I would 3 describe it. I would say that the conflict of 4 interest never materialised for management 5 because the contract with 36 North was not 6 created, therefore it didn't get to the stage 7 where, you know, that had to be approved, 8 which would have required my declaration and 9 all the rest of it. I had resolved that issue ever 10 becoming one by making the decision that the 11 contract should stay with Bland because of the 12 allegation that was made by Mr Gaggero about 13 the sabotage. 14 Q. Sorry, the question was: did you dispose of 15 your interest in 36 North in September 2018? 16 A. That is a question which requires only a 17 factual answer, not whether it was right or not, 18 and the answer is No. 19 Q. Do you know when you no longer had an 20 ownership stake indirectly in 36 North? 21 A. No, but I do know that that ownership 22 stake was undone by the partners of Hassans. 23 Q. Later? 24 A. I believe so. 25 (12.31)</p> <p style="text-align: center;">Page 135</p>
<p>1 created the platform. 2 Q. He did not just create it, he maintained the 3 platform, did he not? 4 A. Maintained and established. 5 Q. And you knew that he maintained the 6 platform? 7 A. I think I know that now, I don't know how 8 much I knew then. 9 Q. Was this question about who gave access 10 and whether you gave access to the NSCIS 11 system at the time it was being allegedly 12 sabotaged, was that part of the reason you 13 were worried about Mr Levy's phone being 14 with the RGP? 15 A. I have told you already that I wasn't 16 worried about the phone being with the RGP 17 for reasons related to communications with 18 me. I'm happy to repeat that if you like. I was 19 not worried about the phone being with the 20 RGP because of any communications between 21 James Levy and me. 22 Q. You said that your conflict of interest 23 ended when the contract was kept with Bland 24 in September 2018. At that point did you 25 dispose of your beneficial interest in 36 North?</p> <p style="text-align: center;">Page 134</p>	<p>1 Q. Yes. Would you agree that, whilst you had 2 an ownership stake, if the founders of 36 3 North were being investigated, possibly 4 charged, even convicted of serious criminal 5 offences, you would have an interest in that 6 investigation, charge and prosecution? 7 A. No. 8 THE CHAIRMAN: Do you mean a financial 9 interest or --- 10 MR WAGNER: (To the witness): Well, a 11 financial interest because if 36 North 12 founders were --- do you agree that if they 13 were prosecuted and convicted, 36 North 14 probably would not survive, would it? 15 A. I didn't have an interest in the sense of 16 being interested in protecting although I had 17 a stake for reasons of a factual and --- 18 Q. I am not asking you about what was in 19 your head --- 20 A. I didn't protect the stake. 21 Q. I am not asking you about the sort of "I'm 22 interested in X," I am asking about conflict 23 of interest, so it is just an objective question. 24 Do you agree that while you had a stake in 25 36 North, you had an interest in the business</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 succeeding, if I can put it like that?</p> <p>2 A. Insofar as I had also on the day that I</p> <p>3 made the decision that it should not succeed</p> <p>4 in taking the maintenance contract, because</p> <p>5 selflessly and with integrity I made the</p> <p>6 decision that was right for the people of</p> <p>7 Gibraltar and not for the company in which I</p> <p>8 held a stake that the agreement should stay</p> <p>9 with Bland, the agreement such as it may be.</p> <p>10 Q. You had just found out that it was --- they</p> <p>11 were potentially sabotaging Gibraltar's</p> <p>12 national security system. It was not --- you</p> <p>13 were not deciding any more between 36</p> <p>14 North and Bland; you had no choice, did</p> <p>15 you?</p> <p>16 A. Well, you say "found out," I mean, to an</p> <p>17 extent in doing so, you are falling into the ---</p> <p>18 -</p> <p>19 Q. Allegedly, I said.</p> <p>20 A. Well, you are falling into the same trap</p> <p>21 that I fell which was simply to say that with</p> <p>22 the bold allegation it was enough for me not</p> <p>23 to want to take a risk, despite the fact that I</p> <p>24 had a stake in 36 North and that I was</p> <p>25 making the decision based on my application</p> <p style="text-align: center;">Page 137</p>	<p>1 have suggested that I had no choice. I could</p> <p>2 have made another decision.</p> <p>3 Q. Yes, you could and ----</p> <p>4 A. I could have said ----</p> <p>5 Q. --- it would have been the wrong</p> <p>6 decision?</p> <p>7 A. Well, perhaps not, hear me out. I could</p> <p>8 have said, "I want the government's ITLD</p> <p>9 department, the information technology and</p> <p>10 logistics department to immediately take over</p> <p>11 the system." Indeed I could even have asked</p> <p>12 that they sequester it. I could have signed a</p> <p>13 notice under the Civil Contingencies Act, in</p> <p>14 my view, taking over the system and,</p> <p>15 therefore, there were other decisions I could</p> <p>16 have made, not just the one that you say I had</p> <p>17 to make which is the one I did make and we</p> <p>18 have just agreed is the right one but you said</p> <p>19 I had no choice; I did have a choice and I</p> <p>20 decided it should stay with Bland because</p> <p>21 they had been operating it with Mr Cornelio</p> <p>22 there and Mr (Inaudible) there and they had</p> <p>23 also been maintaining it afterwards and in</p> <p>24 that meeting James Gaggero gave me an</p> <p>25 undertaking --- and it is important that you</p> <p style="text-align: center;">Page 139</p>
<p>1 of the principles of selflessness and integrity</p> <p>2 and my concern for the public interest of</p> <p>3 Gibraltar and the taxpayer in Gibraltar but in</p> <p>4 particular the national security of Gibraltar</p> <p>5 that there should be no risks taken and the</p> <p>6 contract should stay with Bland.</p> <p>7 Q. It was the right decision to take, was it</p> <p>8 not?</p> <p>9 A. Thank you.</p> <p>10 Q. Once you found out that the ----</p> <p>11 A. Thank you for saying that, Mr Wagner,</p> <p>12 because you have not said that before.</p> <p>13 Q. I am asking the question and I am asking</p> <p>14 you is this why you are saying it is right,</p> <p>15 because, once you found out this company</p> <p>16 and its founders are possibly sabotaging the</p> <p>17 very system which they are asking to be</p> <p>18 given the opportunity to maintain, you had</p> <p>19 no choice but to say that it will stay with</p> <p>20 Bland ----</p> <p>21 A. No.</p> <p>22 Q. --- because you cannot trust the ----</p> <p>23 A. No, I am afraid you are wrong.</p> <p>24 Q. So what was the reason you decided ----</p> <p>25 A. I am afraid you are wrong in the way you</p> <p style="text-align: center;">Page 138</p>	<p>1 reflect on the fact that I said that he was one</p> <p>2 of Gibraltar's captains of industry, there are</p> <p>3 not many James Gaggeros or James Levys,</p> <p>4 there were a few of them, you have to have</p> <p>5 specific regard to them. He gave me his</p> <p>6 undertaking that they would be able to</p> <p>7 maintain the system and they would stop all</p> <p>8 the problems that the sabotage had created.</p> <p>9 Q. Yes.</p> <p>10 A. That is why I made that decision,</p> <p>11 otherwise I might have made the other</p> <p>12 decision I have referred you to, which was</p> <p>13 not to give it to 36 North but to give it to the</p> <p>14 ITLD.</p> <p>15 Q. Yes, and would you agree that going</p> <p>16 forward after that, because you still had a</p> <p>17 stake in the business, if the business failed</p> <p>18 that would negatively impact on you?</p> <p>19 A. I never focused it that way at all.</p> <p>20 Q. I am asking you the question whether you</p> <p>21 agree that if the business failed ----</p> <p>22 A. No, I didn't ----</p> <p>23 Q. --- it would negatively impact on you?</p> <p>24 You would be --- your stake would not be</p> <p>25 worth anything?</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 A. I don't agree. Look, you know, I'm in my 2 early 50s, through Hassans and not through 3 Hassans, I have minor stakes in businesses, I 4 am wealthier than I ever wanted to be as a 5 result of honestly discharging my profession 6 as a lawyer and the distinction of being Chief 7 Minister, I don't concern myself with 2.94 8 per cent of a business I was never interested 9 in, that I was told we had and whether we 10 might lose it or not re the fact that when the 11 time came, it was not for a scintilla of a 12 moment a consideration in my mind, right --- 13 as I think you have agreed. 14 Q. Did you say that you are wealthy because 15 you are Chief Minister? 16 A. No, I said I am wealthy because of my 17 work as a lawyer, no wealthier than you, 18 probably less, and because of my salary as 19 Chief Minister which, although it is not as 20 much as I might have made before, is more 21 than I expected I would ever receive in 22 remuneration when I left university 30 years 23 ago. I don't need 2.94 per cent of Astelon in 24 order to feel wealthy or not. That is the point. 25 Q. I think we are on two different ----</p> <p style="text-align: center;">Page 141</p>	<p>1 driving seat of approving that contract and 2 then at that moment I would have had to deal 3 with issues relating to declarations of 4 interest. 5 Q. I just want to get whether it was a 6 financial --- you agree that it was a financial 7 interest, you agreed the financial interest 8 would increase, you are ---- 9 A. But --- 10 Q. Just bear with me, your interest would 11 increase if the business succeeded, would 12 you agree that your financial interest would 13 decrease if the business failed? 14 A. Mr Wagner, how do you think we need 15 an inquiry for these things? I am very happy 16 to suggest to you that not only would it, in 17 the hypothesis that you set out, have been 18 worth less, it actually was worth less as a 19 result of the decisions I made and the actions 20 I took long before the investigation began in 21 2018. 22 Q. Would the business be more likely to fail 23 if its founders were prosecuted and convicted 24 of criminal offences relating to the business? 25 A. That didn't really come up for</p> <p style="text-align: center;">Page 143</p>
<p>1 A. You are the one who is making 2 something of me being interested in this and 3 I was not interested in this. 4 Q. No, no, no, if I have not been clear I 5 apologise. I am not asking whether you as 6 Fabian Picardo with your assets that you 7 have got were particularly interested in that 8 2.94 per cent, I am asking from the 9 perspective of, say the ministerial code that 10 talks about financial interests, did you have a 11 financial interest in 36 North at the time? 12 A. I had a financial stake, as we have 13 already set out. 14 Q. Right, if 36 North succeeded would that 15 financial interest be worth more than if it 16 failed? 17 A. If it established its business and managed 18 to exploit it in the way that it had, it would 19 have been --- potentially it would have led to 20 the growth of the value of that stake ---- 21 Q. Yes., 22 A. --- and indeed of the value to the taxpayer 23 also of the NSCIS and had the moment for 24 that to happen had come, then the Chief 25 Secretary would have been the person in the</p> <p style="text-align: center;">Page 142</p>	<p>1 consideration because the business had failed 2 even before the matter had been reported to 3 the Royal Gibraltar Police, so I know what 4 you are trying to do, it's a --- with very great 5 respect, I understand why you are trying to 6 do it and I respect that, but it doesn't fall for 7 consideration because I made the decision 8 that what you have said repeatedly was the 9 key thing in your view that NSCIS was set up 10 to do, which was to get the maintenance 11 contract from the government, it wasn't from 12 my view, should not go to NSCIS --- to 36 13 North as from September, October 2019 and 14 so, therefore, at that meeting when we talk 15 about James Gaggero referring the matter to 16 the Royal Gibraltar Police, et cetera, et 17 cetera, all the matters relating to prosecution 18 are after I have made the decision that in 19 your analysis is the one that damns 36 North 20 to failure. 21 Q. But before you disposed of your 22 ownership stake in 36 North? 23 A. Look, I didn't do anything to dispose of 24 my ownership stake. 25 Q. Before it was disposed of ----</p> <p style="text-align: center;">Page 144</p>

36 (Pages 141 to 144)

<p>1 A. If you will allow me, I didn't do anything 2 to dispose of my ownership stake in 36 North 3 and neither did I do anything to acquire an 4 ownership stake in 36 North. I was told 5 about these things because I don't involve 6 myself the investments that Hassans make. I 7 was properly told about this one because it 8 was going to interact with a government 9 activity. 10 Q. Can we go to A234, please ---- 11 A. In the witness bundle? 12 Q. Yes, the witness statement, this is your 13 third affidavit dated 15 November 2023. 14 A. A234? 15 Q. You produced this statement a year and 16 half or so after the Inquiry started its work. 17 You agreed with Mr Santos yesterday that 18 you did not reveal in this statement your 19 meeting with the suspect Mr Levy on 17 May 20 2020. Is that correct? 21 A. Yes, I don't think it requires me to agree 22 whether something is or is not in a statement. 23 It either is or it is not. 24 Q. And you did not reveal in this statement 25 any of your meetings or calls with the</p> <p style="text-align: center;">Page 145</p>	<p>1 A. Well, your tone is hardly anything other 2 than accusatory. 3 Q. Did you recall your meeting at Mr Levy's 4 home on 17 May before you drafted this 5 statement? 6 A. No, because no meeting happened at Mr 7 Levy's home on 17 May. A meeting 8 happened at my home ---- 9 Q. Sorry, at your home, did you recall that 10 meeting before you drafted the statement? 11 A. No, I confess I didn't recall that meeting. 12 Q. That meeting had just completely gone 13 from your memory? 14 A. If I had to recall every time I have spoken 15 to James Levy, met James Levy and in 16 particular met him on a Sunday, I would be -- 17 - I would spend the rest of my days and 18 would not finished by the time I died at 120. 19 Q. But these were extraordinary events, were 20 they not? 21 A. Yes, but that meeting in particular was 22 not about --- the only thing other than, as I 23 have said already, principally Mr Levy 24 resigning as Chairman of Community Care 25 Trust, a hugely important local charity which</p> <p style="text-align: center;">Page 147</p>
<p>1 suspect's lawyer, Mr Baglietto. Is that 2 correct? 3 A. If they are not in the statement, then I did 4 not refer to them but I think subsequently we 5 have. 6 Q. They are not. 7 A. I think there were a number of different 8 statements from different parties that have 9 resulted in disclosure coming, I think, at 10 different stages, as documents have emerged 11 as memories have been jogged. I think your 12 client has sworn six. 13 Q. On your meeting --- sorry, you did not 14 reveal in this statement your meeting with the 15 suspect's son, did you? 16 A. Well, I didn't recall the meeting with the 17 suspect's son until I was referred to it 18 yesterday. I said yesterday that I couldn't 19 recall it but that I preferred his memory of 20 what may have happened to mine. 21 Q. Did you ---- 22 A. So I can't --- I don't think I can be 23 accused of not revealing something that I 24 even now say I cannot recall. 25 Q. I have not accused you of anything ----</p> <p style="text-align: center;">Page 146</p>	<p>1 hold or held at that time in the region of 2 £100,000 million of money that had been 3 donated to the charity by the Gibraltar 4 Parliament, through a vote of the Gibraltar 5 Parliament. 6 Q. Not about anything principally, so you 7 said --- you accept that it was about --- 8 A. It was about other matters. 9 Q. There were other matters discussed? 10 A. Of course but, as I have told you, around 11 that time I was discussing other matters and 12 in particular such --- with all and sundry. I 13 had absolutely --- I make absolutely no 14 qualms about that, Mr Wagner. 15 Q. You have not provided any evidence that 16 you were discussing those matter with 17 anyone except for ---- 18 A. Well, because it doesn't ---- 19 Q. --- Mr Baglietto, vis a vis the Attorney 20 General, is that not right, and ---- 21 A. Well, I mean if the Inquiry would like me 22 to trawl through my statements and my 23 memory to see whether I discussed with Mr 24 Smith down Main Street the issue of the 25 warrant against James Levy, I guarantee that</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

<p>1 I may not be able to remember all of them 2 but I will remember some of them and the list 3 will be longer than your arm and mine 4 because this, as I have said for shorthand, 5 was vox populi in town and, therefore, I 6 would have been discussing it with a very 7 many great people, probably in the Spanish 8 language using phraseology which would be 9 very understandable to people saying, in our 10 lexicon [Spanish spoken]. It is in short 11 terms, it is an abuse what has happened. 12 Right. This was what I was discussing 13 permanently and I cannot, therefore, tell you 14 that I feel it is somehow in appropriate for 15 me not to have recalled that meeting when I 16 prepared this statement. If I had, given my 17 obligations, which I continue to believe I 18 carry, even as Chief Minister, as an officer of 19 the court, and although this tribunal is not a 20 court, it is a properly established Gibraltar 21 tribunal, I would have definitely referred it to 22 the tribunal in this statement or in any other. 23 Q. At paragraph 11 you say, "My frequent 24 conversations with Mr Levy about the search 25 warrants were mostly telephonic and, as I</p> <p style="text-align: center;">Page 149</p>	<p>1 were, you did not have to reveal any of that 2 information because there was no objective 3 record? 4 A. No, not at all, but it is true, and I put it to 5 you that it is common, that memories being 6 what memories are, these days we are greatly 7 assisted either by electronic communications 8 or other documents in remembering things 9 and being able to reconstruct things that 10 happened and, therefore, when we go back 11 and look at things, you say, "Ah, there's a 12 reference to something that happened," you 13 think about that, try and find whether there's 14 an entry in a diary, "Oh, yes, I now 15 remember," and then try and reconstruct that. 16 That's how memories are assisted. That's 17 why we go back to these messages. I would 18 have thought that you will agree that it is 19 very common that that should be the case. 20 When I signed this statement, I was, as one 21 of His Majesty's counsel for Gibraltar, very 22 clear in my mind that the time was going to 23 come when all of my WhatsApp and all of 24 my emails and all of my documents were 25 going to be trawled and provided to the</p> <p style="text-align: center;">Page 151</p>
<p>1 have already said, there are no records 2 beyond those already disclosed. There is no 3 breakdown on the number of dates or times 4 of these conversations as there were and are 5 still many of them. There were no meetings 6 in my office such as may have resulted in a 7 note of it." That final line, is that not 8 somewhat odd language? 9 A. No, it is not, it is designed to deal in 10 particular with I think the Inquiry's particular 11 call for evidence for any notes or official 12 records. There are no official records of 13 meetings I had at my home. It is not 10 14 Downing Street, it is not an official 15 residence, and there would be official records 16 of meetings that I have in my office or at 17 least there would be an entry in a diary. That 18 is why the language is there, it's for that 19 reason. 20 Q. Is the reason that you use that language 21 and you did not reveal any of your calls or 22 conversations with the suspect or the 23 suspect's lawyer or the suspect's son, that it 24 was only later you were asked to provide 25 your WhatsApp messages and before you</p> <p style="text-align: center;">Page 150</p>	<p>1 Inquiry, so it's not as if I didn't expect that 2 that was going to happen and for that reason I 3 fundamentally disagree with the basis on 4 which you have formulated that question and 5 my answer to it is, no. 6 Q. Why, over a year after --- a year and a 7 half after the Inquiry first asked you for an 8 account of what happened had you not 9 trawled your WhatsApp and emails? 10 A. For a very simple reason; it is impossible 11 for me, impossible for me, to discharge the 12 functions of my office, which are more 13 important even than this Inquiry, and stop 14 and trawl through all my emails, all my 15 WhatsApp and all other communications. It 16 is just absolutely impossible. I have had to 17 do it with the assistance of counsel and 18 solicitors. 19 Q. But Mr Levy was not Mr Smith on Main 20 Street, was he? Is that not just a 21 disingenuous way of explaining why you did 22 not provide the relevant information? 23 A. It is not disingenuous. I have not been 24 disingenuous in anything I have said to this 25 Inquiry. I have been truthful and honest</p> <p style="text-align: center;">Page 152</p>

<p>1 keeping to the oath I took at the beginning of 2 these proceedings and, as I have said before 3 in the statements I have made about how I 4 will deal with this Inquiry, and making sure 5 we get to the truth, the whole truth and 6 nothing but the truth and I am grateful to all 7 parties involved in this process, yourself and 8 Ms Gallagher included and counsel for Mr 9 McGrail included, for the process that is 10 enabling us to ensure that all of the 11 information is before the Chairman, 12 including information which has come out 13 later in the day because it is in the nature of 14 the work that we do when we are dealing 15 with civil proceedings of this sort that 16 documents jog memories and enable us to 17 provide more evidence. I daresay the same 18 has happened to your client. He forgot to 19 include in his first statement the transcripts of 20 the conversations he had recorded. 21 THE CHAIRMAN: (To the witness): No, I 22 do not think he did. I think he took a 23 deliberate decision not to reveal them. 24 A. Ah, well, even worse. I took no 25 deliberate decision not to refer to Mr Levy</p> <p style="text-align: center;">Page 153</p>	<p>1 at the very least and I think you said that you 2 would have had a number of calls with Mr 3 Baglietto? 4 A. A myriad. 5 Q. A myriad, yes, and you met with both Mr 6 Baglietto and Mr Levy on the 17th, where, if 7 you go to A1448 ---- 8 A. I don't think I have that. 9 Q. Paragraph 17, "At the meeting with Mr 10 Levy, I remember I discussed again how 11 legally improper it had been in our view for 12 the RGP to have proceeded by way of search 13 warrant and not production order, how 14 outraged I was by the fact that I believed that 15 Mr McGrail had lied to me about the advice 16 he had had in respect of my subsequent 17 complete loss of confidence in him," and 18 then you say that the key issue was the 19 charity, and also at 14 above, you say, "I 20 believe I would have shared with Mr 21 Baglietto the fact that I was very open with 22 GPA and the then Governor and that Mr 23 McGrail no longer enjoyed my confidence 24 and my views as to the mechanisms to see 25 Mr McGrail removed and the consequences</p> <p style="text-align: center;">Page 155</p>
<p>1 and my meeting with him at home. 2 MR WAGNER: (To the witness): If we can 3 go to B1418 ---- 4 A. In my statement? 5 Q. No, this is the text messages between you 6 and Mr Llamas. You have been taken 7 already to this section, it is right to say, is it 8 not, that you highlighted to Mr Llamas the 9 Constitutional powers that he had to take 10 over the search warrant potentially from the 11 police and to discontinue it? 12 A. Yes. 13 Q. And you were in --- at a similar time you 14 were in regular communications with both 15 Mr Baglietto and Mr Levy, including - and 16 this is the current list - the call with Mr Levy 17 on 12 May whilst he was on his way to the 18 office, is that correct? 19 A. That's what has been suggested, yes. As 20 you know, there are no call records which 21 indicate that but I recall a call and yesterday 22 in the discussion with Counsel to the Inquiry, 23 we agreed it was likely to have happened in 24 that period. 25 Q. And a call with Mr Baglietto on 13 May</p> <p style="text-align: center;">Page 154</p>	<p>1 thereof." Is it fair to say that during this 2 period you proposed a number of ideas to Mr 3 Baglietto about points that could be made 4 against the search warrant? 5 A. Yes, as you can see, I was very concerned 6 about how disgracefully I believed Mr 7 McGrail had behaved with me in my office, 8 how much of an abuse I believed that the 9 search warrant was for all the reasons I have 10 already given in detail and in that context I 11 was discussing with Lewis Baglietto the 12 certain options that I believed he should 13 pursue; for example, the application for the 14 return of the phone, et cetera, but simply 15 sharing ideas with him. I have known him, 16 as he has said, for very, many years. We are 17 close personal friends. These days we don't 18 see each other as much as we would but I 19 would consider him one of my closest friends 20 and also a mentor for me in the law. He 21 always made it fun. 22 Q. You were not sharing it with him because 23 he was your friend, you were sharing it with 24 him because you hoped to help Mr Levy? 25 A. Because he was my friend.</p> <p style="text-align: center;">Page 156</p>

39 (Pages 153 to 156)

<p>1 Q. Mr Levy?</p> <p>2 A. Yes.</p> <p>3 Q. So would it be fair to say that in those</p> <p>4 discussions you were ----</p> <p>5 A. When I say "friend," you have got to</p> <p>6 understand that I have the highest regard for</p> <p>7 this man for reasons which are professional</p> <p>8 and which are institutional and which relate</p> <p>9 to the jurisdiction. I think "friend" is a word</p> <p>10 which makes it seem a little cheap.</p> <p>11 Q. A very good friend ----</p> <p>12 A. And with jurisdictional concerns arising</p> <p>13 from the consequences on Mr Levy, friend or</p> <p>14 otherwise as I expressed in the context of my</p> <p>15 discussions, whether it had been somebody</p> <p>16 else who I might not regard as a friend</p> <p>17 because of the jurisdictional consequences.</p> <p>18 Q. I will ask you about that concept of</p> <p>19 jurisdictional consequences after lunch, I</p> <p>20 think, but just going --- finishing off this</p> <p>21 topic, would it be fair to say that you were in</p> <p>22 discussions with Mr Baglietto and Mr Levy</p> <p>23 about how to support Mr Levy's claims</p> <p>24 against the search warrant?</p> <p>25 A. I wouldn't say I was in discussions</p> <p style="text-align: center;">Page 157</p>	<p>1 Q. I am not asking if they were good ideas, I</p> <p>2 am just proposing that you were making ----</p> <p>3 A. I am putting it in the context of my</p> <p>4 research. I mean, I didn't go into Archbold</p> <p>5 and check the foot notes to see how it might</p> <p>6 have been done, that was a matter for his</p> <p>7 counsel.</p> <p>8 Q. If we can go to A224, please, this is your</p> <p>9 second statement and at paragraph 10.1 ---</p> <p>10 sorry, paragraph 10, this is your responsive</p> <p>11 statement, the second statement, it is A224 --</p> <p>12 --</p> <p>13 A. I have it.</p> <p>14 Q. You say, "Mr McGrail says he is under</p> <p>15 threat of litigation mounted by Hassans in</p> <p>16 relation to James Levy, warrant devices"</p> <p>17 A. Where are you?</p> <p>18 Q. At paragraph 10.</p> <p>19 A. Yes, it says IM.</p> <p>20 Q. Yes, "... with whom I knew he was in</p> <p>21 contact. The intended insinuation appears to</p> <p>22 be that I was in cahoots with Mr Levy in</p> <p>23 relation to the threat by him to litigate against</p> <p>24 Mr McGrail in relation to the warrant issues.</p> <p>25 I respond as follows," and then "I recall I had</p> <p style="text-align: center;">Page 159</p>
<p>1 because Mr Baglietto was his counsel or at</p> <p>2 least his solicitor on the record but that it was</p> <p>3 talking to them about it and, you know,</p> <p>4 therefore having discussions in the non-legal</p> <p>5 sense of the word, I was not his counsel, I</p> <p>6 was not his solicitor.</p> <p>7 Q. I am sorry, I did not know there was a</p> <p>8 legal definition of discussions, I just mean a</p> <p>9 conversations?</p> <p>10 A. Well, yes, there is a legal definition of</p> <p>11 discussion, in my view, it is advice and I</p> <p>12 want to make clear that I was not advising.</p> <p>13 Q. No, but you were talking about how to</p> <p>14 support Mr Levy's claims against the</p> <p>15 warrant?</p> <p>16 A. I was talking with Mr Baglietto and Mr</p> <p>17 Levy about how disgraceful I thought it was</p> <p>18 and these were my ideas of what you might</p> <p>19 do. It is hardly the most sophisticated ideas.</p> <p>20 I mean, the application for the return of the</p> <p>21 phone was something I learned in the first</p> <p>22 week that I came back from university and</p> <p>23 was thrown in at the deep end in the</p> <p>24 magistrates' court, it is criminal practice 101,</p> <p>25 as you can imagine.</p> <p style="text-align: center;">Page 158</p>	<p>1 communications with Mr Levy about these</p> <p>2 claims. He was incensed about what had</p> <p>3 occurred and was very clear in his view that</p> <p>4 damages claims would be made against the</p> <p>5 Government for the RGP's failures under Mr</p> <p>6 McGrail's leadership. None of these</p> <p>7 communications in any way amounted to be</p> <p>8 encouraging, supporting or otherwise</p> <p>9 promoting Mr Levy's claims." Is that not the</p> <p>10 opposite of what was happening at the time?</p> <p>11 A. No.</p> <p>12 Q. Had you squared with what you were</p> <p>13 doing ----</p> <p>14 A. [Over speaking] encouraging, supporting</p> <p>15 or otherwise promoting, that is almost like</p> <p>16 being a cheer leader for, "Come on, do it, you</p> <p>17 must do it." That is not what I was doing. I</p> <p>18 was having a discussion with friends about</p> <p>19 what had happened. I didn't say, "You must</p> <p>20 do it." I didn't say, "You have to do it, come</p> <p>21 on, make sure that you file it before nine</p> <p>22 o'clock tomorrow." I don't accept that I was</p> <p>23 encouraging, supporting or otherwise</p> <p>24 promoting Mr Levy's claims. I was</p> <p>25 encouraging and supporting Mr Levy who, as</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

<p>1 he has said, was in a very difficult position</p> <p>2 and in a very difficult mental state at the</p> <p>3 time. But having those discussions does not,</p> <p>4 in my view, vitiate what I have said here</p> <p>5 which remains true.</p> <p>6 Q. Is that sentence a complete reversal of</p> <p>7 what the true position was ----</p> <p>8 A. No.</p> <p>9 Q. --- which was that you were offering not</p> <p>10 just support but you were offering legal ideas</p> <p>11 for them to put in their letters to the RGP?</p> <p>12 A. We were having those --- I don't know</p> <p>13 whether those ideas made it into the letter to</p> <p>14 the RGP.</p> <p>15 Q. You were offering ideas that they could</p> <p>16 use in the letters?</p> <p>17 A. Yes, in a discussion with friends. I told</p> <p>18 you specifically ----</p> <p>19 Q. A discussion with friends?</p> <p>20 A. Well, you accepted that it was a</p> <p>21 discussion with friends a moment ago ----</p> <p>22 Q. It is not for me to accept anything ----</p> <p>23 A. Well, let's be very clear, let's be very</p> <p>24 clear, this was not legal advice. It was not</p> <p>25 legal advice. This was far too serious for me</p> <p style="text-align: center;">Page 161</p>	<p>1 -- I note the time, sir. A188, please ----</p> <p>2 A. Is this an exhibit to my first statement?</p> <p>3 Q. No, it is A188, it should be your first</p> <p>4 statement.</p> <p>5 A. I have got it now, yes.</p> <p>6 Q. You say in 31, "This is the criminal</p> <p>7 investigation referred to by Mr McGrail' s</p> <p>8 lawyers in the email of 5 June 2020. I have</p> <p>9 never interfered in any police investigation,</p> <p>10 still less sought or tried to divert its course,</p> <p>11 and I certainly did not do so in this case."</p> <p>12 You have admitted that you angrily</p> <p>13 criticised the Commissioner of Police about</p> <p>14 an ongoing police operation. Is that correct?</p> <p>15 A. Yes, an operation not an investigation.</p> <p>16 Q. So that is your answer, is it, that because</p> <p>17 you were criticising for an operation and not</p> <p>18 an investigation, that is how you can square</p> <p>19 what you did with this statement that you</p> <p>20 never interfered with an investigation?</p> <p>21 A. Absolutely. I never asked them not to</p> <p>22 carry out the investigation into Perez and</p> <p>23 Corneli, I never asked them to stop the</p> <p>24 investigation of James Levy, I never asked</p> <p>25 them to stop any investigation whatsoever. I</p> <p style="text-align: center;">Page 163</p>
<p>1 to take the view that I could have given, even</p> <p>2 from a capacity of not being in practice as a</p> <p>3 lawyer, detailed legal advice. I would have</p> <p>4 known that I would have had to go to</p> <p>5 Archbold and check every single footnote on</p> <p>6 search warrants and the grant of them in</p> <p>7 order to be able to properly advise, so I was</p> <p>8 giving very high level ideas which did not</p> <p>9 amount to encouraging, supporting or</p> <p>10 otherwise promoting Mr Levy's claims. I</p> <p>11 don't accept that I have in any way failed in</p> <p>12 my duty of candour to the tribunal by setting</p> <p>13 this out in this way because I still believe it is</p> <p>14 true.</p> <p>15 Q. Is this not just another example of you</p> <p>16 not giving the whole truth to the Inquiry?</p> <p>17 A. No, it's another example of my ensuring</p> <p>18 that I give the Inquiry the truth, the whole</p> <p>19 truth and nothing but the truth, although that</p> <p>20 is sometimes relatively complex given how</p> <p>21 much an excess of facts there is here that we</p> <p>22 are all trying to trawl through in order to get</p> <p>23 to the truth of the subject matter of this</p> <p>24 Inquiry.</p> <p>25 Q. I have just one more quick matter before -</p> <p style="text-align: center;">Page 162</p>	<p>1 just happen to believe, then as I do now, that</p> <p>2 a search warrant was the wrong way to go</p> <p>3 about getting particular evidence in that</p> <p>4 investigation.</p> <p>5 Q. What did you ----</p> <p>6 A. They are two completely different</p> <p>7 aspects.</p> <p>8 Q. What did you hope to achieve? When</p> <p>9 you called Mr McGrail into your office on 12</p> <p>10 May, what were you hoping would be the</p> <p>11 outcome of that meeting?</p> <p>12 A. I have already given evidence in that</p> <p>13 respect in my statement and here. I was very</p> <p>14 clear that the issue for me was the</p> <p>15 jurisdictional risk which he himself had</p> <p>16 alluded to when he had come to brief me in</p> <p>17 respect of the other search warrant that he</p> <p>18 briefed me on which was in relation to a</p> <p>19 much more junior member of the Bar.</p> <p>20 Q. We are just about to get to lunch, I want</p> <p>21 to stick very specifically on this meeting.</p> <p>22 What did you hope to achieve in that</p> <p>23 meeting? What did you hope Mr McGrail</p> <p>24 would come out thinking differently than</p> <p>25 when he came in?</p> <p style="text-align: center;">Page 164</p>

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<p>1 A. I didn't necessarily expect that. I might 2 have left that meeting thinking differently. 3 So I expected to understand why in the 4 context of this more senior member of the 5 Bar it was appropriate to go by way of search 6 warrant rather than by way of a production 7 order. 8 Q. Yes 9 A. And he might simply have said to me, 10 "Well, Chief Minister, I am sorry to have to 11 tell you, I know that he is a very good friend 12 of yours and you have a very high regard for 13 him, and so do many other people, but we 14 were convinced that he was going to destroy 15 evidence unless we went down the route of 16 the search warrant." 17 THE CHAIRMAN: (To the witness): That 18 is precisely what was said in the application 19 at the magistrates' court. 20 A. Yes, but the question is about what was 21 said to me in the meeting of 12 May. What 22 was I expecting ---- 23 MR WAGNER: (To the witness): No, what 24 were you hoping would be the outcome of 25 that meeting?</p> <p style="text-align: center;">Page 165</p>	<p>1 him answering the question. 2 MR WAGNER: No, I cannot. 3 THE CHAIRMAN: Most importantly, you 4 asked him that in the course of one and a half 5 hours. 6 THE WITNESS: It is uncomfortable for 7 you to hear but there were two lies; the first 8 that the Attorney General had advised that 9 the warrant should be obtained, it should 10 proceed by way of search warrant which the 11 Attorney General very quickly said was not 12 true and, second, that he had been advised by 13 the DPP to proceed by way of search warrant 14 and that is what led to my loss of confidence. 15 If Ian McGrail had not lied to me, if he had 16 simply said this was the decision that the 17 police took, that it is the decision the police 18 are entitled to take and he stood by it, then 19 that would have been it on that day, full stop, 20 but that's not what he did. He lied to me. 21 MR WAGNER: (To the witness): But you 22 wanted information? That is why you called 23 the meeting? 24 A. In exactly the same way as he had given 25 me information about another search warrant</p> <p style="text-align: center;">Page 167</p>
<p>1 A. I wasn't hoping there would be an 2 outcome other than my having the 3 information, as I have told you, of why in 4 relation to this more senior member of the 5 Bar the thing that I had been told was so 6 sensitive about a more junior member of the 7 Bar was appropriate. 8 Q. You just wanted information? That is 9 what your answer is, you were hoping to get 10 --- your hope for that meeting was to get 11 information from Mr McGrail? Is that fair? 12 A. Absolutely. 13 Q. All right. 14 A. Information as to why on earth they had 15 decided it was appropriate to go by way of 16 search warrant rather than production order. 17 I think I have been explicit about that and 18 then what happens is that the answers that I 19 am given are untruthful, they are in fact lies 20 and not just one, but two. 21 Q. You have said that many, many times. 22 A. First, that the Attorney General had 23 advised in that respect and second --- I know 24 it is uncomfortable for you to hear but ---- 25 THE CHAIRMAN: You cannot object to</p> <p style="text-align: center;">Page 166</p>	<p>1 in relation to a more junior member of the 2 Bar. 3 MR WAGNER: Yes, thank you. I am happy 4 to stop there. 5 THE CHAIRMAN: Okay, thank you very 6 much. One o'clock, please. 7 (13.04) 8 (The short adjournment) 9 (14.00) 10 THE CHAIRMAN: We are five minutes late 11 starting so I think it is only fair to give you 12 another five minutes to ... yes, quarter past 3. 13 MR WAGNER: Thank you. Just to tie up 14 one of the points we were discussing before 15 lunch, you said that sending ideas about legal 16 options to Mr Levy's lawyer was not 17 promoting Mr Levy's claims. Is that right? 18 A. I took a point that it wasn't within the 19 terms of the sentence that you had referred 20 me to in my statement. I forget which it was. 21 Q. At the time in mid May when you were 22 sending those options to Mr Baglietto, you 23 would have known that Mr Levy was 24 a suspect. Is that right? 25 A. I knew what you know I knew at that</p> <p style="text-align: center;">Page 168</p>

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<p>1 time which was that he had had a search 2 warrant executed in respect of him and that 3 there were questions that he had to answer. 4 Q. Mr Baglietto must have told you in one of 5 your myriad conversations that Mr Levy was 6 a suspect. 7 A. You're making an assumption about the 8 things that Mr Baglietto would have said 9 during the course of those meetings. I can't 10 recall it in order to be able to give you 11 truthful evidence that he did or that he did 12 not. 13 Q. No. Did Mr Levy tell you he was 14 suspected of criminal offences? 15 A. I believe that he may have said words that 16 suggested that he felt it was grossly unfair 17 that there was any suggestion that he might 18 have been involved in anything that was 19 criminal. 20 Q. So he said to you words to the effect of ... 21 sorry, he said to you something which made 22 you realise he was suspected of criminal 23 behaviour. 24 A. No, he said the things I have told you he 25 said to me.</p> <p style="text-align: center;">Page 169</p>	<p>1 at the time. Although you did say to your 2 credit that you thought that was debatable. 3 Although my rejoinder to that was that the 4 Gibraltar Parliament had been asked to 5 legislate in that respect. 6 Q. I did not say whether it was debatable or 7 not, but it is being debated. But the point is 8 at the very least would you accept that by 9 mid May you knew he could be a suspect? 10 A. I knew by then that the search warrant 11 had been executed in respect of him, and I 12 have told you about what I think about who 13 search warrants are executed against. 14 Q. Looking back, would you do anything 15 differently now to avoid the impression that 16 you were supporting the criminal suspect in 17 his claims against the police? 18 A. I don't think I ever gave the impression 19 that I was supporting a criminal suspect in 20 respect of his claims against the police. 21 Q. Yes. 22 A. But in any event when I look back upon 23 my life there are many things that I would do 24 differently. No doubt there are things that I 25 would probably do differently with the basis</p> <p style="text-align: center;">Page 171</p>
<p>1 Q. Yes, but if he said to you, "It is absurd 2 that I could be accused of any criminal 3 offence", you knew that he was accused of 4 some sort of criminal offence. Is that fair? 5 A. He was never accused of any criminal 6 offence. 7 Q. Suspected. Do you agree? 8 A. I don't necessarily agree with your 9 characterisation. 10 Q. So you are saying you did not know he 11 was suspected of a criminal offence. 12 A. No, I'm telling you that I knew that the 13 police wanted to interrogate his devices and 14 there had to be a reason for that. 15 Q. Yes. 16 A. And that his view was that that was 17 entirely misconceived and I think the way 18 that he has expressed it here is the way that 19 he expressed it to me and to others, namely 20 that this was fundamentally flawed. And 21 indeed when we looked at the letter that you 22 referred me to earlier, I believe it was you 23 that referred me to it, it referred to 24 a conspiracy to defraud, was an offence 25 which was not an offence that existed in law</p> <p style="text-align: center;">Page 170</p>	<p>1 of advice perhaps composure, not just in 2 relation to this matter but in relation to many. 3 Q. But in relation to this matter would you 4 do anything differently when you look back 5 at those messages and the meetings? When 6 you recall the meetings with Mr Baglietto 7 and Mr Levy, would you do anything 8 differently? 9 A. I don't think it's fair to expect me to give 10 you an answer in respect of the myriad 11 number of messages and events that occurred 12 without, which is obviously not possible, 13 taking me to each of them asking me whether 14 I would change any of them with the benefit 15 of hindsight. Hindsight, as we all know, is 16 20/20 vision. We are here to look at what 17 happened not at what should have happened. 18 That is a matter for submission from you and 19 other counsel. But my evidence and the 20 evidence of my witness is about what 21 happened rather than about what should have 22 happened. 23 Q. The 12 May meeting, you called that 24 meeting, did you not? 25 A. I asked to speak to Ian McGrail. I didn't</p> <p style="text-align: center;">Page 172</p>

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<p>1 call for a meeting.</p> <p>2 Q. Yes. It was not a preplanned meeting.</p> <p>3 A. No.</p> <p>4 Q. It was arranged spontaneously when you</p> <p>5 found out that Mr McGrail was at 6 Convent</p> <p>6 Place. Is that right?</p> <p>7 A. My call was not spontaneous. In other</p> <p>8 words, the "I want to speak to Ian McGrail"</p> <p>9 had nothing to do with the fact that he was in</p> <p>10 Convent Place. He was in Convent Place</p> <p>11 when I said I wanted to speak to him. I think</p> <p>12 the call went out from one of my secretaries</p> <p>13 to him and he said, I believe, to them he was</p> <p>14 here. He says, "Do you want him to come</p> <p>15 up?" And I think that's when I said yes.</p> <p>16 Q. But you in your text message said: "I am</p> <p>17 going to say no more because Mr Levy is</p> <p>18 a friend."</p> <p>19 A. Yes.</p> <p>20 Q. So it must have been when you found out</p> <p>21 Mr McGrail was in the building, it must have</p> <p>22 been spontaneous that you said, "Well, bring</p> <p>23 him up, I want to talk to him."</p> <p>24 A. That's the point I'm making to you.</p> <p>25 Q. Yes.</p> <p style="text-align: center;">Page 173</p>	<p>1 Q. Was that upsetting to you?</p> <p>2 A. I think I've not hidden the fact that it was.</p> <p>3 Q. And you were also very angry. Is that</p> <p>4 fair?</p> <p>5 A. No, I don't think that's fair because, you</p> <p>6 see, I have said in evidence that I was angry</p> <p>7 and you have translated that into my being</p> <p>8 very angry. I would rather stick with my</p> <p>9 version about how I felt rather than yours. I</p> <p>10 was angry, not very angry.</p> <p>11 Q. So you were upset and you were angry.</p> <p>12 Yes?</p> <p>13 A. How many times would you like me to</p> <p>14 repeat it?</p> <p>15 Q. I am just asking the question. You were</p> <p>16 upset and angry. Is that fair?</p> <p>17 A. I was upset in the sense that I was angry.</p> <p>18 There was not a different level of upset other</p> <p>19 than anger.</p> <p>20 Q. Yes. You said before you wanted</p> <p>21 information. Did you know at that stage that</p> <p>22 Mr McGrail was not leading the</p> <p>23 investigation?</p> <p>24 A. Um, I didn't expect that Mr McGrail</p> <p>25 would be leading the investigation. He was</p> <p style="text-align: center;">Page 175</p>
<p>1 A. I think I said I would like to talk to Ian</p> <p>2 McGrail and when my switchboard, in the</p> <p>3 context of Gibraltar it's hardly a switchboard,</p> <p>4 it's my secretary, sought to raise Ian McGrail</p> <p>5 on the phone, I believe he would have said to</p> <p>6 him or to her, "I'm actually in number 6</p> <p>7 Convent Place." And they asked me, "Would</p> <p>8 you like him to come up?" So it was</p> <p>9 spontaneous in that sense.</p> <p>10 Q. It was a heat of the moment meeting. Is</p> <p>11 that fair?</p> <p>12 A. Well, yes, I suppose you could describe it</p> <p>13 in that way. But it was not a meeting that</p> <p>14 was sought in the heat of the moment. It was</p> <p>15 a phone call that I was seeking. It happened</p> <p>16 to be a meeting by happenstance because he</p> <p>17 was in number 6 Convent Place, not at New</p> <p>18 Mole House.</p> <p>19 Q. When you spoke to Mr Levy on that day</p> <p>20 do you remember him being upset?</p> <p>21 A. Of course I do.</p> <p>22 Q. You do remember him being upset.</p> <p>23 A. Just like any innocent person about to</p> <p>24 have a search warrant executed in respect of</p> <p>25 them.</p> <p style="text-align: center;">Page 174</p>	<p>1 the Commissioner of Police.</p> <p>2 Q. So if you wanted information about the</p> <p>3 investigation did you invite the officer in</p> <p>4 charge, Mr Richardson --</p> <p>5 A. I never would do that because that would</p> <p>6 be to try to put my hand into the action of the</p> <p>7 RGP and its investigation, which I would</p> <p>8 never do, and I have consistently said outside</p> <p>9 of here and here that I would not do. I was</p> <p>10 seeking information only about the warrant.</p> <p>11 I had repeatedly told you that's what I was</p> <p>12 seeking before the lunch break and I was</p> <p>13 seeking it from the person that I would</p> <p>14 interface with in the RGP in respect of all</p> <p>15 matters, in this case the Commissioner of</p> <p>16 Police. So to give you an idea from where I</p> <p>17 sit in the hierarchy of Gibraltar politics, you</p> <p>18 would not expect me to be engaging other</p> <p>19 than with the heads of the different</p> <p>20 organisations that I deal with. In the context</p> <p>21 of my office, for example, if I want to know</p> <p>22 something about a project or development, I</p> <p>23 don't tend to call the person who is on the</p> <p>24 ground dealing with that project. I call the</p> <p>25 Chief Technical Officer who himself will</p> <p style="text-align: center;">Page 176</p>

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<p>1 have contact with the individuals who have 2 the information. 3 Q. You deal with -- 4 A. So in the context of the Royal Gibraltar 5 Police and an action that they had 6 undertaken, the logical thing for me to do is 7 to, and the natural thing for me to do, before 8 and after 12 May, is to call the Commissioner 9 of Police. In this case in particular for one 10 reason, because he had texted me moments 11 earlier. 12 Q. So you knew that the Commissioner of 13 Police would not be in charge of the 14 investigation. Did you give him 15 an opportunity to provide you a briefing in 16 advance of that meeting? 17 A. Yes. Not in advance of that meeting. I 18 enabled him to provide me a briefing when I 19 asked him what had happened and why they 20 had proceeded by way of search warrant. 21 Q. Did you, when you invited him to that 22 meeting, had you said to him, "I want some 23 information about this, please go and find out 24 from the officer in charge what happened and 25 then come to me with a briefing"?</p> <p style="text-align: center;">Page 177</p>	<p>1 warrant against James Levy?" 2 Q. Yes. So you were not asking for, the 3 meeting was not about information. It was 4 about to express your view of disapproval to 5 the Commissioner of Police -- 6 A. No. 7 Q. -- about the search warrant. 8 A. No. I have started my answer to you by 9 saying that I asked him what on earth had 10 happened that had led to them deciding to 11 proceed by way of search warrant. Look, if 12 there's a recording of that conversation, as I 13 deeply suspect there might be, I would be 14 delighted for all of us if we could hear it. 15 Q. After the meeting, when you had calmed 16 down, did you give Mr McGrail the 17 opportunity to provide a prepared briefing? 18 A. After the meeting Mr McGrail had plenty 19 of opportunity to provide a prepared briefing 20 should he have wished to. 21 Q. Did you ask him to? 22 A. After the meeting -- 23 Q. Yes. 24 A. -- Mr McGrail had plenty of opportunities 25 to provide me with a briefing. I cannot recall</p> <p style="text-align: center;">Page 179</p>
<p>1 A. I don't understand why it is that you're 2 asking me about something that we both 3 know didn't happen because we know the 4 chronology of those facts. In other words, 5 we know that what happened was that he sent 6 me a message. After that I asked to speak to 7 him. Because he was in number 6 he 8 suggested or asked whether I wished him to 9 come up to have that discussion, and that's 10 what happened. So self-evidently there isn't 11 in the space of those minutes me seeking a 12 briefing in writing ahead of a meeting. You 13 know that and if what you want me to do is 14 to say that it didn't happen because we both 15 know it didn't happen, then the answer is it 16 didn't happen. 17 Q. No. Did you start the meeting by saying 18 to Mr McGrail, "Please could you explain 19 what has happened?" 20 A. Not in so many words, but yes. 21 Q. Did you start the meeting by criticising 22 the RGP and Mr McGrail? 23 A. I asked the question, "What on earth 24 (perhaps not in those terms) had happened 25 that you have decided to go by way of search</p> <p style="text-align: center;">Page 178</p>	<p>1 exactly how we ended the meeting and 2 whether at the end of the meeting I might 3 have left open the possibility that he could do 4 that. But the door was certainly not closed to 5 him doing so and he chose not to do so. 6 Q. There is no evidence that you asked him 7 for a briefing after that meeting. So unless 8 you are saying you did, I am just asking you 9 did you remember asking him for any kind of 10 briefing? 11 A. No, I didn't ask him for a briefing after 12 the meeting. The meeting was to ask him 13 what had happened and why. And in that 14 meeting, as you will recall I told you before 15 lunch, instead of telling me the things that it 16 is now apparent from the evidence that we 17 have seen in the context of this inquiry 18 trawling for the information that there was 19 a chief inspector or detective chief inspector 20 who had believed that Mr Levy would 21 destroy evidence, although that is challenged. 22 What is apparent is that, instead of telling me 23 that, Mr McGrail, and I think it is his 24 evidence also, told me first that the Attorney 25 General had advised that they should go by</p> <p style="text-align: center;">Page 180</p>

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1 way of search warrant and, second, that the
 2 DPP had advised that they should go by way
 3 of search warrant. I can't overemphasise to
 4 you enough the importance of that. Because
 5 if all that had happened is that Mr McGrail
 6 had told me the facts, that is to say, look,
 7 Paul Richardson believed that James would
 8 destroy those statements, those exchanges of
 9 information, whatever information he had, if
 10 he had gone by way of production order, then
 11 if he had said that, then Mr McGrail might
 12 still be Commissioner of Police today. But
 13 he didn't say that. He lied to me. And that's
 14 why he is not the Commissioner of Police
 15 today.
 16 Q. What right did you have as the Chief
 17 Minister to ask for information in a criminal
 18 investigation about your good friend?
 19 A. Exactly the same right I had to receive
 20 information from the Commissioner of Police
 21 on the execution of a search warrant in
 22 respect of a more junior member of the bar
 23 who was not my friend, and indeed the same
 24 right I had, which was none, to be told by the
 25 Commissioner of Police about the execution

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1 of a search warrant in respect of a person
 2 who happened to be my friend. And I
 3 suppose the same right that Mr Gaggero had
 4 to be told before those individuals had been
 5 arrested that they were going to be arrested
 6 on that day by the selfsame Commissioner of
 7 Police.
 8 Q. Did you ask the DPP for a briefing
 9 following the meeting?
 10 A. I think the DPP has been very clear about
 11 the fact that I have hardly been in contact
 12 with him in the time that he has been in his
 13 post.
 14 Q. Is it yes or no? Did you ask the DPP for
 15 a briefing after the meeting?
 16 A. For the reasons that DPP has given in his
 17 very clear evidence, the answer is no.
 18 Q. No.
 19 A. And neither do I think that in any way
 20 reflects against the fact that what I was trying
 21 to do that day in the meeting of the 12th
 22 when Mr McGrail came to see me, because
 23 he happened to be at number 6 Convent
 24 Place, what I would have done on the phone,
 25 if we had spoken on the phone, would have

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1 been to try and understand why on earth they
 2 had decided to go by way of search warrant
 3 against James Levy.
 4 Q. But his advice was the core of your
 5 concern about what Mr McGrail had told
 6 you. Did you not contact the DPP to verify
 7 what your concern was?
 8 A. No, because my concern after the
 9 meeting on the 12th was not about the search
 10 warrant. I had expressed my concerns about
 11 that to the Commissioner of Police. My
 12 concern after the meeting on the 12th was
 13 about the fact that I had been misled. Let me
 14 be very clear with you, Mr Wagner. I have
 15 been clear already and I will be clear again. I
 16 didn't interfere with this investigation. It
 17 continued after 12 May and it continued after
 18 Ian McGrail was no longer Commissioner of
 19 Police. I was not interested in any way
 20 interfering with the investigation in respect
 21 of any of the Operation Delhi defendants or
 22 anybody else including Mr Levy if he had
 23 become a defendant. I was very interested in
 24 knowing at that time why they had gone by
 25 way of search warrant and why I had been

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1 told at that late stage, when I had been told
 2 much earlier in respect of another nor junior
 3 member of the bar. That is what I was
 4 inquiring about on 12 May. After that
 5 meeting on 12 May, because of the first lie
 6 about the Attorney General, and the second
 7 thing about the DPP which the Attorney
 8 General believed was not true, the Attorney
 9 General went off and confirmed to me that I
 10 had been lied to also about the DPP issue. So
 11 after 12 May my issue with Ian McGrail has
 12 nothing to do with the substance of a search
 13 warrant. So I had asked him to be briefed
 14 about it. I had asked him about why he lied.
 15 Q. You thought after that meeting that
 16 Mr McGrail had lied to you about being
 17 advised by the DPP. Correct?
 18 A. About being advised by the DPP to go by
 19 way of search warrant.
 20 Q. Yes. Did you check with the DPP
 21 yourself whether that was correct?
 22 A. No, I didn't.
 23 Q. No.
 24 A. No. For a reason that I know you fully
 25 aware of because you are obviously very well

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<p>1 briefed on the papers in this proceeding,</p> <p>2 which is that I asked the Attorney General to</p> <p>3 go and check that because in the same way as</p> <p>4 I wouldn't call a superintendent in the Royal</p> <p>5 Gibraltar Police for anything, I would call the</p> <p>6 head of an organisation, the head of the</p> <p>7 government's law officers in the Attorney</p> <p>8 General and I asked him to check with the</p> <p>9 DPP.</p> <p>10 Q. And he gave you the wrong information.</p> <p>11 A. Yes. And quickly redressed that.</p> <p>12 Q. We will come to that.</p> <p>13 A. The inaccuracy in the information that he</p> <p>14 provided, however, did not go to the issue of</p> <p>15 whether what Mr McGrail had told me was</p> <p>16 true or not. It went to the degree to which</p> <p>17 what he had told me was true or not, but not</p> <p>18 to whether what he had told me was true or</p> <p>19 not. And that is an issue that I think you will</p> <p>20 find it difficult to shift me or anybody else</p> <p>21 on, looking at my view of what happened on</p> <p>22 that day.</p> <p>23 Q. Did you consider whether the</p> <p>24 spontaneous, emotional and angry meeting</p> <p>25 may have led you to some misunderstanding</p> <p style="text-align: center;">Page 185</p>	<p>1 A. Only by Mr McGrail I assume.</p> <p>2 Q. Well, also by Mr Pyle.</p> <p>3 A. By who?</p> <p>4 Q. By Mr Pyle.</p> <p>5 A. Well, by Mr Pyle who says I am angry</p> <p>6 about what happened, when I was --</p> <p>7 Q. He said you had the bit between your</p> <p>8 teeth.</p> <p>9 A. It I had not conveyed my emotion to</p> <p>10 Mr Pyle you would be asking me the</p> <p>11 question now about why I had hidden how I</p> <p>12 felt.</p> <p>13 Q. You did not take any kind of notes of that</p> <p>14 meeting, did you?</p> <p>15 A. I don't take notes in meeting because I am</p> <p>16 a principal in meetings and so I tend not to</p> <p>17 take notes. Others take notes.</p> <p>18 Q. No, but you did not ask any others to take</p> <p>19 notes, did you?</p> <p>20 A. At what meeting?</p> <p>21 Q. At the 12 May meeting.</p> <p>22 A. That was not a sit down meeting, as you</p> <p>23 know, Mr Wagner. That was an impromptu</p> <p>24 meeting that happened by happenstance. It</p> <p>25 would have been a telephone conversation if</p> <p style="text-align: center;">Page 187</p>
<p>1 between you and the Commissioner?</p> <p>2 A. Yes, I did, on a number of occasions.</p> <p>3 And I have searched my conscience and my</p> <p>4 soul in that respect because these are</p> <p>5 consequential actions that we took thereafter.</p> <p>6 This was not something to be done simply in</p> <p>7 anger and anger dies down and then it's time</p> <p>8 for quiet reflection and consideration and I</p> <p>9 had the time for that. And indeed 48 hours</p> <p>10 later, when I was much calmer, I opened my</p> <p>11 brief on references to Gibraltar in the</p> <p>12 international press, as I do every morning,</p> <p>13 and the first thing I see is that I have also</p> <p>14 been failed by the Commissioner of Police</p> <p>15 because claims have been filed in respect of</p> <p>16 deaths at sea which I have not been made</p> <p>17 aware of by the Commissioner of Police.</p> <p>18 Q. You said for the first time yesterday in</p> <p>19 your evidence that you believed</p> <p>20 Mr McGrail's temperament was of concern to</p> <p>21 you and others.</p> <p>22 A. Only because it's the first time I have</p> <p>23 ever been asked about his appointment.</p> <p>24 Q. But is it not you who have been described</p> <p>25 repeatedly in this Inquiry as acting in anger?</p> <p style="text-align: center;">Page 186</p>	<p>1 it had not been that Mr McGrail happened to</p> <p>2 be in number 6 and not New Mole House.</p> <p>3 Q. It was a very important meeting, was it</p> <p>4 not?</p> <p>5 A. It was a meeting for me to find something</p> <p>6 out in order to be able to deal with the</p> <p>7 potential consequences for the jurisdiction.</p> <p>8 Q. Have you ever before that meeting called</p> <p>9 in the Commissioner of Police and angrily</p> <p>10 criticised him in relation to an operational</p> <p>11 decision?</p> <p>12 A. Yes.</p> <p>13 Q. You have.</p> <p>14 A. Twice, I think.</p> <p>15 Q. So it is the third time you had ever done</p> <p>16 it.</p> <p>17 A. Yes.</p> <p>18 Q. Now, Mr McGrail took a note of this</p> <p>19 meeting, B75. He wrote an email to himself</p> <p>20 that day.</p> <p>21 A. Right, let us be very clear about the fact</p> <p>22 that he did not take a note in that meeting.</p> <p>23 He was standing up and speaking to me.</p> <p>24 Q. On 75, please, B75. (Pause). Sorry, 76.</p> <p>25 A. I don't have it here.</p> <p style="text-align: center;">Page 188</p>

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<p>1 Q. It would be on the screen. (Pause). 2 A little bit further. (Pause). So if you just 3 look there, this is at the top, the second line: 4 "I advised that the warrant had been signed 5 by a judge who was satisfied that this was the 6 likely method we had to resort to in order to 7 recover the material which could hold 8 evidence and all the grounds to deal with JL 9 had been consulted with the DPP." 10 Do you accept that that language, "all the 11 grounds to deal with JL had been consulted 12 with the DPP", could well have been what 13 Mr McGrail said to you which led to 14 a misunderstanding? 15 A. No. 16 Q. You say it is impossible that those were 17 the words he used? 18 A. I do not recall those words being the 19 words used. I recall the words being used 20 being he has advised that we should go by 21 way of search warrant. As I say, if there is 22 a recording of that meeting the sooner that 23 we all hear it the better. 24 Q. You can take it from me there is not one. 25 A. Well, you have not been told that there is</p> <p style="text-align: center;">Page 189</p>	<p>1 implausible? 2 A. Yes, of course. 3 Q. And did you not think: maybe I have just 4 got the wrong end of the stick here. Maybe 5 Mr McGrail in this angry exchange was just 6 saying something like the AG's chambers, or 7 whatever it was? 8 A. No, I didn't believe that. 9 Q. You saw just thought the 10 Commissioner -- 11 A. I thought Mr McGrail is sembling when 12 he was with me in order to mislead me. 13 That's the conclusion I came to once I 14 considered it. And indeed when I heard the 15 additional five minutes of the recording that 16 Mr McGrail carried out the following day 17 and I hear him sitting in the car, forgetting 18 that he himself was recording himself. And 19 here he has explained to Mr Richardson the 20 things that he said, I said and he said, etc, I 21 am reinforced in my view that my 22 recollection is correct and this is 23 a self-serving note made by Mr McGrail at 24 sometime thereafter. 25 Q. But Mr McGrail did not know by this</p> <p style="text-align: center;">Page 191</p>
<p>1 one. 2 Q. Mr McGrail knew at the time, he has 3 given evidence, that the DPP would not have 4 advised on the search warrant and the DPP 5 has given exactly the same evidence that he 6 just simply would not advise on operational 7 matters. Did you know that at the time, that 8 the DPP did not advise on operational 9 matters? 10 A. I knew at the time that these decisions 11 were for the RGP. That's why I was 12 surprised to be told that the DPP had advised 13 that they would go by way of search warrant. 14 As surprised as I had been a moment earlier 15 when the Commissioner had told me that the 16 Attorney General had advised that they go by 17 way of search warrant, which the Attorney 18 General in front of Mr McGrail quickly said 19 was not true and was not the case. 20 Q. But why, did you not think to yourself in 21 the cold reflection after the meeting: why 22 would Mr McGrail lie about what the 23 Attorney General had said to him while he 24 was standing there in front of the Attorney 25 General? Did you not think that was</p> <p style="text-align: center;">Page 190</p>	<p>1 stage that you had any concerns about him 2 lying to you, did he? This is on the day of 12 3 May. 4 A. Well, this is allegedly on the day. 5 Q. Well, it is emailed to himself and the 6 Inquiry has the emails. 7 A. I think he would have known. Just 8 correct me if I am wrong, if it is emailed on 9 the 12th, it is emailed late on the 12th. Is that 10 right? 11 Q. Yes, about 10 in the evening. 12 A. Yes and is it not the case that the 13 Attorney General was pursuing whether or 14 not Mr McGrail had lied to me that afternoon 15 and that that was a very live issue at that 16 time? 17 Q. He spoke to him -- 18 A. So I don't agree with you. 19 Q. -- on the 13th. 20 A. That is why I definitely don't agree with 21 you that by then Mr McGrail did not know 22 that I believed that he had lied. 23 Q. That is wrong. The Attorney General 24 was speaking to Mr McGrail on the 13th. 25 A. No, they had the meeting which has been</p> <p style="text-align: center;">Page 192</p>

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<p>1 recorded on the 13th. That does not mean 2 that they didn't also speak during the course 3 of the 12th. 4 Q. Well, you can take it from me there is 5 absolutely no evidence that they did. 6 THE CHAIRMAN: Taking it from you 7 rather sounds like you giving evidence, 8 which is not (inaudible). 9 MR WAGNER: No, fair enough. Did you 10 not think, well, why would Mr McGrail tell 11 me the DPP's advice on the warrant if the AG 12 or I can just simply ask the DPP and I will 13 find out that it is not true. Did you not think 14 is that not implausible as well, that the 15 Commissioner of Police would say that even 16 in a heated meeting? 17 A. Well, Mr Wagner, that doesn't hold any 18 water in the context of the phrase that you are 19 actually referring me to, which is that he told 20 me that the matter had been consulted with 21 the DPP and the whole theory behind your 22 question is that they did not have to and it 23 would be surprising for him to have 24 mentioned him. 25 Q. No, I am asking you what was said, not</p> <p style="text-align: center;">Page 193</p>	<p>1 my presence, that he misled me. And he did 2 not thereafter seek to undo the lie that he had 3 told me. Lies, sorry, lies that he had told me. 4 Q. Did this situation not happen in fact 5 because you had inappropriately called him 6 in for an angry confrontation in a matter 7 which you had no statutory or jurisdictional 8 ambit over? 9 A. But, you see, the whole premise of that 10 question is based on it being inappropriate 11 for me to talk with the Commissioner of 12 Police about a search warrant when in fact 13 the Police Commissioner is the man who has 14 himself come to see me about another search 15 warrant in respect of another barrister and he 16 has sent me the message about this search 17 warrant. So I don't accept your 18 characterisation of why this meeting comes 19 about or the fact that it was inappropriate, 20 given the potential jurisdictional 21 consequences of this particular search 22 warrant. 23 Q. Is it right that you did not write down 24 what you thought the Commissioner of 25 Police had said until four weeks later?</p> <p style="text-align: center;">Page 195</p>
<p>1 what that means. I was asking you is it 2 plausible that that was what was said to you 3 and when you wrote it down eventually you 4 had misremembered it. 5 A. And I am saying to you it is not what 6 happened. What happened, I remember as if 7 it were yesterday what happened and I will 8 always remember what Ian McGrail said on 9 that day because it was consequential. Now, 10 you heard Dr Britto say that he is somebody 11 who does not like confrontation. I know 12 Dr Britto since I was 12 years old and I fully 13 understand that that is exactly how he is. 14 None of the rest of us like confrontation. I 15 didn't want a confrontation with Ian McGrail. 16 I didn't want to have to use the powers that 17 are provided for in section 15 of the Police 18 Act to seek information about deaths at sea, 19 which is something that I should be receiving 20 anyway. These circumstances appertained 21 because of what happened on the 12th and 22 the way that your client dealt with me in my 23 office in a way that was in my view 24 intentionally designed to mislead or at the 25 very least, because he became so nervous in</p> <p style="text-align: center;">Page 194</p>	<p>1 A. It is very likely that I didn't until, with the 2 assistance of my counsel, I prepared the 3 response to the GPA letter. 4 Q. And that is at C4734, please. (Pause). 5 A. Four seven? 6 Q. C4 -- 7 A. Three four? 8 Q. In fact, you have already been shown it 9 and you have seen it, but you accept that that 10 is the first time, four weeks later, that you 11 wrote down what happened, with your 12 lawyer. 13 A. It's very likely, yes, but, you know, I 14 don't have to write things down to remember 15 them and sometimes when I write them down 16 they may not be the most accurate record. 17 My recollection, I know this is the accurate 18 record. 19 Q. Yes. If we can just go further down the 20 page. The next page. Sorry, further on. 21 Keep going, there. Sorry, it is the next 22 paragraph. Next page, sorry. I didn't put the 23 right reference in. And further down. 24 (Pause). Yes, keep going. And keep going. 25 (Pause). There. B, all the above, and just go</p> <p style="text-align: center;">Page 196</p>

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<p>1 down that paragraph: 2 "As in May, since this day, as the COP well 3 knows, there are a lot of reasons why I 4 further lost confidence in him by virtue of the 5 criminal investigation. I have not lost 6 confidence in him because he has obtained 7 a search warrant in circumstances which I 8 believe are inappropriate. There is the reason 9 the criminal investigation, the primary reason 10 is the COP has clearly lied to me. During the 11 meeting which I refer to above the COP 12 states to me in explicit terms in response to 13 my concerns about the propriety of the 14 warrant that he had obtained and executed 15 a search warrant against Mr Levy in reliance 16 on legal advice from the DPP. He confirmed 17 it was appropriate to seek such a warrant and 18 proceed in that way." 19 Do you accept that Mr McGrail will not have 20 told you that he obtained the warrant? 21 (Pause). 22 A. Yes, that is a characterisation of him as 23 the RGP. 24 Q. Yes, and do you accept that he would not 25 have told you that he executed a search</p> <p style="text-align: center;">Page 197</p>	<p>1 nos mintió a los dos", is that "he lied to us 2 both"? 3 A. That's very good, I didn't know you spoke 4 the language. 5 Q. Yes I have seen that text (inaudible). 6 A. That means that he has lied to us both. 7 Q. Yes, exactly. Mr Llamas says, "He 8 certainly gave us the impression the search 9 warrant decision was sanctioned by the 10 DPP." Why did you not text back to say: 11 Michael, he did not just give us the 12 impression, he stated to me in explicit terms 13 that he has obtained the search warrant 14 against Mr Levy in reliance of legal advice 15 from the DPP? 16 A. Because I didn't have to, because Michael 17 Llamas was there. 18 Q. "gave us the impression". Do you know 19 that Mr Llamas did not support, in his letter 20 to the GPA, that Mr McGrail had lied to you 21 in the meeting? 22 A. I can't recall the terms of Mr Llamas's 23 letter, that's his letter, and it's not Mr 24 Llamas's confidence in the Commissioner of 25 Police that's relevant in this case.</p> <p style="text-align: center;">Page 199</p>
<p>1 warrant? 2 A. It is personification in the letter, yes, 3 absolutely. 4 Q. So you accept that bit of the letter is 5 inaccurate. 6 A. No, I'm saying it is personification. 7 Q. And that second part: "In reliance on 8 legal advice from the DPP who confirmed it 9 was appropriate to seek such a warrant and 10 proceed in that way", that was the only time, 11 or you say that was the first time you had 12 written that down? 13 A. Yes, I didn't write it down though, as you 14 know. 15 Q. No. 16 A. It was written down by my lawyers. 17 Q. On instructions, yes. 18 A. Yes. 19 (14.30) 20 Q. So B1417. There. This is the mistake 21 that Mr Llamas makes, "Spoke with the DPP, 22 he's categorical that whilst he told the RGP 23 that an interview with JL would likely be 24 necessary he strongly advised against a 25 search warrant." You said, "Parece que (?)"</p> <p style="text-align: center;">Page 198</p>	<p>1 Q. But were not -- 2 A. Mr Llamas is the Attorney General; the 3 Police Act does not refer to the GPA having 4 to consult with the Attorney General in any 5 respect. 6 Q. Were you not all represented by the same 7 lawyer at that point? 8 A. We were. 9 Q. And were those letters not coordinated? 10 A. They were written by the same lawyer, I 11 don't think that they were coordinated. 12 Coordination implies that we were trying to 13 ensure that they said the same thing. We 14 weren't trying to do that; we were both trying 15 to reflect accurately (or all three of us, 16 because I think there was also the question of 17 the Governor at the time), all three of us were 18 trying to reflect accurately what we believed 19 we should reply to the scurrilous (if I may 20 call it that) letter which had come in from 21 Gomez & Co in the guise of being Mr 22 McGrail's representations. 23 Q. Is it not of concern to you that of the two 24 other people who were in the meeting apart 25 from you (Mr McGrail and Mr Llamas),</p> <p style="text-align: center;">Page 200</p>

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<p>1 neither of them at this stage seem to be 2 supporting what you so clearly remembered 3 on 5 June? 4 A. No, it is not a concern of mine. I think 5 that the Attorney General actually does share 6 my view that I was misled, and I am not 7 going to be concerned or (to use the other 8 word that you constantly try to persuade me 9 use) worried in that respect, because I have a 10 very clear recollection of what happened on 11 that day. I have a very clear recollection of 12 the things that Ian McGrail said, and as a 13 result I have a very clear recollection of the 14 fact that I was lied to not once but twice. 15 And the first lie was, if I may say so, the 16 most -- the most nonsensical thing to have 17 said, because the Attorney General was 18 actually in the room with us. 19 Q. Of course, it was nonsensical which 20 implies -- 21 A. And Michael Llamas himself said -- 22 Q. -- (inaudible) that you misunderstood. 23 A. No, because Michael Llamas himself said 24 (I would say got up, but we were all standing 25 up): that's not true, Ian. So he said it with the</p> <p style="text-align: center;">Page 201</p>	<p>1 Attorney General wasn't asking him 2 questions, I was. But that reference by the 3 Attorney General in the letter of 5 June is not 4 to the events of 12 May in my office. And 5 so, the failure for him to say that the CoP lied 6 to him is not a failure of support by the 7 Attorney General to my contention of what 8 happened on 12 May. 9 Q. Did you ask him -- 10 A. Your chronology is completely wrong in 11 that respect. 12 Q. Did you ask him to include that point in 13 his letter and he refused? 14 A. No, I didn't ask him to include anything 15 in his letter. He had discussions with lawyers 16 to put what he felt was appropriate in his 17 letter -- 18 Q. Yes. 19 A. -- I had discussions with lawyers to 20 discuss what was appropriate for me to put in 21 my letter. 22 Q. Yes. 23 A. I did not -- first of all, I did not ask him to 24 put it in, and second, I did not ask him and he 25 refused. So, you're wrong on both counts.</p> <p style="text-align: center;">Page 203</p>
<p>1 Attorney General in the room, and the 2 Attorney General had to say to him that it 3 was not true. 4 Q. But the Attorney General did not... Well, 5 I will show you. C4732. This is his letter to 6 the GPA on 5 June, same lawyers as you. 7 "Contrary to what the letter says", that is Mr 8 McGrail's letter, "I've never said the CoP lied 9 to me". I will ask you again: does it not 10 concern you that the other two people in the 11 meeting, at that relevant time were not saying 12 what you were saying? 13 A. No, and I'm -- I must tell you I think this 14 entirely disingenuous, with respect, because 15 the alleged dispute in respect of Mr Llamas 16 and Mr McGrail is not in the meeting of 12 17 May. So, when Mr Llamas is saying that he 18 does not say that Mr McGrail lied to him he 19 is talking about in the things that happened 20 before and after 12 May, not in the context of 21 12 May. So, I just will not accept that that is 22 related to the things that Ian McGrail said to 23 me on 12 May. And in any event, the 24 reference was to me, not to him. He didn't lie 25 to the Attorney General, he lied to me. The</p> <p style="text-align: center;">Page 202</p>	<p>1 Q. I was asking a question -- 2 A. Well -- 3 Q. -- I was not putting a proposition. 4 A. Well, in the event that you would believe 5 that the answer was going to be positive to 6 either of them, you are wrong. 7 Q. B1417, just to go back to those messages 8 please. "Spoken to the DPP, he's categorical 9 that whilst he told the RGP that an interview 10 with JL would likely be necessary he 11 strongly advised against a search warrant." I 12 think your evidence now is that that was later 13 corrected, and you think within -- I think you 14 said 24 to 48 hours? 15 A. I think so. 16 Q. You think so. So, by 14 May? 17 A. I think so. 18 Q. If we go to A256, please. Now you met 19 with the Governor, the Interim Governor, on 20 15 May, and this is what he says in paragraph 21 26.5. He says, "I clearly remember saying 22 something along the lines of 'now I've got 23 that off my chest," and you then told him 24 what your issues were. "The Chief Minister 25 then outlined his belief that Mr McGrail had</p> <p style="text-align: center;">Page 204</p>

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<p>1 made a serious error of judgement with 2 regard to the execution of a search warrant 3 against James Levy, gone against the advice 4 of the DPP and AG". Now, do you accept 5 that only you and the Attorney General 6 wrongly thought that he had gone against the 7 advice of the DPP at that stage? 8 A. No. 9 Q. So, who else and you? (?) 10 A. The DPP and Mr McGrail. 11 Q. No, no. The Attorney General has given 12 evidence that he misinterpreted -- 13 A. Yeah. 14 Q. -- what the DPP said. So, the DPP did 15 not know that at the time. Do you accept that 16 it was only you and the Attorney General 17 who were subject to that mistake? 18 A. No, no, let's be clear. That mistake I 19 think by then had been shared with others, 20 who had corrected it. 21 Q. Alright, so why did you tell the Governor 22 that the Commissioner had gone against the 23 advice of the DPP? 24 A. I told the Governor that I had been told 25 by the Commissioner the various things that</p> <p style="text-align: center;">Page 205</p>	<p>1 bottom of the page, "There can be little 2 surprise that, as we believe is the case, the 3 DPP advised the Commissioner against the 4 making of these applications." Now, I think 5 you have accepted that it was you who told 6 Hassans that? 7 A. Well no, I have accepted that I told 8 Hassans that -- 9 Q. Yes. 10 A. -- I am not accepting that I'm the only 11 person who might have told Hassans that. 12 Q. Alright. You have accepted you told 13 Hassans. 14 A. Yeah. I didn't -- 15 Q. (inaudible) 16 A. Sorry, if I can just pause you there. Just 17 a... I didn't tell Hassans, I told Mr Baglietto 18 -- 19 Q. Mr Levy. 20 A. -- probably James Levy... 21 Q. And Mr Smith on Main Street, did you 22 tell him as well? 23 A. No, Moshe Levy as well, it appears. And 24 I would have told Mr Smith and Mr Wagner 25 if I'd met him on Main Street, who would</p> <p style="text-align: center;">Page 207</p>
<p>1 he had told me, and the fact that, you know, 2 Michael had told me: strongly advised. But 3 then it turned out not just to be strongly 4 advised, in fact that the DPP had, I believe 5 the question was: not advised on the warrant. 6 And in fact, I think at one stage I was told 7 they knew not to ask me, because if they had 8 asked me, you know, my view might have 9 been slightly different. 10 Q. So, you are saying it is a complete 11 coincidence that the Governor makes exactly 12 the same mistake that the Attorney General 13 communicated to you -- 14 A. Yeah. 15 Q. -- on this day. It is just a coincidence, 16 and you had in fact corrected him of all the 17 relevant facts? 18 A. Yeah, I don't think it's exactly the same 19 language, so I don't think it's so great a 20 coincidence. Because if you look at the 21 language that you've taken me to, it's actually 22 different. So, I don't share your view as to it 23 being a coincidence. 24 Q. And, then if we go to B5419. This is the 25 Hassans letter that they sent on 15 May,</p> <p style="text-align: center;">Page 206</p>	<p>1 have been equally concerned, being a human 2 rights lawyer, what was happening. 3 Q. So, you shared what you thought was the 4 advice of the Director of Public Prosecutions 5 in an ongoing investigation with the lawyer 6 of the suspect? 7 A. No. 8 Q. Well, which bit of that did you not do? 9 A. I showed the absence of advice -- 10 Q. No -- 11 A. -- not the advice. 12 Q. Well, are you saying there again: it is just 13 a complete coincidence that -- 14 A. It is completely -- 15 Q. -- that the DPP advised (this language), 16 the DPP advised the Commissioner against 17 the making of these applications. 18 A. Yes. 19 Q. Are you saying that it is completely 20 coincidental -- 21 A. No. 22 Q. -- that you were the only one, with the 23 Attorney General, who was operating under 24 that mistake, and that same mistake made it 25 into the letter from the suspect's lawyers?</p> <p style="text-align: center;">Page 208</p>

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<p>1 A. No, I am not taking that point at all, Mr 2 Wagner. The point I'm taking is that I didn't 3 share the advice; I shared the absence of 4 advice, and that's completely different. One 5 thing is to say: look, the DPP has told me, 6 has told the Attorney General who has told 7 me, that there's a case of the Crown v Picardo 8 that establishes that you cannot obtain a 9 search warrant in these circumstances, and 10 it's a proposition that must be followed in 11 cases such as this. And it's quite another to 12 say: the DPP didn't advise. That's different. 13 Q. That is not what he says -- 14 A. That's different. 15 Q. -- he says, "advised the Commissioner 16 against the making of these applications." 17 A. Well, I mean, that's form of words: didn't 18 advise, advised against. It's not to share the 19 advice, it's to share the absence of advice, 20 and I think that is materially important and 21 it's relevant, because from the point of view 22 of widening the circle of privilege and 23 confidentiality -- 24 Q. Yes -- 25 A. -- it's quite one thing to go into the detail</p> <p style="text-align: center;">Page 209</p>	<p>1 look, we want to share with you some advice 2 we have had in a current investigation, this is 3 the outcome of the advice. You think it is 4 appropriate to go and share that with 5 anybody you want? 6 A. Well Mr Wagner, are you talking about 7 circumstances in which I would be advised 8 that I was being told is privileged, or a 9 conversation before I'm told? 10 Q. So, you are saying unless the Director of 11 Public Prosecutions or the police say to you: 12 please do not tell anyone, you would expect 13 that they are just telling you the outcome of 14 that advice for it to be shared with anybody? 15 A. Let's be very clear: you have made the 16 point repeatedly that (you or others, but it 17 may have been Counsel for the Inquiry) that 18 the prosecuting authority is the DPP, that the 19 investigating authority is the RGP. What is 20 implicit in that also is that the executive (and 21 I lead the executive) is different to those two. 22 The circles of privilege that appertain to them 23 are different; that is to say, when one shares 24 information with the other they are breaking 25 the circle of privilege. If you're -- if you</p> <p style="text-align: center;">Page 211</p>
<p>1 of something that you had been told and the 2 legal logic, and quite another to say that 3 advice has not been provided or this had been 4 against advice without going into the detail 5 of it. I never had the detail of it -- 6 Q. No -- 7 A. -- because it didn't exist. 8 Q. -- you had what you thought the outcome 9 of it was, which is that he'd advised against. 10 Is that fair? 11 A. So if you want to tell me that shared the 12 outcome of his advice -- 13 Q. Yes. 14 A. -- with Hassans, the answer is: I shared it 15 with Mr Baglietto, with -- 16 Q. Yes. 17 A. -- James Levy; very likely with Moshe 18 Levy, given what he says; with Mr Smith -- 19 Q. Alright. 20 A. -- and I would have shared it with Mr 21 Wagner if I'd seen you down Main Street. (?) 22 Q. So, the RGP senior command are in this 23 room now. Are you saying that if they come 24 to you for any reason -- I am not sure why 25 they would, but if they came to you and said:</p> <p style="text-align: center;">Page 210</p>	<p>1 form part of the -- of the OCPL, you keep 2 everything that's in there that's confidential; 3 if you form part of the police, you keep 4 everything that's in there confidential; if 5 you're in the cabinet, you keep the 6 deliberations of the cabinet confidential. If I 7 shared a deliberation of the cabinet with a 8 third party, I would be breaching the 9 confidence of the deliberations of the cabinet, 10 and I would then have to accept that that 11 person might share that information more 12 widely. If there are instances when 13 information has been shared with me by the 14 senior command of the RGP, including by 15 Ian McGrail when he was Commissioner of 16 Police, in respect of matters where they 17 needed cooperation from the Government or 18 the Government needed cooperation from 19 them, dealing with issues... Let me give you 20 an example which is obvious and comes to 21 my mind: the arrest of Grace 1 in Gibraltar's 22 waters. Of course, you are going to keep 23 those things confidential. But if something is 24 shared with me there should be absolutely no 25 expectation of privilege or confidentiality</p> <p style="text-align: center;">Page 212</p>

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<p>1 extended.</p> <p>2 Q. Would you, if you could have your time</p> <p>3 again, share that advice with the lawyers of</p> <p>4 the criminal suspect?</p> <p>5 A. Not just with the lawyers of Mr Levy, but</p> <p>6 also with Mr Smith and with Mr Wagner if I</p> <p>7 saw him down Main Street, because I</p> <p>8 believed that this was a gross abuse of power</p> <p>9 by the Royal Gibraltar Police and thought it</p> <p>10 was inappropriate, and as I've said before I</p> <p>11 was evangelising about that by anyb-- with</p> <p>12 anybody who talked to me about it, because</p> <p>13 this was vox populi. Everybody in Gibraltar</p> <p>14 was talking about this. Let me just make this</p> <p>15 point --</p> <p>16 Q. Nobody was talking about the advice</p> <p>17 (inaudible)</p> <p>18 A. Let's be very clear, let's be very clear: this</p> <p>19 is not London, and this is not an anonymous</p> <p>20 person that was subject to a police procedure.</p> <p>21 This is Gibraltar; this was Gibraltar's most</p> <p>22 high-profile lawyer, and he had been subject</p> <p>23 to this police procedure, and everyone was</p> <p>24 talking about it, me too. And one of the key</p> <p>25 things for me was that I had had confirmed to</p> <p style="text-align: center;">Page 213</p>	<p>1 confidence --</p> <p>2 Q. Yes.</p> <p>3 A. -- then it isn't in confidence.</p> <p>4 Q. Yes. I am going to put to you, Chief</p> <p>5 Minister, that as an experienced lawyer and a</p> <p>6 King's Counsel you should have known</p> <p>7 better.</p> <p>8 A. I put it to you, Mr Wagner, that it is not</p> <p>9 correct to suggest that I should not be free to</p> <p>10 share that information, given that I received</p> <p>11 it in a political position which did not extend</p> <p>12 to the circle of privilege or confidentiality</p> <p>13 which attaches to those conducting criminal</p> <p>14 proceedings, either in the Office of Criminal</p> <p>15 Prosecutions or in the Royal Gibraltar Police,</p> <p>16 and that therefore I breached no privilege and</p> <p>17 I breached no confidence. And that is my</p> <p>18 view as a King's Counsel.</p> <p>19 Q. Yes, and that remains your view now?</p> <p>20 A. I have just told you it is my view as a</p> <p>21 King's Counsel.</p> <p>22 Q. The Attorney General, during the course</p> <p>23 of this meeting on 13 May, referred to item</p> <p>24 nine on this letter that was sent to Mr Levy.</p> <p>25 You already discussed it with Counsel to the</p> <p style="text-align: center;">Page 215</p>
<p>1 me from outside the circle of privilege in the</p> <p>2 OCPL, and outside the circle of privilege in</p> <p>3 the RGP, that that warrant had been obtained,</p> <p>4 with all the different degrees of strong advice</p> <p>5 against from the DPP, no advice from the</p> <p>6 DPP, as I was told at different times. And the</p> <p>7 thing for me was that I had been lied to by</p> <p>8 the Commissioner of Police.</p> <p>9 Q. Well, and you were angry. Did you ask</p> <p>10 the Attorney General for permission to share</p> <p>11 the outcome of the advice with the lawyers of</p> <p>12 the criminal suspect?</p> <p>13 A. I don't believe I needed it, so I didn't seek</p> <p>14 it.</p> <p>15 Q. Did you ask the DPP for permission to</p> <p>16 share the advice with the suspect?</p> <p>17 A. As you know, I have spoken to the DPP</p> <p>18 only on a limited number of occasions and</p> <p>19 not in relation to this matter.</p> <p>20 Q. Yes. So, you did not know whether the</p> <p>21 outcome of that advice had been provided to</p> <p>22 you privately within confidentiality or not, at</p> <p>23 the time.</p> <p>24 A. Let's be very clear, you assume</p> <p>25 something is not expressly stated to be in</p> <p style="text-align: center;">Page 214</p>	<p>1 Inquiry, it was about messages between you</p> <p>2 and the Chief Minister, do you recall that.</p> <p>3 A. I am the Chief Minister.</p> <p>4 Q. Sorry, between you (as in, Mr Levy) and</p> <p>5 the Chief Minister. Do you recall the letter?</p> <p>6 A. Between me and Mr Levy, yeah.</p> <p>7 Q. You and Mr Levy. And, are you aware</p> <p>8 that that text was changed at some point?</p> <p>9 A. I am aware as a result of these</p> <p>10 proceedings, and I was not otherwise aware.</p> <p>11 Q. Yes. You were asked yesterday whether</p> <p>12 that was on the basis of discussions you had</p> <p>13 with the Attorney General, and I am not sure</p> <p>14 you got around to answering the question.</p> <p>15 Was it on the basis of discussions --</p> <p>16 A. I genuinely... I mean --</p> <p>17 Q. -- you had had with the Attorney</p> <p>18 General?</p> <p>19 A. I can't recall. I mean --</p> <p>20 Q. You cannot recall.</p> <p>21 A. -- if there is a... yeah.</p> <p>22 Q. Might have been?</p> <p>23 A. It might have been, but this was not an</p> <p>24 issue that was live for me, for my</p> <p>25 recollection to be as vivid as it is of the</p> <p style="text-align: center;">Page 216</p>

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<p>1 meeting --</p> <p>2 Q. Yes.</p> <p>3 A. -- in my office.</p> <p>4 Q. The Governor. Is it correct to say that</p> <p>5 you contacted the Governor about Mr</p> <p>6 McGrail, he did not contact you.</p> <p>7 A. I think the record -- the documentary</p> <p>8 record will show which of those is correct.</p> <p>9 Q. Had the Interim Governor expressed any</p> <p>10 views to you before 12 May that he had lost</p> <p>11 confidence in Mr McGrail?</p> <p>12 A. I cannot recall whether we've had any</p> <p>13 conversations relating to the issues at sea at</p> <p>14 that stage, I think it all happened afterwards.</p> <p>15 Q. Yes. So, he had not expressed any view</p> <p>16 to you to the effect that he was losing</p> <p>17 confidence, or had lost confidence, in Mr</p> <p>18 McGrail?</p> <p>19 A. I don't believe any of that happened</p> <p>20 before the 14th -- you know, 12th, 13th, 14th.</p> <p>21 Those were the key dates.</p> <p>22 Q. Yes. But it was you that approached him?</p> <p>23 A. I believe that's what the documentary</p> <p>24 record shows.</p> <p>25 Q. Were you transparent with the Gibraltar</p> <p style="text-align: center;">Page 217</p>	<p>1 A. -- this is May 2020 --</p> <p>2 Q. Yes. Did you tell him about your --</p> <p>3 A. -- I had resolved the issue of the</p> <p>4 investment in Astelon / 36 North in October</p> <p>5 2018, which was a full year and a half before.</p> <p>6 Q. But you still had a stake in 36 North in</p> <p>7 May 2020, didn't you?</p> <p>8 A. Well, I don't know when Astelon was</p> <p>9 liquidated --</p> <p>10 Q. Alright.</p> <p>11 A. -- it may have been after that.</p> <p>12 Q. Okay.</p> <p>13 A. It has been liquidated.</p> <p>14 Q. So, you did not check?</p> <p>15 A. I tell you what: I knew by then, and I'd</p> <p>16 known for 18 months, that that was worth</p> <p>17 nothing or less, because I'd made the decision</p> <p>18 that the contract should stay with Bland</p> <p>19 Limited.</p> <p>20 Q. Yes, but you still had a stake.</p> <p>21 A. I still was very clear in the fact that the</p> <p>22 investment in Astelon such as it may be,</p> <p>23 which I believe you reminded me was 2.94</p> <p>24 percent, had been rendered almost worthless</p> <p>25 by the decision I had made 18 months before.</p> <p style="text-align: center;">Page 219</p>
<p>1 Police Authority about your involvement</p> <p>2 with Op Delhi?</p> <p>3 A. I'm sorry, did you say -- what?</p> <p>4 Q. Were you transparent with the Gibraltar</p> <p>5 Police Authority about your invol--</p> <p>6 A. I'm sorry, the rustling has affected the --</p> <p>7 was I what?</p> <p>8 Q. Sorry, could someone shut the door?</p> <p>9 Would that be possible? The wind is</p> <p>10 blowing. A foul wind is blowing. (?)</p> <p>11 A. Will blow (?) if you shut the door, but</p> <p>12 what was the word you used?</p> <p>13 Q. Were you transparent --</p> <p>14 A. Oh, I see. Yes, I was.</p> <p>15 Q. -- with the Gibraltar Police Authority?</p> <p>16 A. I was transparent with Dr Britto, who's</p> <p>17 the person I met.</p> <p>18 Q. Yes. Did you tell him about your</p> <p>19 personal connections to the Op Delhi</p> <p>20 investigation?</p> <p>21 A. I believe I did tell him about the issues</p> <p>22 relating to Op Delhi, but it depends what you</p> <p>23 call my personal connections, because</p> <p>24 remember by then --</p> <p>25 Q. Did you tell him about your --</p> <p style="text-align: center;">Page 218</p>	<p>1 Q. Did you know at the time that Hassans</p> <p>2 still owned a third of the company</p> <p>3 beneficially?</p> <p>4 A. I very likely would have --</p> <p>5 Q. Yes.</p> <p>6 A. -- in the sense that I wasn't told that they</p> <p>7 no longer did, but I also knew that that was</p> <p>8 probably worthless by then given the</p> <p>9 decision I'd made 18 months earlier. So</p> <p>10 although on paper that might have been true,</p> <p>11 the value was then absolutely irrelevant.</p> <p>12 Q. Yes. But you did not tell Joey Britto</p> <p>13 about any of that, did you?</p> <p>14 A. I told Joey Britto about the things that</p> <p>15 had happened in my room on 12 May, and</p> <p>16 why Ian McGrail had lied to me.</p> <p>17 Q. Yes. You did not tell him about Op Delhi,</p> <p>18 about 36 North.</p> <p>19 A. I did tell him -- I did tell him about the</p> <p>20 background to that. I don't know the detail to</p> <p>21 which I told him.</p> <p>22 Q. Well, he does not recall being told. I</p> <p>23 want to go to C4747, please. This is the</p> <p>24 letter you sent to the GPA on 5 June. You</p> <p>25 were accused by Mr McGrail in his lawyer's</p> <p style="text-align: center;">Page 220</p>

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<p>1 letter of the 29th of having personal 2 connections to the investigation. 3 A. I don't have C4747, is that -- 4 Q. C4747 -- 5 A. There it is. (?) 6 Q. -- it's on the screen, it's the -- 7 A. Yeah. 8 Q. -- it's the letter of 5 June. So, he had used 9 the expression "personal connection with the 10 outcome of the investigation". You say in 11 that letter, "That personal connection is 12 presumably the fact that Mr James Levy, 13 whose conduct is apparently under 14 investigation, is the senior partner of 15 Hassans, a law firm of which I am also on a 16 partner, although presently on sabbatical." 17 Was it not quite the whole truth just to 18 say: my personal connection is about James 19 Levy being a partner of Hassans? Rather 20 than going into the details about your other 21 personal connections to 36 North? 22 A. No. Because those have been resolved 23 already, in the circumstance that I've already 24 repeatedly explained to you in the past 25 answers to your two questions.</p> <p style="text-align: center;">Page 221</p>	<p>1 questions rather than having to sit down and 2 write it all longhand. 3 Q. You said in this letter that your principle 4 reason for losing confidence was what you 5 describe as "the two lies". 6 A. Not just in this letter. 7 Q. Yes. But was it not the case that it was 8 also the fact that the warrants were executed 9 (or attempted to be executed) against your 10 friend James Levy, which was central to the 11 loss of confidence in Mr McGrail? 12 A. No. 13 Q. No, it was not. Okay, so that is -- 14 A. It wasn't. It was very clearly for me an 15 issue -- 16 Q. Yes. 17 A. -- of -- confidence in Ian McGrail would 18 have nothing to do with James Levy. 19 Confidence in Ian McGrail had to do with 20 Ian McGrail, and his ability to tell me the 21 truth rather than something that was not 22 truth. The uncomfortable truth. Public 23 servants have to tell uncomfortable truths to 24 elected officials. I would have had no 25 difficulty with Ian McGrail telling me an</p> <p style="text-align: center;">Page 223</p>
<p>1 Q. But they were still important in the 2 investigation, were they not? You had to 3 give a statement later about your text 4 messages to the founders. 5 A. Not because of my ownership of 2.4 -- 6 .94 percent in Astelon, but because -- 7 Q. But you do not mention your connection 8 to the setting up of 36 North in that 9 paragraph, do you? 10 A. No, I mean I (?)... Mr Wagner, do you 11 want to let me answer your questions or not? 12 Q. Please go ahead. 13 A. Right, because the reference you made to 14 the statement I had to give to the police was 15 not because of my ownership of 2.94 percent 16 of Astelon, it was because of the 17 communications with them, which did not 18 arise because of my ownership of Astelon. It 19 arose because I had been the pivot for 20 communication with John Perez in 21 Government from the time that NCIS had 22 been created and senior exchanges had to be 23 had. That's why they wanted my 24 information, and they kindly allowed me to 25 prepare the statement by way of answers to</p> <p style="text-align: center;">Page 222</p>	<p>1 uncomfortable truth about James Levy if 2 that's what he felt he had to do. My loss of 3 confidence was about the fact that he told me 4 something which was an untruth. The fact 5 that it was James Levy or anybody else was, 6 to that extent, neither here nor there. Of 7 course the James Levy issue was relevant to 8 the jurisdictional concern that I had, but it 9 wasn't relevant to my loss of confidence in 10 Ian McGrail. You might have told me in that 11 context, if you'll permit me, that I should 12 have lost confidence in Paul Richardson, not 13 in Ian McGrail, who was the person who says 14 that he believes that James Levy might have 15 destroyed evidence if we hadn't gone by way 16 of search warrant. But I didn't lose 17 confidence in Paul Richardson; indeed, when 18 things have been said about Paul Richardson 19 I have described them as fanciful, because I 20 don't think that his credibility has in any way 21 been negatively affected. For me, it's only 22 Ian McGrail's credibility that is completely 23 destroyed by the way that he misled me on 24 12 May. 25 Q. C4767, please. Oh sorry, excuse me,</p> <p style="text-align: center;">Page 224</p>

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<p>1 A199, paragraph 68. This is your first 2 statement to the Inquiry. "After this 3 exchange, I met with the Governor. I am not 4 able to recall that meeting in detail, but 5 subsequent WhatsApp and email exchanges 6 have assisted me to reconstruct the 7 discussion and events that followed. I do 8 specifically recall, however, that I explained 9 to the Governor, Nick Pyle, the issues of the 10 execution of the search warrant in respect of 11 Mr Levy and my views in respect thereof, 12 which was central to my loss of confidence 13 in Mr McGrail and, in fact, is what I was 14 referring to in the first of the WhatsApps I 15 have extracted, when I say: "...I will alert to a 16 particular matter when we meet..." Are you 17 not saying exactly the opposite from what 18 you have told the Chairman: that in fact -- 19 A. No. 20 Q. -- you told Mr McGrail "the issues of the 21 execution of the search warrant in respect of 22 Mr Levy and my views in respect thereof" 23 were "central to my loss of confidence in Mr 24 McGrail"? 25 A. No, I'm not saying the opposite, I'm</p> <p style="text-align: center;">Page 225</p>	<p>1 said; I challenge it, and say that you are 2 completely wrong. 3 Q. Yes. And is that not the reason why 4 conflict of interest policies exist in the first 5 place: to avoid the situation when a minister 6 is so personally and emotionally impacted by 7 an event, because it relates to them 8 personally, that they cannot disentangle their 9 motivations in deciding what to do next? Is 10 that not the reason why -- 11 A. No, let me tell you -- 12 Q. -- those policies exist? 13 A. I am not going to give you a dissertation 14 on the existence of conflict of interest -- 15 Q. No, please do not. 16 A. -- but let me tell you very clearly that my 17 views in relation to James Levy as a friend 18 and as a mentor, even in the heat of this 19 moment, were subsidiary -- subsidiary -- to 20 my concerns about James Levy as a rain- 21 maker and the jurisdictional challenge that 22 Gibraltar could face as a result of him having 23 been served with a search warrant. So in my 24 view, Mr Wagner, it is totally unfair, not to 25 say wrong and untrue, to suggest that my</p> <p style="text-align: center;">Page 227</p>
<p>1 saying exactly what I've told you. "the issues 2 of the execution of the search warrant", in 3 other words the things that I had been told 4 about the execution of that search warrant: 5 the fact that they had been advised by the 6 DPP -- first the Attorney General, then the 7 DPP, to proceed by way of search warrant in 8 respect of a senior member of the Bar like 9 James Levy. So, the lie that I had been told. 10 So, exactly as I have said in evidence to this 11 tribunal a moment ago and contrary to the 12 inference set out in your question. 13 Q. Is not the truth, Chief Minister, that you 14 could not distinguish in your own mind 15 between your highly emotional response to 16 the search warrant and your belief that Mr 17 McGrail had lied to you? 18 A. No, that is not the truth. That is a 19 mischaracterisation of the reality that has 20 appertained from the moment that on 12 21 May, in my office, the office of the highest 22 elected politician in this land, the 23 Commissioner of Police decided to go down 24 the road of untruth rather than the road of 25 truth. So, I do not accept what you have</p> <p style="text-align: center;">Page 226</p>	<p>1 emotions here were motivated through 2 friendship and mentorship, only or 3 principally. And in fact, this issue for me 4 very quickly on 12 May became an issue in 5 relation to Ian McGrail about the credibility 6 of Ian McGrail and therefore the confidence I 7 could no longer have in him. And that was 8 not related to my relationship of friendship, 9 trust and mentorship with James Levy. I 10 have expressed it on many occasions, and 11 you are free of course (subject to Mr 12 Chairman's views) to ask me in as many 13 different ways as you like, but you are going 14 to get the same answer from me every time, 15 because I am going to tell you the truth every 16 time. 17 Q. And just picking up on telling the truth, 18 when you found out (some time in the first 19 few days after the Attorney General sent you 20 that messaged about "strongly advised") that 21 it was incorrect. By that time you had told 22 the Governor and told Hassans that that was 23 the reason for your loss of confidence, had 24 you not? 25 A. I've already told you that I believe that by</p> <p style="text-align: center;">Page 228</p>

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<p>1 the time I was telling the Governor and 2 Hassans the Attorney General may have 3 corrected that, and I was giving them my 4 version of that, which was not the "strongly 5 advised" version. 6 Q. Okay, well allow me to present the 7 evidence -- sorry, I will leave that aside. Did 8 you, once you realised the mistake, also 9 realise you had set a ball rolling which could 10 not be brought back? That you had told 11 Lewis Baglietto and you had told the Interim 12 Governor that the DPP had advised against 13 the warrant. Did you then try and save that 14 by coming up with a different reason why 15 you were saying and claiming that the 16 Commissioner had lied to you, which is that 17 he had said in clear terms: I took advice, we 18 were acting on advice from the DPP. Is that 19 what happened? Is that why you do not set it 20 out on 5 June? 21 A. That's not what happened, and that's not 22 what I did. 23 Q. You were keen for matters to proceed 24 quickly on the GPA process, is that correct? 25 A. For the reasons that you've seen in the</p> <p style="text-align: center;">Page 229</p>	<p>1 A. Well, no, it's not. Hang on, the word is 2 "suggest." 3 Q. Yes, no, no, I understand what the word 4 is but he --- his evidence was that he was 5 talking to a lawyer, was taking it as advice. 6 A. I didn't hear his evidence so you will 7 excuse me for not wanting to take your word 8 for what his evidence was or meant. I can 9 look at it in the transcript. 10 Q. Fine, we will do that later --- you can do 11 that later. Now, 2103, that is on 21 May, if 12 we go to A205, paragraph 81, this is your 13 statement, "The final, signed, version of the 14 section 15 request to the RGP for a factual 15 report was sent to Mr McGrail at 20:58 hrs 16 on 21 May 2020," so do you accept that that 17 is three minutes before you proposed to Joey 18 Britto that Mr McGrail have a seven day 19 period to respond to his letter? 20 A. No, I accept it is whatever it is after I 21 suggest to Mr Britto that he should have 22 seven days. 23 Q. Three minutes? 24 A. Three minutes after I suggested. 25 Q. How long were you giving Mr McGrail</p> <p style="text-align: center;">Page 231</p>
<p>1 exchanges between me and Nick Pyle. 2 Q. B1441. These are text messages between 3 you and the Governor -- the Interim 4 Governor, sorry. The one at 13.59... further 5 down, on the 18th. 6 A. Yeah. 7 Q. "Yes re both. We cannot allow ourselves 8 to be at daggers-drawn for too long, that 9 would be institutionally bad for Gibraltar and 10 the rule of law. I will ensure in what I 11 prepare for Joey that I propose a timetable 48 12 hour, or seven days to provide reasons." The 13 Governor, if you just go below, says, "48 14 hours would not be unreasonable." You then 15 advise, if you go to B1437, this is a text 16 between you and Mr Britto, halfway down 17 the page. 21 May, 9.03, you advise seven 18 days, can you see that? 19 A. Yeah. I advised (?) -- 20 Q. You suggest, "I would suggest that you 21 provide seven days", at the end. 22 A. Yeah. But it says "suggest", not advise. 23 Q. He took it as advice, but you say it was 24 not advice. 25 (15.00)</p> <p style="text-align: center;">Page 230</p>	<p>1 to respond to the section 15? 2 A. Seven days. 3 Q. So at pretty much the same moment you 4 provided him with a complex section 15 5 report, the first time you had ever done it, 6 with a seven day response time and --- 7 A. The first time it's ever been done. 8 Q. The first time it has ever been done and at 9 the same moment you were providing him 10 with --- you were suggesting to Mr Britto 11 that he be given seven days to respond to the 12 GPA letter. Is that right? 13 A. Instead of 48 hours. 14 Q. Yes. 15 A. Yes, and probably I was having to 16 produce a myriad of other things whilst I was 17 doing this as well. I mean, we were all under 18 a lot of pressure at the time and are still 19 today. 20 Q. No doubt. 21 A. Having to do a lot of things at the same 22 time though it is not in the context of a 23 Commissioner of Police something that one 24 is asking an individual to do because in the 25 context of Mr McGrail and the section 15</p> <p style="text-align: center;">Page 232</p>

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<p>1 request, he would have the whole 2 organisation available to provide the 3 information. Indeed what you saw was 4 produced was not produced by Mr McGrail, 5 it was produced under the direction of Mr 6 McGrail but it was produced I believe 7 principally by Mr Ullger and by Mr Yeats. 8 Q. Did you provide the same deadline in the 9 suggestion you made to Mr Britto and the 10 section 15 request because you knew that it 11 would put Mr McGrail under immense 12 pressure? 13 A. No, that was not for one moment any of 14 the considerations in my mind. 15 Q. So you did not consider whether it would 16 put him under immense pressure? 17 A. No, I didn't because, first of all, it was not 18 up to me --- 19 Q. So all good? 20 A. Sorry? 21 Q. Sorry, please go on. 22 A. What did you say, "All good"? 23 Q. Did you just think it was all good? 24 A. No, no, the reason that I didn't have that 25 as a consideration because of the level at</p> <p style="text-align: center;">Page 233</p>	<p>1 about what the nolle prosequi would mean in 2 political terms and in fact I have been proved 3 right because in many instances people have 4 made mischief with those nolle to suggest 5 that they have somehow been entered in a 6 way that is of assistance to me when (a) they 7 are not and everyone who has been properly 8 briefed understands that they are not 9 Q. You are saying --- I did not catch the very 10 beginning of what you said but you say you 11 did not have any discussions at all with the 12 Attorney General about the nolle prosequi 13 until he briefed you at the same time as he 14 briefed everybody else? 15 A. Yes, I mean, the nolle comes into this 16 very late in the day. Ian McGrail is long 17 retired now --- 18 Q. I am running out of time, sorry, can you 19 answer the question; did you have any 20 discussions at all with the Attorney General 21 about the nolle prosequi until he briefed you 22 at the same time as he briefed everybody 23 else? 24 A. I do not believe I had any discussions 25 with the Attorney General about the nolle</p> <p style="text-align: center;">Page 235</p>
<p>1 which Mr McGrail, the Governor, the 2 Attorney General the DPP, I and others were 3 having to operate, which is not dissimilar to 4 how perhaps individuals in practice at the 5 Bar have to operate, is that you have to deal 6 with a very enlarged number of things at the 7 same time, so the fact that he would have to 8 cause his team to produce the section 15 9 report was not an issue that should in any 10 way divert us from what might have been the 11 appropriate timetable that a Governor and a 12 Chief Minister might decide is the 13 appropriate timetable for us to suggest - not 14 advise, recommend or otherwise - to the 15 GPA they might wish to consider but the 16 decision as to how long they allow him was 17 not a matter for us, it was a matter for the 18 GPA. So I hope that puts your "all good" 19 comment into context. 20 Q. Did you have any discussion with the 21 Attorney General at any time about the 22 possibility of a nolle prosequi being entered 23 in the Op Delhi prosecutions? 24 A. No, he briefed me at the same time as he 25 briefed others and I had very grave concerns</p> <p style="text-align: center;">Page 234</p>	<p>1 prosequi at any time until he briefed me 2 about the subject later on. There may have 3 been mention of these things because I 4 believe that Ian McGrail was mentioning 5 nolle prosequi at the time of the meeting of 6 13 May and that may have meant that those 7 words are used in discussions but not 8 otherwise. 9 Q. I think what you are saying is that you 10 may have had discussions with the Attorney 11 General about the nolle prosequi? 12 A. No, that is not what I have said. I have 13 given a very full answer, Mr Wagner, and I 14 have told you that I did not believe that I 15 have had such discussions with the Attorney 16 General about the nolle prosequi. The nolle 17 prosequi is the one that was entered but I told 18 you that I seem to recall that in the meetings 19 on 13 or 14 May, Ian McGrail was 20 mentioning the words nolle prosequi and, 21 therefore, they may have crept into 22 exchanges between us in that context but not 23 because it was discussed with me, I had 24 absolutely no involvement, no discussion 25 whatsoever about the nolle prosequi. I think</p> <p style="text-align: center;">Page 236</p>

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<p>1 the nolle prosequis --- I say them in the plural</p> <p>2 because I think there were three of them,</p> <p>3 have been politically disadvantageous to me</p> <p>4 because people have believed that they have</p> <p>5 been designed to be politically advantageous</p> <p>6 to me and so, therefore, I would refer you to</p> <p>7 the full extent of my answer rather than your</p> <p>8 attempt to paraphrase it in one word.</p> <p>9 Q. Any text messages with the Attorney</p> <p>10 General about a nolle prosequi?</p> <p>11 A. If you can point me to them, then they are</p> <p>12 there.</p> <p>13 Q. I am asking you if you recall any?</p> <p>14 A. You are asking me whether I can recall</p> <p>15 all of my text messages with the Attorney</p> <p>16 General. If you distil the words "nolle</p> <p>17 prosequi" from them ---</p> <p>18 Q. Just any about the subject, do you recall</p> <p>19 any about the subject?</p> <p>20 A. All of my text messages are before the</p> <p>21 tribunal and I am not going to even pretend</p> <p>22 for one moment to have a photographic</p> <p>23 memory or to be able to sift through all of</p> <p>24 them to point you to any that might say the</p> <p>25 words nolle prosequi. As it is all digital, we</p> <p style="text-align: center;">Page 237</p>	<p>1 Q. It was a very long answer but are you ----</p> <p>2 A. This is a very complex matter, Mr</p> <p>3 Wagner.</p> <p>4 Q. Are you being evasive ----</p> <p>5 A. Not at all.</p> <p>6 Q. -- in not answering that question?</p> <p>7 A. I am being so particular --- I am being so</p> <p>8 particular that I think it is impossible for</p> <p>9 anybody to think I am being evasive. I have</p> <p>10 given all of my WhatsApps with the Attorney</p> <p>11 General so, therefore, if there is any</p> <p>12 reference in any of those WhatsApps to the</p> <p>13 words "nolle prosequi" either at the time of</p> <p>14 the nolle prosequi in the case of Delhi or at</p> <p>15 the time in May 2020 when Mr McGrail</p> <p>16 started to use the language of nolle prosequi,</p> <p>17 then it is there and if it is there, that is an</p> <p>18 answer but what you are asking me to do is</p> <p>19 simply a mental exercise and I do not think it</p> <p>20 is helpful for the Inquiry in trying to</p> <p>21 determine the facts that I should do that. The</p> <p>22 Inquiry has the WhatsApps, it can see that for</p> <p>23 itself. This should not be an adversarial</p> <p>24 process, it is an inquisitorial process.</p> <p>25 Q. The Inquiry has 129 pages of WhatsApp -</p> <p style="text-align: center;">Page 239</p>
<p>1 can probably all search and see whether I</p> <p>2 have exchanged those discussion and used</p> <p>3 that word.</p> <p>4 Q. Do you recall sending or receiving any</p> <p>5 text messages about the nolle prosequi with</p> <p>6 the Attorney General?</p> <p>7 A. I refer you to the answer I have just given</p> <p>8 you.</p> <p>9 Q. So you are not answering the question</p> <p>10 whether you recall that or not?</p> <p>11 A. No, I am answering the question by</p> <p>12 telling you that I could not do now the mental</p> <p>13 exercise of going through all of my</p> <p>14 WhatsApps with the Attorney General in my</p> <p>15 head to see whether I had used those words at</p> <p>16 any time in the exchanges and whether I have</p> <p>17 at the time that the nolle prosequis were</p> <p>18 entered or at the time around May 2020 when</p> <p>19 Ian McGrail in meetings with the Attorney</p> <p>20 General started to mention the words nolle</p> <p>21 prosequi and the Attorney General might</p> <p>22 have referred me to that. That is what I am</p> <p>23 saying to you. I think it is a very full answer</p> <p>24 and it is undeserving of a suggestion that I</p> <p>25 am not answering.</p> <p style="text-align: center;">Page 238</p>	<p>1 -- sorry, let us leave that. I want to get on to</p> <p>2 the employment scheme, if I can put it like</p> <p>3 that. Can I show you C6933 please. This is</p> <p>4 a witness statement by Michael Crome who</p> <p>5 describes the scheme that was set up to deal</p> <p>6 with alleged whistleblowers.</p> <p>7 A. What you call the scheme, yes.</p> <p>8 Q. "On 22 January I received an email from</p> <p>9 the GPF chairman in a statement which was</p> <p>10 made --- allegations towards the former</p> <p>11 Commissioner of Police. The email was</p> <p>12 then forwarded directly to the Chief</p> <p>13 Minister." Pausing there, how was it</p> <p>14 appropriate for you to --- as a core participant</p> <p>15 in this Inquiry, to be receiving any emails</p> <p>16 with potential statements criticising Mr</p> <p>17 McGrail?</p> <p>18 A. Well, are you suggesting I should have</p> <p>19 put up a barrier in my inbox?</p> <p>20 Q. Correct?</p> <p>21 A. How? How does that happen? How do</p> <p>22 you do that? I assume ----</p> <p>23 Q. If you had said to Mr Crome, "I don't</p> <p>24 want to receive any critical statements</p> <p>25 against Mr McGrail, because I don't want to</p> <p style="text-align: center;">Page 240</p>

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<p>1 be seen to be potentially procuring or 2 influencing or in any way changing the 3 direction of the proposed witness 4 statements," you could have said that? 5 A. I don't accept that I have been or can be 6 said to have been doing that. 7 Q. No. When you ---- 8 A. And so look at what I say, refer it to the 9 Inquiry. 10 Q. Yes, so if we go further down ---- 11 A. Which I think is the entirely appropriate 12 thing to do. 13 Q. You then --- there was a system set up 14 whereby the ---- 15 A. Which paragraph are you taking me to? 16 Q. As a consequence, the Chief Minister --- 17 Mr Crome then explained the assurances that 18 the Government would afford under the 19 Employment Act 2012, you accept that there 20 is absolutely no mention at all in the 21 Employment Act of giving people alternative 22 employment? 23 A. Only if you accept that it does not have to 24 be in the Employment Act for it to be 25 relevant and helpful.</p> <p style="text-align: center;">Page 241</p>	<p>1 supportive of Mr McGrail and was offered 2 protection? 3 A. I don't know. 4 Q. But you signed all the agreements, do you 5 remember anybody coming forward saying, 6 "I want to support Ian McGrail"? 7 A. I wasn't told the evidence that they were 8 giving was A, B or C against Ian McGrail. 9 Q. So you had no idea ---- 10 A. I was told that there was a potential 11 detriment if they didn't get the --- if they 12 didn't get the protection. 13 Q. You had no interest whether it was 14 negative or positive? 15 A. Absolutely not. 16 Q. No, and you did not ---- 17 A. The call for evidence for the Inquiry gave 18 rise to a lot of people who had gripes against 19 Ian McGrail potentially wanting to bring 20 those forward. 21 Q. Do you accept, given the credibility of 22 Mr McGrail is at issue in this Inquiry, that it 23 would assist you potentially if someone came 24 forward with negative evidence about Mr 25 McGrail?</p> <p style="text-align: center;">Page 243</p>
<p>1 Q. In those --- there is then a meeting in this 2 case between Maurice Morello, Lief 3 Simpson, "At this meeting I explained that if 4 she wished to volunteer a statement to the 5 Inquiry into the former Commissioner Ian 6 McGrail, then the Government would afford 7 her full protection including a transfer to 8 another Government entity if her position 9 within the RGP became untenable." Did you 10 approve that arrangement? 11 A. I approved not just this arrangement, I 12 approved the general tenor of these 13 arrangements and indeed I brought the 14 whistleblowing legislation to Parliament 15 because we thought it was necessary to 16 provide these types of protections in these 17 and other cases and these are not the only 18 cases where they would have been provided. 19 Q. But the whistleblower ---- 20 A. And indeed if a whistleblower had come 21 forward who had information to put before 22 this tribunal which was favourable to Ian 23 McGrail they would also have been afforded 24 the protection. 25 Q. Did anybody come forward who was</p> <p style="text-align: center;">Page 242</p>	<p>1 A. Not necessarily. I think that those of us 2 who are trained in the law know that there 3 are different issues of credibility affecting 4 different moments and, therefore, the issue 5 that relates to me and the issue --- the one 6 that seriously concerned me, which was the 7 12 May, the issue of the maritime incident 8 and the failure to provide me with timely 9 information on 14 May, et cetera, would be 10 completely different to the sorts of issues that 11 might arise in the context of the organisation. 12 Q. And so you trusted again yourself to be 13 able to separate out your personal interest in 14 certain evidence being given to this Inquiry 15 and your interest and Gibraltar's interests? 16 A. I am sorry, Mr Wagner, I don't believe 17 that I have any interest in the information 18 being given to this Inquiry in any particular 19 way, shape or form. 20 Q. Okay. 21 A. The interest that I have in this Inquiry is 22 that it be able to obtain all of the facts; 23 whether they are favourable or unfavourable 24 is already a characterisation that I don't 25 recognise because what we are trying to do is</p> <p style="text-align: center;">Page 244</p>

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<p>1 get the facts. I am not trying to determine --- 2 I am not trying to determine whether 3 anything is favourable. It is up to the 4 Chairman to decide that which he thinks is 5 relevant and what consequence it may have 6 in respect of his views of what happened in 7 May, June 2020. This is not a trial. There 8 are no parties to it in the traditional 9 adversarial way. 10 Q. Sure, so you did not enthusiastically 11 receive any negative evidence against Mr 12 McGrail? 13 A. No, far from it. 14 Q. Can we have the new email up, please. 15 This is an email, if we can go from the 16 bottom, that was sent to the chair of the 17 Gibraltar Police Federation ---- 18 A. This is not a new email. This is the email 19 that was before the magistrates' court during 20 the hearing of the --- 21 Q. I am sorry, it was my shorthand, it is 22 newly with the Inquiry. 23 A. Okay. 24 Q. This is the person who alleged sexual 25 assault against Mr McGrail that went to trial</p> <p style="text-align: center;">Page 245</p>	<p>1 would be expressed in a completely different 2 way. There is no enthusiasm whatsoever in 3 my remarks there. 4 Q. Was it not totally inappropriate for you to 5 be anywhere near, within 100 miles you 6 might say, of witnesses, potential witnesses 7 to the Inquiry who would give critical 8 evidence against Mr McGrail? 9 A. Every witness that wants to give evidence 10 to this Inquiry has been told in a call for 11 evidence that they should come forward. 12 Some of them have had concerns that they 13 would suffer detriment if they did. That is 14 why some of them have come through that 15 system which we established in writing to 16 ensure that it was objective and what I am 17 saying in that message is what I think is 18 absolutely right, which is that the information 19 must be laid before the Inquiry and the 20 Commissioner to determine whether it's 21 relevant or not. That is the view that I think 22 is the correct view and then the 23 Commissioner can hear submissions from 24 counsel for all sides about whether or not 25 those issues are relevant to the terms of</p> <p style="text-align: center;">Page 247</p>
<p>1 and he was acquitted, "My name is X" age 2 --- "I am writing this statement in relation to 3 a number of incidents I have experienced 4 personally with the Royal Gibraltar Police 5 involving senior management." I am not 6 going to show the allegations but the 7 allegations were set out in the email that 8 followed, and then that is sent by the 9 Federation Chairman to Mr Crome and if we 10 go above, he forwards it to you, and you say, 11 "This is chilling to the bone, remarkable. 12 This information must be laid before the 13 Inquiry for the Commissioner to determine 14 whether it is of relevance or not but it 15 describes the Mr McGrail we know. He was 16 a corrosive influence." Do you accept that 17 that is marked a neutral response to this very 18 serious allegation? 19 A. No, I don't. 20 Q. Do you accept that you were responding 21 enthusiastically to the negative evidence 22 against Mr McGrail? 23 A. Enthusiastically? To say that something 24 is chilling to the bone, one has to realise how 25 concerning the allegation is. Enthusiasm</p> <p style="text-align: center;">Page 246</p>	<p>1 reference of the Inquiry and if he determines 2 that it is relevant, he can then decide whether 3 any credibility should be attached to any 4 particular witness or otherwise. That is not 5 my role. 6 THE CHAIRMAN: (To the witness): In fact 7 what I did was ensure that the complainant 8 was advised that she should report the 9 matters to the RGP which in fact happened. 10 A. Yes, that's right. 11 MR WAGNER: (To the witness): At the 12 same time you were offering in this 13 agreement jobs to those individuals. Is that 14 correct? 15 A. No, that's not true. 16 Q. If their situation became untenable, you 17 were offering them jobs? 18 A. No, that is not true and I heard you say 19 that and you used the terminology of job 20 offers before. We never saw it that way. We 21 have only ever seen it as transfers. In other 22 words, these are people who have jobs 23 already and are being transferred within their 24 service of the Crown from one department to 25 another. So these were not job offers.</p> <p style="text-align: center;">Page 248</p>

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<p>1 THE CHAIRMAN: I think that is about it. 2 MR WAGNER: I have just one more 3 question on that. 4 THE CHAIRMAN: Okay. 5 MR WAGNER: (To the witness): When 6 these people transferred, were they 7 interviewed for their new positions? 8 A. In some instances, they were in order to 9 determine which would be the correct 10 position. I don't know whether in all 11 instances but in some instances they might 12 have had clearly transferable skills. I wasn't 13 at all involved in what they would do once 14 they came into the Gibraltar Development 15 Corporation and that, by the way, is perfectly 16 normal. It has happened on a number of 17 occasions; in particular on occasions I can 18 recall that the current Commissioner has 19 asked us to act in that way in respect of 20 transfers from the RGP, so that cannot be 21 improper in any way. 22 Q. Is the truth that these were people being 23 offered jobs with no strings attached? 24 A. Not at all. That allegation is as fanciful, 25 in my view, as the allegations made against</p> <p style="text-align: center;">Page 249</p>	<p>1 invitation to you by Mr McGrail to do so? 2 A. I did. 3 Q. Why did you do so? 4 A. Because Mr McGrail I recall from 5 memory at the time had said that there had 6 been very grave issues that related to his 7 retirement. I think he said that in response to 8 an answer I had given in Parliament to 9 opposition questions about his retirement. It 10 was only after that that he made a public 11 statement taking Umbridge with something I 12 had said and saying that the matter could 13 only be resolved by way of a public inquiry 14 and so I think within 48 hours of him having 15 said that, I was on my feet again in 16 Parliament and I made the statement saying 17 that there would be such an inquiry. 18 Q. Is the position that you are here today and 19 yesterday answering questions because you 20 have chosen to shine the spotlight on 21 yourself? 22 A. To a very great extent, yes, on myself and 23 on others but I have chosen that this process 24 should become live and I gave the 25 opportunity for Mr McGrail and all others</p> <p style="text-align: center;">Page 251</p>
<p>1 Paul Richardson, which, in my view, were 2 entirely fanciful. 3 THE CHAIRMAN: Okay, thank you, we 4 will have a short break. 5 SIR PETER CARUANA: Sir, just reviewing 6 things, I do not envisage being as long as I 7 have been allocated, so I do not envisage that 8 we will be rising particularly late today. 9 THE CHAIRMAN: You can --- 10 SIR PETER CARUANA: There is no need 11 to shorten matters. 12 THE CHAIRMAN: You take your time but 13 we will have a short break now, thank you. 14 (Short adjournment) 15 FABIAN PICARDO (Continued): 16 Questioned by SIR PETER CARUANA 17 (Continued): 18 Q. Good afternoon, Chief Minister, can we 19 just start here, was it your decision to call 20 this Inquiry? 21 A. Yes, it was. 22 Q. Did you have any legal obligation to do 23 so? 24 A. I have none whatsoever. 25 Q. Did you do it in response to a public</p> <p style="text-align: center;">Page 250</p>	<p>1 who had anything that they wished to 2 contribute in the context of the terms of 3 reference to make those statements. 4 Q. Chief Minister, do you have power to 5 remove the Commissioner of Police? 6 A. No, no, I don't. 7 Q. So that statutory power, do you have the 8 soft power, by which I mean political power, 9 extra-statutory to remove the Commissioner 10 of Police? 11 A. I don't believe I do because all of the 12 powers to remove the Commissioner of 13 Police require others to be involved also, so 14 my expression of a lack of confidence on its 15 own is not sufficient for the Commissioner of 16 Police to be removed. 17 Q. Do you have a statutory power to invite 18 him to retire? 19 A. No, not at all. 20 Q. Have you ever invited him to retire, 21 privately or publicly? 22 A. Not at all. 23 Q. Who has the power to invite the 24 Commissioner of Police to retire? 25 A. Well, if you will excuse me in case I get</p> <p style="text-align: center;">Page 252</p>

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<p>1 my retirements and resignations wrong,</p> <p>2 under section 34, the GPA of course have</p> <p>3 power to invite him to retire. He has the</p> <p>4 power to make representations and then they</p> <p>5 shall have him retire if they are not satisfied</p> <p>6 and the Governor then under section 13 has</p> <p>7 the power to call on him to resign, I believe,</p> <p>8 from memory, and if he does not resign upon</p> <p>9 the call from the Governor, then the</p> <p>10 Governor has the power to suspend him.</p> <p>11 Q. In May 2020 did you lose confidence in</p> <p>12 Mr McGrail as Commissioner of Police for</p> <p>13 the reasons that you have explained and I am</p> <p>14 not going to waste the tribunal's time taking</p> <p>15 you through again?</p> <p>16 A. I did for all those reasons.</p> <p>17 Q. Did you, therefore, as of that time, wish</p> <p>18 to see him cease to be Commissioner of</p> <p>19 Police and replaced by somebody else?</p> <p>20 A. Yes, but I would caveat that by saying</p> <p>21 that my mind was fully made up once I had</p> <p>22 had a discussion with the Acting Governor at</p> <p>23 the time.</p> <p>24 Q. Did you agree with the then governor, Mr</p> <p>25 Pyle, to approach the GPA and ask them to</p> <p style="text-align: center;">Page 253</p>	<p>1 even in the absence of the GPA process</p> <p>2 which was by then defunct because of their</p> <p>3 constitutional problem,</p> <p>4 Q. And, just to be clear, so that no one might</p> <p>5 think that this absence or where the power</p> <p>6 lies has been used for a purpose other than</p> <p>7 the one it had been used for, if Mr Pyle had</p> <p>8 exercised his powers under section 13 would</p> <p>9 you have supported him doing so?</p> <p>10 A. I would have done so.</p> <p>11 Q. It is the case that has been advanced, at</p> <p>12 least latterly on behalf of Mr McGrail, that</p> <p>13 you have manipulated the then Governor,</p> <p>14 then then --- we are calling him the interim</p> <p>15 Governor, the then Governor, substantively</p> <p>16 previously and later Deputy Governor, in</p> <p>17 order to have your way through him. Are</p> <p>18 you aware of that allegation?</p> <p>19 A. I have seen it put and of course I don't</p> <p>20 agree with it.</p> <p>21 Q. Did Mr Pyle require any persuasion by</p> <p>22 you of the desirability of replacing Mr</p> <p>23 McGrail as Commissioner of Police?</p> <p>24 A. No, and as I think the electronic record</p> <p>25 shows, not only was I what you might call</p> <p style="text-align: center;">Page 255</p>
<p>1 consider exercising their powers to invite Mr</p> <p>2 McGrail to retire?</p> <p>3 A. Yes, as the electronic record shows that</p> <p>4 we did.</p> <p>5 Q. So regardless of whether you have power,</p> <p>6 statutorily or otherwise, is it your position</p> <p>7 that you were wanting to see Mr McGrail</p> <p>8 leave his post?</p> <p>9 A. We took the view together that we felt</p> <p>10 that we had to --- what I think we called kick</p> <p>11 off the GPA process to facilitate that.</p> <p>12 Q. When the police authority attempt to do</p> <p>13 so was frustrated by their procedural</p> <p>14 irregularity, who had the power --- you have</p> <p>15 answered this question, the Governor had the</p> <p>16 power thereafter to call for his resignation?</p> <p>17 A. Yes.</p> <p>18 Q. Did he in fact do so?</p> <p>19 A. He did. Well, sorry, I mean, he was ---</p> <p>20 he said he was going to do so and in order to</p> <p>21 do so he was going to meet with him to tell</p> <p>22 him that he was going to do so and I think</p> <p>23 before Nic Pyle activated the section 13</p> <p>24 procedure, Mr McGrail voluntarily retired ---</p> <p>25 sorry, resigned --- retired is the right word,</p> <p style="text-align: center;">Page 254</p>	<p>1 colloquially pushing at an open door, this</p> <p>2 door swung open before I put my fingers on</p> <p>3 it.</p> <p>4 Q. Did it require any persuasion by you to</p> <p>5 invite the police authority to consider</p> <p>6 inviting him to retire?</p> <p>7 A. Not at all.</p> <p>8 Q. Why did he require no persuasion, in</p> <p>9 your view?</p> <p>10 A. Well, I think for the reasons that are</p> <p>11 largely set out in the electronic record of</p> <p>12 communications between us at the time and</p> <p>13 which the Chairman will be cognisant of, and</p> <p>14 the tenor of our conversations at the time</p> <p>15 which was identical to what is recorded in</p> <p>16 those electronic communications.</p> <p>17 Q. Thank you, so, Chief Minister was this</p> <p>18 the position that you had lost confidence in</p> <p>19 Mr McGrail primarily for one reason, and Mr</p> <p>20 Pyle had also done so primarily for other</p> <p>21 reasons. Is that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. But you had both done so, albeit for a</p> <p>24 myriad of reasons?</p> <p>25 A. That is correct.</p> <p style="text-align: center;">Page 256</p>

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<p>1 Q. You referred to the electronic record, and 2 this is really the only thing I want to take you 3 directly to at any length, so we will just 4 spend a few minutes on this, I just want to 5 take you through the electronic record that 6 you yourself have mentioned and I am going 7 to ask you whether you think it is fair to say 8 that this is your open door that did not need 9 pushing against. Can we go to B1439, that is 10 the thing we have heard so much about, and I 11 am not going to take you to it because it has 12 been read ad nauseum, you gave that literally 13 to WhatsApp with that litany of issues to Mr 14 Pyle at 0949 hours and if my mathematics is 15 not mistaken, eight minutes later or nine 16 minutes later, what does he answer? 17 A. He says, "I agree as we thought at the 18 time wrong appointment, remind me to tell 19 you about the recruitment process which was 20 abject, should we meet tomorrow after or 21 before platinum." 22 Q. If there was manipulation, it can only 23 have been the seductive effect of the list of 24 issues that you chose to include in your 25 litany? I think that is the allegation.</p> <p style="text-align: center;">Page 257</p>	<p>1 asked you towards the end of his examination 2 of you that Mr Pyle had never previously 3 raised any complaint with you about Mr 4 McGrail, is that actually true? 5 MR WAGNER: It was whether Mr Pyle had 6 ever said he lost confidence or was losing 7 confidence in Mr McGrail. 8 A. Mr Pyle had never told me that he was 9 losing confidence in Mr McGrail, but he had 10 also been less than complimentary about Mr 11 McGrail before that date. 12 SIR PETER CARUANA: Can we turn up 13 A255, which is Mr Pyle's witness statement, at 14 paragraph 26, and at 26.1 he says, "On the 15 14th of May I received a phone call from the 16 Chief Minister saying he wished to discuss an 17 important issue surrounding the RGP with me. 18 My response was that this was a remarkable 19 coincidence as I wanted to discuss my deep 20 concerns about its leadership with him. We 21 agreed to meet the next day." Had you worked 22 your manipulative magic on him at this stage? 23 A. Neither then nor later. As I said to you in 24 the course of my evidence yesterday, a 25 Governor is not a stove that one loads with</p> <p style="text-align: center;">Page 259</p>
<p>1 A. Yes, that is quite a way to put it but, 2 absolutely. 3 Q. Can we go over the page to B1440 at 4 2003 do you see that there? Who first 5 suggests in that conversation speaking to the 6 chairman of the GPA? 7 A. Mr Pyle, the then Governor. 8 Q. What did he say, "Good as always to 9 catch up, I don't see any option re CoP, given 10 the evidence, I'll speak to Joey carefully 11 sometime next week." 12 (15.41) 13 A. Yes. 14 Q. Joey there being? 15 A. Dr Joey Britto. 16 Q. And just whilst we are on this page, to not 17 have to return to it, what did you mean when 18 you said to Mr Pyle, "I think you have 19 probably seen this coming before I have"? 20 A. Well, I had conversations with him where 21 he had already indicated being less than 22 impressed by the performance of the RGP 23 generally and the Commissioner in particular, 24 but nothing specific which I could point to. 25 Q. So, when my learned friend, Mr Wagner,</p> <p style="text-align: center;">Page 258</p>	<p>1 logs. 2 Q. And then he goes on, "We met on the 15th 3 of May, at the very start of which meeting the 4 Chief Minister asked me to go first. I told him 5 that I had had for some while concerns about 6 the RGP and its leadership which the incident 7 at sea has turned into a firm belief that changes 8 in how the RGP works are needed. I briefly 9 ran through my concerns as outlined above." 10 Do you confirm Mr Pyle's evidence or do you 11 demur from it that he went first and explained 12 to you his concerns? 13 A. No, I think that's accurate. 14 Q. Sorry? 15 A. I think that's accurate. 16 Q. And then he goes on, "I told him that the 17 incident at sea which had caused the loss of 18 two lives was without doubt going to cause 19 Gibraltar reputational or political damage. I 20 said I could still not understand how the 21 incident had unfolded but that what it did do 22 was further demonstrate a lack of control by 23 RGP leadership. There was a culture at the 24 RGP that was unhealthy and it stemmed from 25 its leadership. I said I believed I had at best</p> <p style="text-align: center;">Page 260</p>

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<p>1 been misled by Mr McGrail over issues that 2 were the Governor's direct responsibility." 3 Did he tell you that without need for 4 persuasion by you? 5 A. Absolutely. 6 Q. And at 26.4, "I told them that I thought Mr 7 McGrail had been evasive on this issue." Did 8 he tell you that? 9 A. Yes, he told me that specifically. 10 Q. And at 26.5, "I clearly remember saying 11 something along the lines of, 'Now I've got 12 that off my chest. What is on your mind?'" 13 So, the door by then did not need the handle 14 turning. 15 A. Quite. 16 Q. 26.6, "The Chief Minister then outlined his 17 belief that Mr McGrail had made a serious 18 error of judgment with regard to the execution 19 of the search warrant against James Levy, 20 gone against the advice ..." - we have covered 21 that ground, with the DPP and the AG, " ... and 22 misled the Chief Minister about that. This was 23 in relation to an ongoing criminal 24 investigation." Did Mr Pyle give you the 25 impression that he knew about that ongoing</p> <p style="text-align: center;">Page 261</p>	<p>1 black that he sent you, correct? 2 A. This is what he sends me on the Sunday at 3 10 to 7 in the evening. 4 Q. After your meeting? 5 A. Yes. 6 Q. So, that was his initiative, not yours? 7 A. Yes, he originates that email trail. 8 Q. What is in red is what you add by way of 9 comment to what he says? 10 A. At 11.53 that night, I reply. 11 Q. I see. So, again he initiates and you 12 respond? 13 A. That's right. 14 Q. If we could turn to - well, perhaps there is 15 no need to turn to it, but at A241, Mr Pyle says 16 at paragraphs 4 and 5 in his witness statement 17 that he approved the note that you prepared of 18 the 18th of May meeting with Dr Britto, is that 19 correct? 20 A. That's right. 21 Q. You submitted it to him in draft and he 22 approved it? 23 A. That's right. 24 Q. Chief Minister, were you aware that Mr 25 Pyle was reporting back to London on all of</p> <p style="text-align: center;">Page 263</p>
<p>1 criminal investigation? 2 A. What, about the detail of the investigation? 3 Q. Was he aware of it? Was it a factor in his 4 mind? 5 A. I think he was as aware of it as everybody 6 in town was because I think this was already 7 two days later, aware of the fact that there had 8 been a search warrant executed at Hassans, but 9 I don't recall that he was aware of any of the 10 details of the investigation. 11 Q. He says in the last paragraph there - he 12 refers in the next paragraph to a long 13 discussion, "We both believed ... A long 14 discussion about the leadership of the RGP. 15 We concluded we had both lost confidence in 16 Mr McGrail who, as the head of the 17 organisation, should be held to account for the 18 RGP's failings." Is that the decision that you 19 both came to? 20 A. That's an accurate reflection of the 21 conclusion of the meeting, yes. 22 Q. If we could turn up C3953, this is the 17th 23 of May email, in the evening - is that an email 24 that - well, if we go further down we can see it 25 possibly originally. This is the email in the</p> <p style="text-align: center;">Page 262</p>	<p>1 these matters? 2 A. Well, I wasn't aware of the reporting that 3 he was doing but, of course, it's in the role of a 4 Governor and Deputy Governor, and he would 5 have been fulfilling both functions at that time, 6 that they would be reporting back on any 7 matters of consequence in Gibraltar and this 8 was clearly a matter of consequence in 9 Gibraltar, and at some stage later on he did 10 share with me that he was seeking advice from 11 London; from the Gibraltar desk, the Foreign 12 Office, from Foreign Office lawyers if 13 necessary, etc. 14 Q. Finally, at A257, which is the last 15 paragraph of his witness statement, he says, at 16 27.1 (I think there is a typographical error 17 there in the numbered paragraphs), "The 18 decision to invoke the procedure relating to the 19 exercise of my power under s.32 of the Police 20 Act to call for the resignation of Mr McGrail 21 was entirely my own." Did you play any role 22 in the Governor's decision to invoke or to 23 begin to invoke the procedure relating to s.13? 24 A. No, and I think that in the context of these 25 proceedings that has come out best in Mr</p> <p style="text-align: center;">Page 264</p>

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<p>1 Britto's evidence, who says that when we were 2 speaking to him, Mr Pyle was very clear that if 3 the s.34 procedure did not prosper, he would 4 be ready to pursue the s.13 procedure. 5 Q. And Mr Pyle, of whom it is not said that he 6 is lying, says, "At no time was I put under any 7 pressure by any person but, in particular, by 8 the Chief Minister to decide on the course of 9 action outlined above, although of course I 10 was comforted by the fact that he shared my 11 view and would be supportive of my decision 12 if I took it." Do you recognise the truth in that 13 sworn testimony? 14 A. Absolutely. 15 Q. Thank you. 16 A. I mean, if I may say so, my relationship 17 with Governors has always been a relationship 18 of equals, neither subservient to the other. 19 Never would it have been suggested, I would 20 have thought, by anyone that the role could 21 ever be reversed and that the Governor would 22 be subservient to a Chief Minister as is the 23 upshot of what is being proposed in the 24 context of the theory being advanced by 25 others.</p> <p style="text-align: center;">Page 265</p>	<p>1 on Monday" - do you think he was referring to 2 the idea to bring in a UK Commissioner or to 3 wider issues? 4 A. To the idea that, if the process ran its 5 course, either the s.34 process or the s.13 6 process, our view might be that we needed to 7 bring in somebody from outside Gibraltar to 8 be Commissioner over the Royal Gibraltar 9 Police at least for an interregnum. I think at 10 one stage he also says that he is getting in 11 touch with the person in Miami who is the 12 Foreign Office advisor on police matters, and 13 he is only based in Miami because that's the 14 most convenient central location for where 15 most of the overseas territories are, which is in 16 the Caribbean. 17 Q. One of the central themes - let me ask you 18 this first. Is it fair to interpret these and other 19 exchanges as meaning that at that time - it may 20 still be your position for all I know - but at 21 that time at least you were willing to consider 22 bringing in an external Commissioner of 23 Police? 24 A. That's absolutely right. 25 Q. It has been one of the central themes of the</p> <p style="text-align: center;">Page 267</p>
<p>1 Q. We would be so lucky. 2 A. Yes, indeed. 3 Q. Can we turn to B1441, the discreetly point, 4 and do you remember being questioned about 5 this and what was the need to suggest that the 6 Chairman of the Police Authority be discreetly 7 approached? Can we turn that up, at 1147 - 8 yes. You made allusion to your pillow and 9 then you said, "If we are going to do this, do 10 we very discreetly at your end line someone 11 up? We cannot have it headless." Do you 12 agree that you are the first to mention the word 13 "discreetly"? 14 A. Yes, absolutely. 15 Q. Am I correct to think that it is in reference 16 to the idea, the proposal to which you 17 appeared to be agreeing that Mr McGrail 18 might be succeeded permanently or 19 temporarily by an external recruit? 20 A. Correct. 21 Q. So that when Mr Pyle goes on to say just a 22 few minutes later, at 13.58 - no, later, when he 23 replies to you at 13.58, "Thinking about it 24 quite a lot. Need to discreetly bring Joey 25 Britto into our thinking. I'm happy to do that</p> <p style="text-align: center;">Page 266</p>	<p>1 case advanced on behalf of Mr McGrail that 2 one of the reasons why you put pressure on the 3 Commissioner of Police, then Mr McGrail, 4 was somehow to protect yourself, your friends, 5 your quadruple conflicts and that this was the 6 reason, to make sure that no-one ever dares 7 tamper with you again - are you familiar with 8 that case that has been advanced? 9 A. I have understood that that is the case that 10 has been advanced. It is nonsensical, untrue, 11 unfair and totally contrary to what my 12 intention was. 13 Q. In your view, is such an objective more or 14 less likely to be feasible for you with an 15 external Commissioner of Police that you were 16 willing to bring in? 17 A. Less likely, obviously. 18 Q. So, did you - moving briefly to the 18th of 19 May meeting - did you direct or instruct him 20 on what the GPA had to do? 21 A. I had neither the power to direct or instruct. 22 Q. So, if we can just go back to C3953, which 23 is that with all your red comments on Mr 24 Pyle's email to you of the Sunday evening, and 25 if we could just go to the next page, in the</p> <p style="text-align: center;">Page 268</p>

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<p>1 middle of page 3, internal page 3 of the email 2 ... 3 A. There is the reference to Miami that I have 4 just seen. 5 Q. Yes, you see the paragraph, "We should, 6 however ..."? 7 A. Yes. 8 Q. So, you told Mr Pyle, "We should, 9 however, at this stage limit ourselves to setting 10 out our concerns. We should also seek to 11 understanding [understand, I suppose] the 12 concerns of the GPA also, as I understand that 13 the Chairman has been trying to speak to me 14 about the report in the past two weeks but I 15 have simply been unable to speak to him. It 16 will then be a matter for the GPA to decide 17 how to act and, if they were, acting 18 independently and in their own discretion and 19 on proper advice to decide that they wanted to 20 engage the s.34(1) power, then that is when 21 they would need to consult both of us and then 22 seek the agreement of one of us. We would 23 then also have the benefit of any representation 24 that the Commissioner might have made under 25 s.34(2). That would mean that any decision</p> <p style="text-align: center;">Page 269</p>	<p>1 you were dealing with a career, you were 2 dealing with consequences that would be 3 personally, of course, very detrimental to an 4 individual and you had to do it properly if you 5 were going to do it. 6 Q. And in fact you said that this email served 7 as a template for your subsequent draft note. 8 A. It's what I took into the meeting with Dr 9 Britto to take him through the issues and it's 10 what I then use, because I had used it as the 11 template for what I was going to say, to 12 produce the file note that I produced. 13 Q. So, does this also reflect the sentiment that 14 you expressed to Dr Britto during the meeting? 15 A. Oh, very much so. Can you go down a 16 little bit? I can only see half of that page. I 17 think I saw the reference to Miami there. 18 Q. Yes, at the very bottom, the Overseas 19 Territory Police Advisor. 20 A. Yes. 21 THE CHAIRMAN: It is also in your email 22 exchange of the 16th. 23 A. It is, that's right. Thank you. 24 SIR PETER CARUANA: Just one point 25 before I go from that. Did you share - and in</p> <p style="text-align: center;">Page 271</p>
<p>1 that you might take to engage your own 2 powers if the GPA were not to discharge their 3 function properly, which I have no reason to 4 doubt they will certainly seek to do, would be 5 better informed and would enjoy the benefit of 6 explanation/information provided by the 7 Commissioner in the course of his 8 representations under s.34(2)." Do you agree 9 that you are there setting out the correct 10 procedure, including giving Mr McGrail the 11 opportunity to make representations on which 12 both the GPA, if they chose to, and the 13 Governor, if he had to, make their decisions? 14 A. I think that's self-evidently the case and it's 15 as detailed as could be for 10 to midnight on a 16 Sunday night. 17 Q. Do you think that that reads very much, 18 given that neither of you had any reason to 19 believe that this would ever see the light of 20 day, as it has, do you think it is fair to describe 21 that as not reflecting any great blunderbuss 22 approach? 23 A. Not just that. I mean, I was very 24 concerned about the fact that what we had to 25 do in this case had to be done properly because</p> <p style="text-align: center;">Page 270</p>	<p>1 the note itself, and the Chairman is familiar 2 now with the note of the 18th of February and 3 he already knows that the last few paragraphs 4 reflect this sentiment which I have just 5 explained to you, so I will not take you there - 6 but did you share with Dr Britto your primary 7 reason that in your view Mr McGrail had lied 8 to you on the 12th of May? 9 A. Of course. 10 Q. And did you explain your view to him with 11 any reservation that he should not share it with 12 the board members of the GPA? 13 A. Not at all. 14 Q. Did you have any control of what he would 15 say or share with the board members of the 16 GPA? 17 A. No, not at all. The whole purpose of us 18 sharing with him was that he would go on to 19 share with the members of the GPA. 20 Q. So, skipping over stuff that has been 21 thoroughly dealt with already, and not to cover 22 old ground: Chief Minister, just to be clear, 23 has it ever been suggested to you by the RGP 24 or by anybody else for that matter that you 25 were a suspect in their criminal investigation,</p> <p style="text-align: center;">Page 272</p>

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<p>1 this Operation Delhi?</p> <p>2 A. No, never.</p> <p>3 Q. Have they ever treated you as a suspect?</p> <p>4 A. Not at all.</p> <p>5 Q. Have you ever taken any step or action to</p> <p>6 prevent anyone from being investigated?</p> <p>7 A. Far from it.</p> <p>8 Q. Have you ever tried to talk Mr McGrail out</p> <p>9 of investigating Mr Levy?</p> <p>10 A. Not at all. In fact, I think that the evidence</p> <p>11 shows that in the meeting of May '19, I'm the</p> <p>12 one who tells Mr Richardson, I think, or Mr</p> <p>13 McGrail, that they need to talk to the senior</p> <p>14 partner of Hassans.</p> <p>15 Q. And to be clear, have you ever instructed</p> <p>16 or asked or hinted to the Attorney General that</p> <p>17 he should try and discourage the police from</p> <p>18 investigating this matter?</p> <p>19 A. Far from it. Not at all.</p> <p>20 Q. Have you directly or indirectly taken any</p> <p>21 steps to try and curtail the RGP from taking</p> <p>22 any step in their investigation beyond the</p> <p>23 criticism that you made of what you were told</p> <p>24 on the 12th?</p> <p>25 A. Not only have I not, if I ever had I would</p> <p style="text-align: center;">Page 273</p>	<p>1 to proceed to allow the trial to go ahead in the</p> <p>2 context of the charges that had been brought</p> <p>3 would be a bad thing for me because all of the</p> <p>4 political consequences would be visited upon</p> <p>5 me, and I was right about that.</p> <p>6 Q. Did you play any role - and when I say</p> <p>7 you, I mean you directly or indirectly by</p> <p>8 getting somebody else to do so on your behalf</p> <p>9 - did you play any role whatsoever in the</p> <p>10 decision taken by the RGP in October 2020 to</p> <p>11 stop treating Mr Levy as a suspect?</p> <p>12 A. Not at all, none whatsoever.</p> <p>13 Q. Were you aware of what was going on</p> <p>14 between June and October 2020 in relation to</p> <p>15 Op Delhi?</p> <p>16 A. Not at all.</p> <p>17 Q. Were you aware whether the RGP were or</p> <p>18 were not interrogating Mr Levy's devices</p> <p>19 during that period?</p> <p>20 A. If I had any information in that respect it</p> <p>21 was in snatched conversations with James</p> <p>22 Levy, not from anyone on what you might call</p> <p>23 the official side.</p> <p>24 Q. So, do you think - it is ultimately a matter</p> <p>25 for the Chairman to express his view about it -</p> <p style="text-align: center;">Page 275</p>
<p>1 have failed myself in what I believe to be the</p> <p>2 central tenets of how we operate in this</p> <p>3 jurisdiction, that I wouldn't be able to look at</p> <p>4 myself in the mirror.</p> <p>5 Q. And just to deal with a suggestion put to</p> <p>6 you by my learned friend, Mr Cruz, did you</p> <p>7 tell the Commissioner of Police or any other</p> <p>8 police officer, or did you ask anybody to do so</p> <p>9 on your behalf, not to execute the search</p> <p>10 warrant against Mr Levy?</p> <p>11 A. Absolutely not. In fact, I was told that the</p> <p>12 search warrant had been executed.</p> <p>13 Q. Did you ask anybody directly in the RGP</p> <p>14 or get anybody to do so on your behalf not to</p> <p>15 examine Mr Levy's communications beyond</p> <p>16 your 12th of May allegedly berating</p> <p>17 conversation with Mr McGrail?</p> <p>18 A. No.</p> <p>19 Q. Did you express any view to anybody</p> <p>20 about whether charges should or should not be</p> <p>21 brought against anybody and what charges</p> <p>22 should or should not be brought?</p> <p>23 A. Not at all. In fact, what I said when I was</p> <p>24 told about the nolle prosequi was that I thought</p> <p>25 that that nolle prosequi that is the decision not</p> <p style="text-align: center;">Page 274</p>	<p>1 but did you think and do you now think, if you</p> <p>2 have changed your mind in the meantime, that</p> <p>3 by commenting to the Commissioner what you</p> <p>4 thought about his decision to go warrant</p> <p>5 instead of production order, that you were</p> <p>6 interfering in a live criminal investigation?</p> <p>7 A. No, and not least because I did not believe</p> <p>8 I was doing so - as I think we ventilated a</p> <p>9 moment ago, it wasn't the Commissioner who</p> <p>10 was doing it, he wasn't running the Operation.</p> <p>11 I didn't ask to speak to the person who was. I</p> <p>12 didn't seek to influence the officers who were</p> <p>13 in charge of it. Far from it, I wanted</p> <p>14 explanations in order to be able to deal with</p> <p>15 the issue and I wanted information and that's</p> <p>16 what the 12th of May meeting would have</p> <p>17 been about if I had been given truthful</p> <p>18 information and if it hadn't then morphed into</p> <p>19 somebody misleading me in my office, which</p> <p>20 is what it led to.</p> <p>21 Q. Even during the so-called berating meeting</p> <p>22 of the 12th of May, did you then in that</p> <p>23 meeting even ask Mr McGrail not to proceed</p> <p>24 with the execution of the warrant?</p> <p>25 A. Not at all. I don't think even Mr McGrail</p> <p style="text-align: center;">Page 276</p>

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1 **in his recollection suggests that I did.**
 2 Q. Did you know at that time at what stage the
 3 execution of a warrant was?
 4 **A. I was told that it had been executed. If you**
 5 **look at the WhatsApp, I am told that the**
 6 **warrant is being executed, "We are executing**
 7 **..." So, as far as I was concerned, the horse**
 8 **had bolted, execution had happened.**
 9 Q. And in between the period - I am going to
 10 mention May twice - May 2019 when Mr
 11 McGrail gives the first briefing to a largish
 12 number of people in your office and May
 13 2020, so that year, were you generally aware
 14 of what was going on in the investigation?
 15 **A. In May '19 to '20 ...**
 16 Q. Yes.
 17 THE CHAIRMAN: Including from Mr Levy,
 18 presumably, you mean?
 19 SIR PETER CARUANA: I am going to ask
 20 you - you can answer that as well - I was going
 21 to focus in on the things that we have heard
 22 particularly about; for example, a meeting
 23 between Mr Richardson and the DPP. But I
 24 will add that at the end, sir.
 25 **A. So, as far as I know, in that period - and**

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1 **correct me if I'm wrong, Sir Peter, because**
 2 **you've all been looking at this in great detail,**
 3 **but for me it's something that happened now**
 4 **some five years ago in relation to 2019 - at**
 5 **different stages we were being told about the**
 6 **potential arrest of Mr Sanchez, who was away**
 7 **on Government business and was returning to**
 8 **Gibraltar, but I was receiving no information**
 9 **from the official side, if you want to put it that**
 10 **way. And from James Levy, I was being given**
 11 **the information that I have already shared with**
 12 **the tribunal, I was being given about his**
 13 **concerns.**
 14 Q. But if, for example, Mr Richardson and Mr
 15 Wyan and the DPP and another Crown
 16 counsel, Mr Zamitt, met on the 3rd of March
 17 2020 in relation to charges, did you know
 18 anything about that before, during or after?
 19 **A. No, no, no, not at all.**
 20 Q. And if there was a meeting on the 1st of
 21 April in relation to charging advice, would you
 22 have ever seen the so-called NDM? You may
 23 not even know what that stands for: National
 24 Decision-Making Model Document, but that
 25 was sent on the 1st of April. Did you ever see

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1 that document?
 2 **A. No, that's not my world and it's not**
 3 **something I would have expected to see, it's**
 4 **not something I saw, it's nothing anybody ever**
 5 **referred to me and neither would they have.**
 6 **Even in the guise of the Government as a**
 7 **victim; so, in other words, the information that**
 8 **we might have been given as a potential victim**
 9 **or complainant. Nobody ever shared any of**
 10 **that with me.**
 11 Q. And were you aware of a telephone
 12 conversation between the Attorney General
 13 and the Director of Public Prosecutions on the
 14 6th of April 2020?
 15 **A. No, that's long before the 12th of May**
 16 **2020, and my concerns about DPP's**
 17 **involvement and the AG's reference to me of**
 18 **things he discussed with the DPP relates to this**
 19 **question of strongly advise what happens in**
 20 **May 2020, absolutely nothing to do with any**
 21 **of that.**
 22 Q. And on the 7th of April meeting between
 23 the Attorney General, the Commissioner of
 24 Police and Mr Richardson, would you have
 25 been briefed on that after the event? Were you

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1 briefed on that after the event?
 2 **A. Not at all, and I would have been seeing**
 3 **Mr Yamas in his guise as the Government**
 4 **Chief Legal Advisor on matters generally and**
 5 **in matters relating to negotiations as they were**
 6 **at the time of the New Year's Eve Framework**
 7 **Agreement, as it came to be known, but he**
 8 **wouldn't be talking to me about any of these**
 9 **things.**
 10 Q. And then there were the three meetings
 11 that the inquiry has heard of about on the 13th,
 12 15th and 20th of May, the ones that were
 13 covertly recorded by Mr McGrail. At the time
 14 of these meetings were you aware of them?
 15 **A. I can't tell you that I wasn't aware that**
 16 **meetings were happening because, you know,**
 17 **with the level of intensity of things that were**
 18 **going on, I might have to see Michael on other**
 19 **matters and he couldn't be available because**
 20 **he was in meetings with Ian McGrail, etc., but**
 21 **I wasn't aware of any of the details being**
 22 **discussed in any of the meetings, and neither**
 23 **was I interested in any of the detail that was**
 24 **being discussed in those meetings.**
 25 Q. And after the 12th of May berating

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<p>1 meeting, did Mr McGrail ever complain to you 2 or somehow get a message to you that he 3 thought that you had interfered in a live 4 criminal investigation? 5 A. Not at all. 6 Q. Or did he ever suggest to you directly - 7 well, we know it was not directly, but perhaps 8 through somebody else, that he could not 9 thereby continue to serve as Commissioner of 10 Police? 11 A. Not at all. 12 Q. Because of the interference that you had 13 done? 14 A. Not at all. In the normal run of play, and I 15 say this not for your benefit, Sir Peter, because 16 I'm sure that you're aware of it, but in the 17 normal run of play, if the Chief Minister tried 18 something on like that, a Commissioner of 19 Police would very likely have a conversation 20 with the Governor about that and the Governor 21 would seek to tell the Chief Minister to desist 22 from that sort of behaviour, which a Chief 23 Minister would never fall into the trap of 24 pursuing. 25 Q. Was it ever suggested, until the email of</p> <p style="text-align: center;">Page 281</p>	<p>1 up?" and all that stuff. 2 A. Yes, and this was an exhibit to that very 3 same witness statement. 4 Q. Are you familiar with the fact that that is 5 an exhibit? And, indeed, were it not for the 6 fact that you disclosed this witness statement, 7 the existence of that meeting might not be 8 known? 9 A. Quite. 10 THE CHAIRMAN: It certainly would not 11 have been known because that is what 12 revealed it. 13 SIR PETER CARUANA: Exactly, sir, that is 14 the point. I am just trying to deal with this 15 point, that somehow you are being criticised 16 by Mr Wagner, Mr Wagner on behalf of Mr 17 McGrail - not him personally, of course - that, 18 because you did not mention it in paragraph 19 11, you were somehow not revealing the fact 20 that the meeting had taken place. 21 A. That's right, it is revealed in the context of 22 the exhibit to that very same witness 23 statement. 24 Q. Yes. I would just like to very briefly ... 25 THE CHAIRMAN: You have got plenty of</p> <p style="text-align: center;">Page 283</p>
<p>1 the 5th of June, that he did not want to 2 continue as Commissioner of Police because 3 of this interference? 4 A. No, not at all. Quite the opposite. What 5 we saw was a considerably robust push-back 6 against the GPA process. 7 Q. It was put to you by my learned friend, Mr 8 Wagner, in respect of the meeting at your 9 house on Sunday the 17th of May, that you 10 had, I think his word was, "Concealed" ... 11 A. Not revealed. 12 Q. Oh, that you did not reveal, not concealed, 13 I beg his pardon, that you did not reveal the 14 17th of May meeting in paragraph 11 of your 15 third witness statement. Do you remember 16 that? 17 A. That's right. 18 Q. Well, could we turn - and it is true that 19 there is no reference in paragraph 11, but as to 20 not revealing, could we turn to B1422 to 1423, 21 at the very bottom of the page? 22 A. This is where we are agreeing that James is 23 going to be collected by Lewis to come to my 24 house. 25 Q. Yes, and all the, "Are you on your way</p> <p style="text-align: center;">Page 282</p>	<p>1 time. 2 SIR PETER CARUANA: Thank you. I will 3 not be much longer, actually, sir. I just want to 4 deal briefly with - in relation to the HMIC 5 report and resourcing and this idea that the 6 2016 recommendations were somehow 7 delayed or there was a resources obstacle to 8 their implementation by Mr McGrail, I think 9 you yourself alluded to the viewpoint - this is 10 the end of your terrible day on the 14th of 11 May, do you remember? 12 A. Quite. 13 Q. Could we turn up B1216? Just a bit further 14 down, please. Well, perhaps not, perhaps you 15 were right, the third IM dialogue box there. 16 Yes, so this is Mr McGrail saying, "RGP 17 evolving" and then the sentence that starts 18 three lines down in that dialogue: "Some of the 19 reasons they offer [referring to the Inspectors 20 in their report] is that of resourcing, IT, 21 infrastructure and other issues." Do you see 22 that? 23 A. Yes. 24 Q. And then shooting down to the bottom of 25 the interviewer's next question: "Are you</p> <p style="text-align: center;">Page 284</p>

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<p>1 going to use this report?" Do you see that? 2 "Are you going to use this report to try to 3 lobby for more resources, better resources, 4 more finances from the Gibraltar 5 Government?" Do you see that? 6 A. Yes. 7 Q. And what does Mr McGrail respond to 8 that? 9 A. Well, very helpfully, I suppose, it's the 10 only good part of my day on the 14th of May, 11 he said this: "The Government has been very 12 supportive towards us, and in fact at the time 13 when the Inspectors were here in October, we 14 were already in the middle of that uplift that 15 the business case that we submitted to 16 Government had produced. So, we are, we've 17 already assumed the first tranche of that uplift 18 and there's another two. It was going to be 19 rolled out over a three year phased out period, 20 and we're now in the second year." 21 (16.15) 22 Q. Okay, can I turn you now over the page to 23 Mr McGrail's first long answer that starts 24 there? Yes, that one. Thank you. And then 25 there is a reference there, I am not sure the</p> <p style="text-align: center;">Page 285</p>	<p>1 "But look at this moment..." Do you see ? 2 A. Yes. 3 Q. "But look at this moment in time the RGP 4 is well funded. The government has always, 5 both this one and the previous 6 administrations has always supported the 7 RGP in the funding of, even when we go 8 over and above our budget for exigencies. 9 So they do not see that as good business 10 sense. They want to see us managing 11 through the police authority the budget 12 ourselves. " Do you think that is a fair 13 characterization by Mr McGrail of the 14 attitude of successive governments to RGP 15 being well-funded? 16 A. It feels almost as if we are in another 17 place! Yes, but I increase it from 5 million in 18 your time to 15 million in mine! 19 Q. Well, yes, a much more generous budget. 20 Going to the bottom of that paragraph, 21 "Whilst the current..." do you see that? 22 A. Yes. 23 Q. "Whilst the current structures which are 24 applied..." Well, I will not go there because, 25 sorry, that is the devolved funding point and</p> <p style="text-align: center;">Page 287</p>
<p>1 Chairman is particularly interested in the 2 differences between our budgeting and the 3 budgeting in the UK. I mean, it might just 4 help if you tell the Inquiry that the difference 5 is that for funding for - for parliamentary 6 appropriation purposes the RGP is treated 7 like another department of the government. 8 Is that correct? 9 A. That's exactly right. That is what I was 10 trying to communicate yesterday, and in fact 11 Mr McGrail dealt with the point about this 12 recommendation that, I think, Mr Wagner or 13 Mr Santos put to me in the HMIC report, in 14 the same way using different language to the 15 one I used before -- 16 Q. But there are strict rules and the public 17 finance - in the Control and Public 18 Finance(sic) Act about how - whether 19 monies can or cannot be transferred from one 20 end of - 21 THE CHAIRMAN: You are quite right, Sir 22 Peter. This is - 23 SIR PETER CARUANA: You understand 24 that. Thank you sir. (To the witness) Then 25 the second - about five or six lines down:</p> <p style="text-align: center;">Page 286</p>	<p>1 Mr Chairman has that point? 2 A. I believe, Sir Peter, if it is helpful, there is 3 no issue between the police and the 4 government on that issue. It is just an 5 external view that does not fit in with 6 Gibraltar's funding structure. 7 Q. Okay. So, the point that I was putting to 8 you is that in May 2000 - sorry, this is----? 9 A. Two days after he left my office on 12 10 May he was still saying that the RGP 11 resourcing was not an issue that was stopping 12 him from delivering against the HMIC report 13 findings, which he later does seek to rely on. 14 Q. Yes. Okay. Then whisking through one 15 or two points that have arisen more recently, 16 and therefore I only have a note and it might 17 just take me a few seconds to retrieve this-- 18 Chief Minister, is it fair to say that you were 19 in principle sympathetic to Mr Cornelio and 20 Perez starting up in business on their own 21 account? 22 A. Yes, absolutely. 23 Q. Was there - that you were aware of - a 24 discussion taking place between Blands and 25 Mr Cornelio and Mr Sanchez about the</p> <p style="text-align: center;">Page 288</p>

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<p>1 NSCIS contract and how it would work and 2 be managed in the context of them leaving 3 that? 4 A. Well, I was encouraging of Mr Perez and 5 Cornelio, as I am of anybody who wants to 6 establish a business in Gibraltar. I gave them 7 that encouragement before I knew there was 8 any suggestion of Hassans' involvement. In 9 the context of my discussions with them, and 10 - not with them, with Mr Perez, because I 11 have never discussed anything with Mr 12 Cornelio - and with Mr Gaggero, I expected 13 an orderly transition between them because 14 that is what had been presented to me, and 15 Mr Sanchez is involved as a government 16 official who is - that I think I have called in 17 the context of my statement "the gate keeper" 18 or "manager" in that respect of the NCIS(sic) 19 administratively because the front end of the 20 NCIS(sic is used by the Borders and 21 Coastguard Agency, the police, customs 22 etcetera. 23 Q. So, do you recall when you made the 24 decision that the contract would stay with 25 Blands notwithstanding Mr Cornelio's and</p> <p style="text-align: center;">Page 289</p>	<p>1 Operation Delhi has not even begun when I 2 say, this contract is not going anywhere; it is 3 staying with Blands. If he gives me an 4 undertaking that they are going to be able to 5 maintain it, and I make that decision there 6 and then. 7 Q. So, when my learned friend Mr Wagner 8 asked you this morning if when the RGP 9 seized Mr James Levy's devices, were you 10 concerned that they would find messages 11 favouring 36 North in them, you had 18 12 months previously severed at least one of the 13 three alleged triple conflicts, the financial 14 one? 15 A. Exactly the point I was trying to make to 16 him. 17 Q. You then had no financial interest with 18 the NSCIS contract? 19 A. That is exactly the point I was trying to 20 make to him. He insisted that I still had a 21 stake, but my point was to say that stake was 22 by that stage entirely neutered by the actions 23 I had taken in respect of the thing which he 24 has put to me during the course of his 25 questioning --</p> <p style="text-align: center;">Page 291</p>
<p>1 Mr Perez's departure? 2 A. In my office in the very moment that 3 James Gaggero raised the issue of potential 4 sabotage, and again it is one of those 5 moments that you remember - just like I 6 remember the 12 May moment with Ian 7 McGrail. I remember the moment when 8 James Gaggero told me that this was 9 potential sabotage, and you know the hairs 10 on the back of my neck went on end, and I 11 decided -- 12 Q. But do you remember when it was 13 tentatively. If I suggest to you it was 14 October 2018? 15 A. September or October 2018. 16 Q. So, that was when the Operation Delhi 17 investigation was barely off the ground. Is 18 that correct? 19 A. No. If I may say so, I believe that is the 20 day on which James Gaggero also told me, "I 21 think I need to report this to the police." 22 Q. So, he had not yet done so? 23 A. And I said, I think, "If you think you 24 should report this to the police, of course you 25 should report this to the police." So,</p> <p style="text-align: center;">Page 290</p>	<p>1 Q. At least in respect of the NSCIS contract? 2 A. - was the thing that 36 North wanted, 3 which was the NSCIS contract. Exactly my 4 point. 5 Q. (After a pause) 6 THE CHAIRMAN: You have got plenty of 7 time. Do you want just to consider your 8 position for a few minutes? 9 SIR PETER CARUANA: I do not think I 10 need to, sir. I just need a few seconds just to 11 decipher my own handwriting. (To the 12 witness) My learned friend Mr Wagner put it 13 to you that your personal connection with the 14 investigation was your interest in 36 North? 15 A. Yes. 16 Q. Do you recall him putting that to you? 17 A. Yes, I recall that. 18 MR WAGNER: Sorry to interrupt. I do not 19 think I ever put it in those terms. 20 THE CHAIRMAN: You did not put it quite 21 in those terms, but that is the effect of it. 22 MR WAGNER: It is probably fair to say a 23 personal interest, not the personal interest. 24 THE CHAIRMAN: Yes. 25 SIR PETER CARUANA: Was the</p> <p style="text-align: center;">Page 292</p>

<p>1 investigation into 36 North - was the 2 Operation Delhi into 36 North or into Mr 3 Perez, Mr Cornelio and Mr Sanchez? 4 A. In fact, I think it was specifically into Mr 5 Perez, Mr Cornelio and Mr Sanchez, and Mr 6 Sanchez was a government officer. 7 Q. Do you have a personal connection with 8 them? 9 A. I have known Mr Perez in the context that 10 I have set out, only in the time that he used to 11 come and see me. I haven't seen him since 12 then. I have known Mr Sanchez as the 13 private secretary to the Deputy Chief 14 Minister, but he is now no longer at No. 6 15 Convent Place and I have never properly met 16 Mr Cornelio at all. 17 Q. Do you have a personal connection with 18 Mr Levey? 19 A. I do, and one that I have not been shy of 20 explaining. 21 Q. So, is your personal connection with the 22 investigation your friendship with Mr Levy? 23 A. It is. 24 Q. So, if we could just put up B4747, this is 25 the half-truth that it was suggested that you</p> <p style="text-align: center;">Page 293</p>	<p>1 said "lobbying" or "pressuring" or whatever? 2 A. Yes. 3 Q. Can we - 1646. Well, just starting at 4 1645, you say to the Chief Secretary: 5 "Darren, when Joey speaks tomorrow at the 6 GPA he is going to explain my views on a 7 sensitive subject. Your support for me on 8 this is key. I have grave grave concerns." 9 Was his answer; Yes, sir, three bags full, sir. 10 Of course you have my support. I will vote 11 for you because you have asked me to? 12 A. No, not at all. 13 Q. What was his answer? 14 A. He said, a minute later: "I know and they 15 are my concerns to for a whole range of 16 reasons. You have this support." 17 Q. Does it sound to you like the Chief 18 Secretary felt that he was being directed on 19 how to vote? 20 A. Not at all. 21 THE CHAIRMAN: When this exchange 22 was first put to you, you said he was a 23 government appointee, which gave me the 24 strong impression that you expected him to 25 do precisely as he was told?</p> <p style="text-align: center;">Page 295</p>
<p>1 had uttered - sorry, C4747, this is the letter 2 of 5 June. Do you remember, that paragraph 3 starting, "Let me be absolutely clear -- 4 A. Yes. 5 Q. It was suggested to you by Mr Wagner 6 that given that your personal connection is 36 7 North, this paragraph is at best a half-truth. 8 Do you remember? 9 A. Yes, he said that. 10 Q. If your personal connection with the 11 investigation was only your friendship with 12 Mr Levy, is there a half as opposed to a full 13 truth in that paragraph? 14 A. No. I think it is a full truth, and if I may 15 say so, I mean I don't want it to be thought 16 that I am anything other than entirely proud 17 of my relationship with James Levy, and the 18 longevity of it and my association with that 19 firm. 20 Q. Thank you, Chief Minister. Can we turn 21 up B1426? This is your exchange of emails 22 with the Chief Secretary, Mr Grech, who you 23 were asked questions by my learned friend to 24 suggest that you might have been 25 influencing, or - I cannot remember if he</p> <p style="text-align: center;">Page 294</p>	<p>1 A. No. I mean, what I said was that he may 2 well -- 3 MR WAGNER: That is the witness's 4 evidence? 5 A. What I said was that on the first day that I 6 was elected, I had a meeting with the then 7 appointee, who asked me how I expected him 8 to vote in respect of the appointment of the 9 Commissioner in December 2011, and I told 10 him that I wanted him to decide for himself 11 once he had heard the interview of the then 12 Commissioner, and I wouldn't direct him to 13 vote for Mr X or Mr Y at the time in 2011. 14 SIR PETER CARUANA: The point of my 15 question, Chief Minister, was whether this 16 email indicates fairly that the Chief Secretary 17 has his own views about Mr McGrail and 18 how he might vote? 19 A. Absolutely right, and that is the case. 20 That is the case in relation to how I directed 21 the acting Chief Secretary in December 22 2011; how Mr Neish reminded me today that 23 the Chief Secretary at the time of Mr 24 McGrail's appointment voted. He did not ask 25 me for how he should vote. He attended the</p> <p style="text-align: center;">Page 296</p>

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<p>1 interview process and he voted as he believe 2 was appropriate; and how Mr Grech reacted 3 in the context of how he was going to 4 approach matters the following day after my 5 statement to him. 6 Q. Did either of you think that this 7 WhatsApp exchange would ever see the light 8 of day? 9 A. No, not at all. 10 Q. So, do you think that Mr Grech felt any 11 great need to window-dress this for external 12 appearances? 13 A. Not at all. 14 SIR PETER CARUANA: Thank you, sir. 15 MR SANTOS: A few short points. 16 THE CHAIRMAN: Yes. 17 FURTHER QUESTIONED BY MR 18 SANTOS 19 MR SANTOS: Just focusing on that, that 20 was before the meeting, the GPA meeting. 21 How was Mr Grech aware of what your 22 concerns were at that stage? 23 A. I don't know. He may have spoken to 24 Joey already, but I know that they were and 25 are very close. I mean they've both been</p> <p style="text-align: center;">Page 297</p>	<p>1 involving the government, the police, the 2 Port Authority, MoD Gibraltar and the 3 command of British Forces etcetera. All of 4 us maintained that confidentiality. Nobody 5 needed to tell the other that there were issues 6 that could not be shared widely. 7 Q. Are you effectively saying that when 8 people report to you as Chief Minister, 9 depending on the context, sometimes things 10 will plainly be confidential and it is not 11 necessary for you to agree explicitly 12 beforehand that that confidence should be 13 kept? 14 A. That's right, but I also operate on the 15 basis, and you will see that I have said this on 16 a number of occasions, that the information 17 that is provided to me is provided to me in 18 my capacity as the representative of the 19 people, and that the people should have 20 information, and that is why our rule on 21 maintaining of documents is not like rules in 22 the UK, and we believe that documents 23 should be public as soon as possible and not 24 wait for 30 years to pass. 25 Q. Is it not the case that the DPP's advice</p> <p style="text-align: center;">Page 299</p>
<p>1 directors of education -- I think successive 2 directors of education. 3 Q. Are you saying he was not aware from 4 you? 5 A. He may have been but I cannot recall, 6 other than this exchange having direct 7 exchanges with the Chief Secretary in respect 8 of this matter. Otherwise, I would have 9 referred him to the fact that we had had 10 discussions already. 11 Q. On another topic, you would accept that 12 in some circumstances confidentiality is 13 simply implied. For example, if you turn up 14 at a restaurant table and find somebody's 15 bank statement or medical records on the 16 table, that does not entitle you to share them 17 with Mr Smith, for example? 18 A. I accept that and there are certain 19 circumstances where information has been 20 shared with me where, even though there has 21 not been an explicit reference for the need for 22 confidentiality, I have maintained the 23 confidentiality that I appreciated was 24 required. For example, I gave the case of the 25 Grace One. There was a lot of planning</p> <p style="text-align: center;">Page 298</p>	<p>1 was precisely the type of information that did 2 not require explicit description as 3 confidential information? 4 A. As you can imagine, Mr Santos, I don't 5 agree with your view because I took a 6 completely different view at the time because 7 those who were sharing that information with 8 me should have known that I was not minded 9 to keep it confidential. This was a looming 10 and important issue in town because of the, 11 first of all, jurisdictional consequence for 12 Gibraltar outside of the jurisdiction, and the 13 consequences inside the jurisdiction too, and 14 therefore I was - as I said, I have used the 15 word "evangelising" to represent talking to 16 everyone that was raising it with me about 17 the circumstances that had given rise to the 18 execution of that search warrant, which I 19 have repeatedly said I felt was abusive. 20 Q. At the time that you were told about this, 21 we have seen the WhatsApp exchanges that 22 was the afternoon of 12 May. It was not vox 23 populi, (to use your term). I am not familiar 24 with that -- 25 THE CHAIRMAN: Just think about your</p> <p style="text-align: center;">Page 300</p>

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<p>1 answer for a moment. If there is an 2 important issue in town and that was a 3 sufficient reason to justify not keeping things 4 confidential, that would... Let us say that 5 there is a terrorist shooting. That would be 6 an important issue in town, and the DPP tells 7 the Attorney General his advice on the matter 8 in your presence, your justification for 9 publicizing it would be that it is an important 10 issue in town. That cannot be right? 11 A. No. It can't be right and it is not what I 12 am saying, and there are certain 13 circumstances in which information has to be 14 kept confidential, which is what I am saying 15 to Mr Santos, and agreeing with his earlier 16 position, and there are certain things that in 17 my view do not have to remain confidential. 18 The point I was going to make in reply to Mr 19 Santos was that here we were not dealing 20 with advice. We were dealing with the 21 absence of advice, and the key point for me 22 was I wasn't sharing, and I gave the example 23 of a case I have imagined, which was R v 24 Picardo, in order not to muddy the waters. 25 This was not the DPP saying to the Attorney</p> <p style="text-align: center;">Page 301</p>	<p>1 after this was that in fact the DPP had not 2 advised. So, the correct position - the 3 corrected position -- 4 Q. I accept that and --? 5 A. That is what I felt free to be able to say, 6 that he had not advised - and in fact, having 7 advised against... Even if I had said, and it is 8 possible that I did because of the particular 9 time, that is the misapprehension under 10 which I laboured for some time (it may have 11 been hours or longer) that he advised against 12 is not to disclose the advice that he gave. 13 That is to say there was no detail of the 14 advice there, or why he advised against and 15 what that advice was. But I take the view, 16 and I believe I am totally free to take this 17 view, that I am able to share that with 18 members of the public. Indeed, there are 19 circumstances when it would be appropriate 20 for me not to share information, advice 21 etcetera, and circumstances where it would 22 be appropriate. In the vast majority, it should 23 be appropriate for the government to disclose 24 information that it has at its disposal. 25 Q. The letter from Hassans to--</p> <p style="text-align: center;">Page 303</p>
<p>1 General: No. I have advised that in R v 2 Picardo, the finding is that you cannot 3 execute a search warrant in these 4 circumstances, but you can in these - and 5 that is the logic that we relied on, and I then 6 went on to share that legal advice. That was 7 not the case. What we had was that the DPP 8 had not given advice, or was not asked for 9 advice, and that is what I thought I was free 10 to share. 11 MR SANTOS: I am sorry, but if we can look 12 at B1417, the text that you receive from the 13 Attorney General is the second one - the 14 second WhatsApp message: "Spoken to 15 DPP. He is categorical that whilst he told the 16 RGP that an interview with JL would likely 17 be necessary, he strongly advised against a 18 search warrant." 19 A. Yes. 20 Q. That is advice? 21 A. But that was quickly corrected. 22 Q. Not by the time of Hassans letter of that 23 evening which said, without the "strongly" 24 says pretty much the same? 25 A. But what I was left with very quickly</p> <p style="text-align: center;">Page 302</p>	<p>1 A. There is a note from Ms Gallagher 2 coming through. 3 Q. Yes, I-- The letter from Hassans to the 4 Attorney General or to the RGP is on 15 5 May, I believe. I am just finding it here. 6 C3802. This is the letter from Hassans to the 7 Attorney General, and it is the final line on 8 that page. "There can be little surprise that as 9 we believe is the case the DPP advised the 10 Commissioner against the making of these 11 applications." Putting to one side the word 12 "strongly", the essence of the DPP's advice, 13 i.e. "against" is what finds its way into this 14 letter, and that can only have come from 15 either the AG or from you. Is that not 16 correct? 17 A. I think we went through this yesterday 18 and I agreed with you at the time. 19 Q. Is it not the case that privilege in that 20 information would sit with the client and not 21 with the DPP or the AG, and therefore it 22 would be for the RGP to waive that privilege 23 and not for the DPP or the AG? 24 A. That is a legal question. I am here to 25 answer questions of fact. As you can</p> <p style="text-align: center;">Page 304</p>

<p>1 imagine, I could probably work out what the 2 answer is if I had time to look at the books. 3 But it was shared with me and I am neither 4 the Attorney General nor the RGP. 5 THE CHAIRMAN: I think the objection to 6 that question is well known. 7 MR SANTOS: I think, let us move to the 8 next question. A couple of short questions 9 on the job offers. Is it correct to say that 10 when RGP officers are moved to, say the 11 Gibraltar Development Corporation they are 12 not transferred out but rather resign as police 13 officers and then are newly employed by the 14 relevant department? 15 A. I think that is correct in the context of 16 how their employment is structured, but the 17 pension, for example, continues straight 18 through. So, there is a continuation of 19 employment under the Crown. It is because 20 of the nature of the RGP, I think, that they 21 resign from one. It is also the case when you 22 go from being a civil servant going to the 23 GDC, that you have to resign from the civil 24 service whilst then continuing your 25 employment in the GDC, but your pension</p> <p style="text-align: center;">Page 305</p>	<p>1 Q. I am just correcting. You said you had 2 nothing to do with the investigation, and I 3 just wanted to make that point clear. 4 A. I know, but I think that is - yes, that is 5 not to have anything to do with the 6 investigation. This was a public statement 7 and it was a public intervention in that 8 respect, but nothing to do with the 9 investigation. 10 Q. I do not want to get into an argument 11 over semantics at 4.40 on a Friday. All I am 12 pointing out is - and I would like to make my 13 question without being interrupted - is that - 14 whatever we want to call it, you did have that 15 communication with the Chief Secretary, and 16 the Chief Secretary with the police in 17 September 2020. That is all I wanted to 18 point out? 19 A. My answer is that that is not in any way 20 an interference with the investigation. 21 Q. And that was not my suggestion? 22 A. But first of all - well, I am afraid that that 23 is how I took your question, because -- 24 Q. Well, you can take it -- I am happy to 25 clarify it.</p> <p style="text-align: center;">Page 307</p>
<p>1 would continue straight through. The same 2 would be true if you went in the other 3 direction, but entry into the civil service is 4 only through the Services Commission and 5 not through the GDC. 6 Q. When you receive reports from potential 7 whistle-blowers, did you ever suggest that 8 they also report the matter to the RGP for 9 criminal investigation? 10 A. I think my view was that because they 11 were in the RGP, the thing to do was to refer 12 matters to the Tribunal for the Tribunal to 13 make the decision on what should happen. 14 Q. You gave evidence that you had nothing 15 to do with the operation and investigation 16 between January and October 2020. Would 17 you accept, however, that in September 2020 18 you did intervene in response to an RGP 19 press statement as you said yesterday to 20 clarify that the government should not be 21 considered a complainant without seeing 22 evidence? 23 A. Yes, but that is not to interfere in the 24 investigation; that is to clarify something 25 that was publicly --</p> <p style="text-align: center;">Page 306</p>	<p>1 A. -- because you juxtaposed it to the 2 reference that I had made to not interfering 3 with the investigation. 4 Q. No. I said you said you had nothing to do 5 with the investigation. 6 A. I had nothing to do with the investigation. 7 Q. That is the only point? 8 A. This was a public statement about the 9 investigation, not the investigation. 10 Q. I was just trying to establish that fact. 11 We can move on. 12 A. I know it's been a long week, but by the 13 way, it is only Tuesday. 14 Q. The 17 May meeting: you make the point 15 that in your third affidavit you exhibited the 16 text messages with Mr Baglietto which, for 17 the first time, revealed that meeting on 17 18 May. Why did you not reveal in your first 19 affidavit in response to our letter - the 20 Inquiry's letter of 4 April 2022 where we 21 asked you for any documents in your 22 possession or control relevant to the subject 23 matter of the Inquiry? Why did you not 24 disclose those messages or the meeting in 25 your evidence?</p> <p style="text-align: center;">Page 308</p>

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<p>1 A. Well, I think I have dealt with that 2 already, but I would just reiterate that there 3 has been an attempt by myself, by my office, 4 by my counsel to provide as much 5 information as possible as soon as possible. 6 Given how calmly we take these things when 7 we're sitting here together, it is difficult 8 perhaps to understand what my day is like 9 when I'm not sitting in the rarified 10 environment of the Garrison library. It is 11 very difficult to spend the time to analyse 12 things in detail and therefore I have had to 13 rely on my office and my counsel to assist 14 me in the preparation of these statements 15 etcetera, and we have tried to provide as 16 much as possible as soon as possible. I know 17 that other parties also have had to provide 18 further information later as it has come to 19 light. I tell you genuinely that a lot of 20 recollection has been assisted by the 21 electronic communications, because you 22 simply wouldn't remember. In these days 23 when we don't have written diaries and we 24 only have Outlook or we have got one word 25 of what is going to happen at a particular</p> <p style="text-align: center;">Page 309</p>	<p>1 May 2024)</p> <p style="text-align: center;">Page 311</p>
<p>1 time, we would not remember otherwise. It 2 is just impossible or super human to 3 remember that much without these triggers, 4 and as these triggers emerge we were able to 5 spend time remembering and writing down, 6 and as soon as we were able to do that and 7 time allowed, we have done so as timeously 8 as possible. 9 MR SANTOS: Thank you, Chief Minister. I 10 have no further questions. Thank you for 11 agreeing to sit a bit later today. 12 A. Thank you very much. 13 THE CHAIRMAN: Thank you very much, 14 and you are in plenty of time? 15 A. Thank you very much. Mr Chairman, is 16 it appropriate for me to thank everyone 17 involved in the proceedings for their work, 18 whatever side they may be on, because I am 19 sure that this process will be a positive one 20 for Gibraltar. I say nothing more than that. 21 THE CHAIRMAN: The answer to your 22 question is probably not, but you have done it 23 anyway! (Laughter) Thank you. 24 (16.44) 25 (Adjourned until 10.00 am, Wednesday, 8</p> <p style="text-align: center;">Page 310</p>	

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