

<p>1 Wednesday, 26 June 2024 2 (10.00) 3 THE CHAIRMAN: You are happy with 4 the new arrangements, are you, Mr Wagner, 5 to speak from there? 6 MR WAGNER: As long as you are happy, 7 sir -- 8 THE CHAIRMAN: No, absolutely fine. 9 MR WAGNER: -- I am happy, yes. 10 THE CHAIRMAN: That is absolutely fine. 11 Okay, over to you. 12 MR WAGNER: Thank you. Good 13 morning. 14 Ian McGrail is an honest man who devoted 15 35 years of his life to public service as 16 a police officer. He rose to the pinnacle of 17 the Royal Gibraltar Police, becoming its 18 Commissioner in 2018. Then, in 19 June 2020, he was forced to retire, two 20 years too soon, after being hounded from 21 office. Ian McGrail called for this Inquiry. 22 He has at all times wanted only one thing; 23 for the truth to come out. Thanks to the 24 hard work of the Inquiry team and you, sir, 25 we are nearly there. Thankfully so. It has</p> <p style="text-align: center;">Page 1</p>	<p>1 from the RGP's warrant. He even went as 2 far as sharing with Mr Levy and his lawyer 3 what he thought the Director of Public 4 Prosecutions have advised the RGP in 5 relation to the warrant, information which 6 he had plainly received in confidence from 7 the Attorney General. 8 In his efforts Mr Picardo was variously 9 aided by Michael Llamas KC, Dr Joey 10 Britto and Nick Pyle. Separately and 11 collectively these individuals were the 12 Attorney General, the Governor and the 13 Chair of the Gibraltar Police Authority. 14 They should have been the institutional 15 guardrails which prevented the Chief 16 Minister from doing what he did. Each in 17 their own way failed to be those guardrails, 18 whether deliberately, inadvertently or 19 recklessly. The guardrails were left broken, 20 as was Ian McGrail. He was treated 21 disgracefully by senior lawyers and 22 officials. The process he was subjected to 23 was both a shambles and a sham. He had 24 his good name dragged through the mud 25 over and over again and it continues to this</p> <p style="text-align: center;">Page 3</p>
<p>1 been four hard, hard years for Ian McGrail. 2 As should be clear from the evidence he 3 gave at the oral hearings, the hounding of 4 Ian McGrail was triggered by an attempt by 5 the RGP on 12 May 2020 to execute search 6 warrants against James Levy KC, 7 a powerful member of the Gibraltar 8 establishment and a close friend of the 9 Chief Minister, Fabian Picardo KC. From 10 the moment that the Chief Minister found 11 out about the warrants and whilst attempts 12 were being made to execute them, all hell 13 broke loose. Mr Picardo did everything 14 within, and sometimes without, his powers 15 to stop the warrants being executed, prevent 16 Mr Levy from being investigated by the 17 RGP, corrupt the justice process and oust 18 Ian McGrail from office. He did this whilst 19 being in almost constant, entirely secret 20 discussions with the suspect, Mr Levy, the 21 suspect's lawyer, Mr Baglietto, and the 22 suspect's son Moshe Levy. In face-to-face 23 meetings, telephone calls, WhatsApp 24 messages, Mr Picardo pulled out every stop 25 to protect Mr Levy and his mobile phone</p> <p style="text-align: center;">Page 2</p>	<p>1 day. 2 The Inquiry has now concluded its oral 3 hearings and the picture that emerged was, 4 we say, crystal clear. Witness after witness 5 expressed their discomfort, their shock, at 6 the way the Chief Minister behaved, 7 although in most cases they did so for the 8 first time in four years. Better late than 9 never. The Attorney General agreed that 10 the meeting of 12 May where Mr Picardo 11 angrily berated Mr McGrail as he watched 12 on, discomforted, without intervening, 13 should not have happened. He accepted 14 that he failed in his duty to assist 15 Mr Picardo in drawing the red lines in 16 relation to the Op Delhi investigation. The 17 former Solicitor General, Lloyd 18 DeVincenzi, said that the Chief Minister 19 should not have been 100 miles of the 20 issues with Mr McGrail. Mr DeVincenzi, 21 to his credit, was the only lawyer within 22 100 miles of the government who tried to 23 raise the alarm about the Chief Minister and 24 the Attorney General not acting properly in 25 relation to Op Delhi. Unfortunately,</p> <p style="text-align: center;">Page 4</p>

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<p>1 nobody listened to him. The former 2 Governor, Mr Pyle, agreed that the process 3 which led to Ian McGrail leaving office was 4 abject and a breach of natural justice. In the 5 end, the only witness left defending Fabian 6 Picardo was Fabian Picardo. 7 Mr McGrail memorably described 8 Mr Picardo's extreme anger about the Levy 9 warrants: "Flared nostrils, disjointed face, 10 he really let rip." Nobody seriously 11 disputed that description. It is ironic that 12 Mr Llamas, in a surprising segway during 13 his oral evidence described Mr McGrail as 14 a bull in a china shop. Because the fact that 15 we say is unavoidable from the evidence is 16 that the bull in the china shop was Fabian 17 Picardo. The Attorney General, the 18 Governor, the Chair of the Gibraltar Police 19 Authority, should have been the matadors, 20 standing up for the rule of law against the 21 bull who was trying to charge through it. 22 But instead of red cloths, they held up white 23 flags. 24 It was clear from Mr Picardo's performance 25 in oral evidence that he is a consummate</p> <p style="text-align: center;">Page 5</p>	<p>1 government, and even the current 2 Governor, who is part of the government, 3 will have their turn this afternoon. What 4 will they say? Not much of a mystery. 5 They have filed a 110-page submission. 6 Here it is. The document has been posted 7 on the Inquiry's website. 8 For members of the public who have not yet 9 managed to read these 110 pages, they may 10 be wondering how the government, the 11 Chief Minister and the others have dealt 12 with the important concessions which were 13 made in the oral hearings. By the Attorney 14 General, the 12 May meeting should not 15 have happened. By Mr Pile that the process 16 which led to Mr McGrail leaving post was 17 abject to breach of natural justice. That 18 Mr Llamas made an error by telling 19 Mr Picardo the DPP strongly advised 20 against the warrant, which was never 21 corrected, caused a fundamental flaw in 22 Mr Pyle's reasoning and a serious flaw in 23 the process leading to Mr McGrail's 24 retirement, all of which Mr Pyle agreed. By 25 Mr DeVincenzi, 100 miles. By the DPP,</p> <p style="text-align: center;">Page 7</p>
<p>1 politician. No one doubts his oratory skills 2 and no doubt they are an asset in Parliament 3 and in politics. But people who watched 4 his performance might also reasonably 5 wonder whether he can be somewhat 6 economical with the truth. So what? He is 7 hardly the first political leader with a gift 8 for the gab and a worrying tendency to 9 protect his friends at the expense of the 10 public interest. But that is what the 11 Constitution is meant to protect against. 12 That is why Gibraltar has the guardrails, the 13 red lines. 14 Many people in Gibraltar have watched 15 these proceedings, thanks to the excellent 16 work that GBC has done in broadcasting 17 them. We in Mr McGrail's team know this 18 because people come up to us everywhere 19 we go. They have told us again and again 20 how shocked they are at what they have 21 seen. They will no doubt be following this 22 final hearing. What will they hear this 23 afternoon? The government parties, that is 24 the Chief Minister, the Attorney General, 25 Mr Pyle, who now works for the</p> <p style="text-align: center;">Page 6</p>	<p>1 who said he would not share information 2 about a current investigation with the Chief 3 Minister and never share information about 4 Op Delhi. For those watching, I can save 5 you the time. These concessions do not 6 appear at all. One hundred pages, but I can 7 summarise this document for you in four 8 words: no concessions, no insight. 9 Despite everything the public of Gibraltar 10 have heard in five weeks of oral hearing, 11 the Government of Gibraltar concede 12 nothing and show no insight. Dispute and 13 duty of candour which they are supposed to 14 maintain as a public authority, they 15 continue to act more like parties to 16 commercial litigation, concede nothing. 17 More disturbingly they still, four years on, 18 show no understanding of the boundaries 19 and red lines which are supposed to exist 20 according to Gibraltar's Constitution of the 21 Ministerial Code, of the standards of public 22 life. To be clear, we do not place any 23 blame on the government's lawyers. They 24 are no doubt acting on instructions. But 25 just imagine the scene where those</p> <p style="text-align: center;">Page 8</p>

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<p>1 instructions were given. Fabian Picardo, 2 Michael Llamas and Nick Pyle in a room 3 together with their lawyers. What will we 4 do about the fact that Michael said the 5 meeting of 12 May should not have 6 happened? What will we do about the fact 7 that Nick agreed the process that led to 8 Mr McGrail's departure was a breach of 9 natural justice? What about the former 10 Solicitor General? Perhaps like Mr Gibbs 11 yesterday they will have recognised what 12 a pivotal witness he was. What will we do? 13 We will do nothing. Act as if the evidence 14 was never given. Not give an inch. People 15 will draw their own conclusions about why 16 this is so. 17 To be fair to Sir Peter, there is Sir Peter, the 18 day is young and perhaps he will have new 19 instructions. Perhaps, and we can only 20 hope, at this late hour his instructions will 21 be to show some insight. We will find out 22 this afternoon. But if he does not, as things 23 currently stand, there are some disturbing 24 implications. The Attorney General no 25 longer thinks the Chief Minister should not</p> <p style="text-align: center;">Page 9</p>	<p>1 demonstrate how little the government 2 parties have learned, we only need to look 3 at the events which have happened in the 4 four years since June 2020 and I will come 5 back to that at the end of my submissions. 6 Ian McGrail called for this Inquiry. It is for 7 him an opportunity to expose the truth of 8 what happened in the 28 days between 12 9 May 2020, when attempts were made to 10 execute the warrants against Mr Levy, and 11 6 June 2020, when Mr McGrail 12 communicated his decision to retire. But it 13 is also an opportunity to ensure that no 14 other public official is subjected to such 15 treatment again by strengthening the 16 guardrails which failed to protect Ian 17 McGrail. 18 We have, sir, respectfully proposed four 19 areas for recommendations in a separate 20 document which is also on the website. 21 Having made these introductory remarks I 22 will now introduce our team and set out our 23 key themes. I act with Caoifhionn 24 Gallagher KC, who, as you know, sir, 25 unfortunately could not make these dates</p> <p style="text-align: center;">Page 11</p>
<p>1 have been at that 12 May meeting. The 2 Chief Minister still believes that is his right 3 to intervene in police investigations, even 4 when the suspect is his close friend and 5 business partner, if to do so would be to 6 protect the jurisdiction. In other words, he 7 believes he has licence to intervene in 8 police operations whenever they involve 9 important people or powerful people. Even 10 when those powerful people are his close 11 friends. Even when they are from the very 12 same legal firm where he is a partner. The 13 Chief Minister still says he believes he can 14 share information about what the Director 15 of Public Prosecutions has advised on 16 a criminal investigation with the criminal 17 suspect and anyone he likes, including 18 Mr Smith on Main Street. Unfortunately 19 and disturbingly, the Chief Minister seems 20 to have learned nothing about the red lines 21 he failed to respect. And that means the 22 guardrails are still as weak as they were in 23 May 2020 and there is nothing to prevent 24 this happening again. 25 If these 110 pages were not enough to</p> <p style="text-align: center;">Page 10</p>	<p>1 which were set by the Inquiry. I also 2 appear with Charles Gomez, who sits 3 beside me, Nick Gomez and Daniel 4 Benyunes. I want to take this opportunity 5 to credit them and their tireless work over 6 for years for Ian McGrail in the face of 7 almost unbearable pressure and endless 8 array of curveballs. Ian McGrail has 9 nothing like the resources available to the 10 government parties or to Hassans, with their 11 bevy of King's Counsel, not just Sir Peter 12 but more in the background. The Inquiry 13 has only ever funded Mr McGrail's team 14 two-thirds of a King's Counsel and I hope I 15 am not overstepping by saying this those 16 instructing me are a credit to Gibraltar, as is 17 Ian McGrail. 18 He has fought everything which they have 19 been able to fire at him over the past four 20 years, from high up figures who lined up 21 against him in lock step, from the moment 22 the RGP crossed the invisible red line, 23 which nobody spoke of but everybody was 24 supposed to know about, by investigating 25 James Levy and by entering Hassans. He</p> <p style="text-align: center;">Page 12</p>

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<p>1 has fought on, despite the witnesses who 2 have been paid off with public money after 3 offering to give evidence against 4 Mr McGrail. He has fought on, despite the 5 increasingly vicious stories which have 6 been published about him on government 7 websites and a newspaper with a curious 8 ownership structure, which I will come to 9 later. Ian McGrail has stood firm against 10 them all. But it has not always been easy. 11 Sometimes it has been almost unbearable. 12 And his mental health has suffered greatly 13 as a result, and I hope he does not mind me 14 saying that. Sir, you will have seen the 15 effects of this at points in his evidence, but I 16 do ask that when considering his evidence 17 and the fact that it was not as slick or as 18 polished or as composed as some of the 19 other witnesses, you bear that in mind. 20 In our opening submissions, Ms Gallagher 21 KC and I began by saying that despite the 22 long list was issues which have been 23 referred to on the issues list, there is only 24 one central issue. The central issue for this 25 Inquiry is what happened in those 28 days.</p> <p style="text-align: center;">Page 13</p>	<p>1 we had the most important piece of missing 2 evidence, the text messages between 3 Mr Levy and Mr Picardo. We know that 4 they were both keen text messengers. Levy 5 has said his phone collapsed. Mr Picardo 6 has simply given no satisfactory 7 explanation as to why he has messages 8 between every key individual and himself 9 in May and June 2020 but not the relevant 10 messages to and from Mr Levy. To 11 continue our Isaac Newton theme, the 12 Levy/Picardo text messages are the black 13 hole in the evidence. 14 I will of course not be taking you through 15 all the detail of our written submissions, 16 which are on the Inquiry website, but I will 17 be dividing the rest of my submissions into 18 three parts; before 12 May, 12 May 19 onwards and, finally, what should happen 20 next and the C word. 21 Before diving in, a simple evidential point 22 which we say is very important. 23 Mr McGrail's account of what happened 24 has remained consistent since 12 May 2020. 25 On that day he was so concerned at what he</p> <p style="text-align: center;">Page 15</p>
<p>1 We said that the warrant was a massive 2 object which exercised a gravitational pull 3 on everything around it. It was only 4 because of the RGP's attempt to execute the 5 warrant on 12 May that Mr Picardo 6 contacted the acting Governor, Mr Pyle. If 7 there had been no warrant, none of the 8 events which this Inquiry is now 9 investigating would have happened. 10 Mr Picardo would not have approached 11 Mr Pyle. Mr Pyle would not have 12 attempted to remove the Commissioner of 13 Police on his own. We say that after the 14 oral hearings those propositions have been 15 proven. We also say that the central 16 question for this Inquiry is why Mr Picardo 17 so fiercely advocated for Mr McGrail's 18 removal. If you answer that question, sir, 19 the other issues fall into place. We say it is 20 now obvious what the answer was. To 21 borrow the words of my learned friend 22 Mr Gibbs, Mr Picardo was batting for team 23 Levy. 24 Perhaps that would have been resolved, 25 perhaps we would know more about this, if</p> <p style="text-align: center;">Page 14</p>	<p>1 feared was corrupt conduct that he wrote 2 and emailed notes to himself to record what 3 was happening. The government parties 4 had been so worried by his 5 contemporaneous emails that they have in 6 their written closing submissions posed 7 a conspiracy theory that Ian McGrail in fact 8 sent them later and somehow changed the 9 date using technical jiggery-pokery. That 10 theory has now been debunked by the 11 RGP's technical experts. Hopefully Sir 12 Peter will be instructed to apologise to 13 Mr McGrail for accusing him without 14 evidence. Perhaps he can put that on the 15 to-do list for lunch adjournment. The 16 account Mr McGrail gave in those emails of 17 12 and 13 May and in his lawyer's letter of 18 29 May remains his account today. Others 19 have been less consistent and I will come to 20 that. 21 So, first section, beginning with before 12 22 May, and, sir, I am at paragraph 10 of our 23 written submissions if you have them in 24 front of you. 25 THE CHAIRMAN: I can get them very</p> <p style="text-align: center;">Page 16</p>

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1 easily.
 2 MR WAGNER: Thank you, sir.
 3 THE CHAIRMAN: Yes.
 4 MR WAGNER: Paragraph, 10, thank you,
 5 sir. Those observing the oral hearings may
 6 have noticed a curious fact. There appears
 7 to be two Ian McGrails. There is the Ian
 8 McGrail which everyone knew before 12
 9 May. His 35-year service in the RGP was
 10 exceptional. He had a distinguished and
 11 decorated career, unblemished by any
 12 disciplinary or other sanctions. He was
 13 popular with colleagues and had excellent
 14 working relationships with leading
 15 members of the Gibraltar community,
 16 including Mr Pyle, Mr Picardo and
 17 Mr Llamas and Mr Rocca. This
 18 Mr McGrail was well liked, well-respected
 19 and known for his professionalism and
 20 integrity. The witnesses who gave oral
 21 evidence were unified their view of him
 22 before 12 May. You can read what some of
 23 them say about him at paragraph 10 of my
 24 written submissions. This McGrail
 25 emerged from 35 years of diligent service

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1 to the RGP. This is the real McGrail.
 2 And then there is the other McGrail, I will
 3 call him the bad McGrail. The bad McGrail
 4 was constructed in the 28 days between 12
 5 May and 9 June 2020. It is a skewed and
 6 inaccurate caricature of Ian McGrail which
 7 was presented by Mr Picardo, Mr Llamas
 8 and Mr Pyle. They have attempted to paint
 9 Mr McGrail as a dishonest and incompetent
 10 police officer. Nobody is perfect, sir.
 11 Certainly Ian McGrail is not perfect. But
 12 the bad McGrail does not exist expect in the
 13 trumped-up allegations made against him
 14 and the balance of evidence does not
 15 support those allegations. In any case, if it
 16 was in any way close to the truth, if
 17 Mr McGrail was dishonest about important
 18 issues or evasive with his superiors or a bull
 19 in a china shop, then there would have been
 20 evidence of these characteristics before 12
 21 May 2020. His professional record says
 22 otherwise.
 23 The lead-up to 12 May.
 24 The Op Delhi investigation was already
 25 becoming a matter of serious concern to

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1 Mr Picardo, Mr Llamas and Mr Rocca as to
 2 which high up members of the Gibraltar
 3 community it would drag in and the damage
 4 it could do to Gibraltar's reputation.
 5 Mr Llamas raised Op Delhi a number of
 6 times with Mr McGrail. Those
 7 conversations are recorded by Mr McGrail
 8 in his notes on 12 May. Much was made of
 9 the fact that there were no notes taken of
 10 the earlier conversations and the fact that
 11 Mr McGrail could not remember the dates,
 12 but, sir, there is not a true conflict of
 13 evidence between Mr McGrail and
 14 Mr Llamas about this. Mr McGrail says the
 15 conversations probably happened during
 16 meetings about other matters. Mr Llamas
 17 does not deny this is possible. Mr Llamas
 18 admits that he may have asked for
 19 occasional updates on Op Delhi, which he
 20 described as at most a light touch. And in
 21 his second affidavit he does not explicitly
 22 deny Mr McGrail's account, though he does
 23 not agree with some of Mr McGrail's
 24 interpretations of what was said. That is at
 25 paragraph 17.3 of my submissions. And it

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1 appears that at least some of the issues were
 2 raised in the meeting of 7 April, which
 3 nobody disputes happened.
 4 Coming to that meeting, I am at paragraph
 5 18 of my written submissions.
 6 One of the key factual disputes in this
 7 Inquiry is whether there was an agreement
 8 on 7 April 2020 between Mr McGrail and
 9 Mr Llamas about not progressing Op Delhi
 10 without first consulting Mr Llamas. This is
 11 important for two reasons. First, because it
 12 was a central plank of the reasons given by
 13 Fabian Picardo to the Governor and the
 14 GPA that Ian McGrail must go. It was one
 15 of the reasons why the said Ian McGrail,
 16 the bad McGrail, was dishonest, because he
 17 had dishonoured an agreement he had
 18 reached with the Attorney General of
 19 Gibraltar, an agreement which the Attorney
 20 General said, and accepting these definitely
 21 were his words: "Clear beyond
 22 peradventure."
 23 The second reason, it is important, is if
 24 there was no such agreement it calls into
 25 question the Attorney General's credibility.

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1 The evidence before you, sir, shows that
 2 there was no such agreement. The
 3 Attorney's description of the reason for the
 4 7 April meeting is quite curious. In oral
 5 evidence he recalled giving Mr McGrail
 6 a warning, "Ian, be careful, take tremendous
 7 care with this investigation." But not in his
 8 capacity as Attorney General. He said, "I
 9 do not think I was even speaking to him as
 10 Attorney General and Commissioner of
 11 Police." He said, "I was not giving him
 12 legal advice. It was friendly advice. It was
 13 private advice, to be careful." And those
 14 are all his words.
 15 The claim that there was an agreement is
 16 unsupported by any other witnesses to this
 17 inquiry, including Mr Richardson and
 18 Mr DeVincenzi, who were there with
 19 Mr McGrail. And then in oral evidence
 20 Mr Llamas said that it was clear from the
 21 context of the meeting and the agreement
 22 was more of an implication. Mr Llamas
 23 accepted he could not say whether on
 24 reflection there was a misunderstanding
 25 about what was agreed on 7 April. Even

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1 leaving aside the contrast with his repeated
 2 statements that it was clear beyond
 3 peradventure, it is significant that
 4 Mr Llamas supported the removal of
 5 Mr McGrail on the basis of being misled by
 6 him. For example, by permitting
 7 Mr Picardo to brief the GPA at AG felt that
 8 he had been misled. Plainly at the least he
 9 exaggerated the position and also
 10 potentially himself misled Mr Picardo about
 11 the agreement. And we now know from the
 12 late disclosure of a timeline by Mr Llamas
 13 what Mr DeVincenzi told him at the time
 14 on 3 June 2020. He commented in
 15 a timeline which Mr Llamas sent to his
 16 lawyers. He said:
 17 "Suggestion: I appreciate that the COP and
 18 Mr Richardson may have thought that the
 19 understanding we received was limited to
 20 the exercise regarding the rationalisation of
 21 the charges against the individuals who
 22 were the principal subject of our discussion.
 23 However, even if this was the case, it was
 24 implicit that no action on this case more
 25 broadly would take place without being

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1 informed."
 2 That is what Mr DeVincenzi told the
 3 Attorney General at the time. This is
 4 damning for Mr Llamas's account but it
 5 does demonstrate a common theme; the
 6 willingness to exploit obvious
 7 misunderstandings to accuse Mr McGrail of
 8 dishonesty and the erasure of any doubt or
 9 nuance in written correspondence. What is
 10 the explanation given in the government
 11 parties' submissions for the irresolvable
 12 tension between what Mr Llamas said in
 13 oral evidence, in written evidence and in
 14 correspondence at the time and why nobody
 15 else supports him on the point? They say
 16 this at paragraph 121:
 17 "While Mr Llamas accepted in oral
 18 evidence that it was an implication rather
 19 than an explicit agreement, he nevertheless
 20 maintained that, for him, it was clear
 21 beyond peradventure."
 22 So it is both an implication and clear
 23 beyond peradventure. "When I use a word
 24 it means just what I choose it to mean,
 25 neither more nor less." I take that quotation

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1 not from Oscar Wilde but from Humpty
 2 Dumpty in Alice's Adventures in
 3 Wonderland. From a King's Counsel and
 4 the Attorney General of Gibraltar this is
 5 Alice in Wonderland stuff. No concessions,
 6 no insight.
 7 Another important thing that happened
 8 before 12 May was that the DPP advised
 9 that Mr Levy should be treated as a suspect
 10 and was briefed on the plan to execute
 11 a search warrant. I am at paragraph 20 of
 12 my written submissions, sir. It is important
 13 background that the DPP was asked for and
 14 provided supportive advice on the treatment
 15 of Mr Levy as a suspect. He was also
 16 briefed on the plan to obtain a search
 17 warrant. How did this come about? On 1st
 18 March 2020, Mr McGrail requested that Mr
 19 Richardson, and I am quoting: "Consult
 20 with the DPP to ensure our intended
 21 activity is legally supported." Those were
 22 the terms of his request. Mr McGrail, in
 23 common with the other police officers, did
 24 not expect the DPP to advise on the
 25 operational decision, what to do with the

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<p>1 determination that Mr Levy was a suspect, 2 i.e. to execute the search warrant. But he 3 did expect him to advise on his treatment as 4 a suspect, which would then lead to 5 operational action being taken. 6 It is important that the terms of 7 Mr McGrail's request resembled what he 8 recalls telling Mr Picardo and Mr Llamas in 9 the meeting of 12 May 2020 as recorded in 10 his email to self of the same day, that all the 11 grounds to deal with Mr Levy had been 12 consulted with the DPP. It is also notable 13 that in his oral evidence Mr McGrail said 14 that it was not the practice of the RGP to 15 ask the consent of the DPP for an 16 operational decision, such as obtaining a 17 search warrant, however he expected for the 18 team to "run it past" the DPP. This is 19 crucial context when we come to the 12 20 May meeting and what was said, which I 21 will come to shortly. 22 But before that, another pre-May 12 issue, 23 the red lines. I am at paragraph 25. There 24 were red lines which should have prevented 25 Mr Picardo from getting involved in Op</p> <p style="text-align: center;">Page 25</p>	<p>1 pressure on Mr McGrail regarding Op 2 Delhi. How are you to determine, sir, what 3 inappropriate means? There are a number 4 of ways to do so. A lot is just common 5 sense, but we say that two analytical lenses 6 can be used. Gibraltar's laws, Constitution 7 and the Police Act set out a clear scheme as 8 to who is responsible for that and the 9 Ministerial Code. 10 What is the answer? Well, the three current 11 and former senior law officers in Gibraltar 12 were as one on those boundaries and what 13 was inappropriate or appropriate. 14 Mr Rocca said that if he was contacted by 15 the Chief Minister and asked for any 16 information about on ongoing inquiry, he 17 would, likely depending on what it was, 18 refuse to speak to him about it and I think 19 he would have known that as well. And in 20 relation to Op Delhi he said: "Definitely I 21 would not speak to him because the 22 ultimate beneficial ownership of 36 North." 23 Mr DeVincenzi, the former Solicitor 24 General, said Mr Picardo should probably 25 be running 100 miles in the other direction</p> <p style="text-align: center;">Page 27</p>
<p>1 Delhi in any way. This is a simple point 2 which, in our submission, was clear at the 3 time and remains clear and even clearer 4 after five weeks of oral evidence. Fabian 5 Picardo had no power or function to 6 become involved in police operations. That 7 is not the Chief Minister's role, as is 8 perfectly obvious from the Constitution and 9 the Police Act. The Ministerial Code is 10 important here. It states at 7.1 that: 11 "Ministers must ensure that no conflict 12 arises, or could reasonably be perceived to 13 arise, between their public duties and their 14 private interests, financial or otherwise." 15 And at paragraph 7.7: 16 "Ministers must scrupulously avoid any 17 danger of an actual or perceived conflict of 18 interest between their ministerial position 19 and their private financial interests. They 20 should be guided by the general principle 21 that they should either dispose of the 22 interest giving rise to the conflict or take 23 alternative steps to prevent it." 24 One of the issues on the issue list is whether 25 the Chief Minister placed inappropriate</p> <p style="text-align: center;">Page 26</p>	<p>1 from this matter. And Mr Llamas agreed 2 with Mr DeVincenzi's analysis when he 3 was asked about it. Why should the Chief 4 Minister not get involved in Op Delhi in 5 particular? This has been well rehearsed in 6 the oral hearings and I will not repeat the 7 detail. But in summary, he had beneficially 8 owned part of 36 North, Hassans was owed 9 476,000 by 36 North. If the business 10 failed Hassans was committed to employ 11 the three Op Delhi defendants as 12 consultants at 300,000 per year. 13 Mr Picardo was himself a person of interest 14 or at the very least a potential witness to the 15 investigation. He had been quite deeply 16 involved in the factual background. He 17 later gave a statement to the criminal 18 investigation. 19 Mr Picardo's oral evidence that once he had 20 decided the maintenance contracts should 21 remain with Bland he no longer had 22 an interest in 36 North is wrong in fact. He 23 retained a beneficial stake in the company, 24 however small, as did the other Hassans 25 partners and Mr Levy, whose stake was not</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 that small. This plainly engages the duty 2 and the Ministerial Code to scrupulously 3 avoid any danger of an actual or perceived 4 conflict of interest. Mr Picardo's oral 5 evidence that he did not have an interest in 6 36 North because it was negligible to him is 7 simply an evasion. He maintained 8 a financial interest which was not de 9 minimis, even despite his curious statement 10 in oral evidence that he has become, 11 quoting him, "Wealthier than I ever wanted 12 to be as a result of honestly discharging my 13 profession as a lawyer and the distinction of 14 being a Chief Minister." It would of course 15 be open to Rishi Sunak, other wealthy 16 political leader, to claim he does not have to 17 comply with conflict of interest principles 18 when he owns part of a company because 19 he just owns so many it does not matter to 20 him. But if he did try that he would cause 21 a public uproar and rightly so. And that 22 equally applies to the Chief Minister. 23 But, sir, even if you take away all of those 24 factors which I have mentioned, 36 North, 25 the beneficial ownership, all of that, there is</p> <p style="text-align: center;">Page 29</p>	<p>1 then he was entitled as Chief Minister to 2 intervene in it. He said in oral evidence that 3 it was appropriate to give his view on the 4 warrant because: 5 "There was a jurisdictional risk as a result 6 of the execution of that search warrant. 7 Gibraltar's Reputation was in play." 8 As to whether he could intervene in respect 9 of a senior partner of the firm in which he 10 herself was a partner, Hassans, Mr Picardo 11 said: 12 "It is not possible for me to delegate to 13 another the protection at that I would have 14 afforded to senior partners and lawyers of 15 other firms to deploy in respect of James 16 Levy. It had to be me." 17 Protection, it had to be me. Mr Picardo also 18 says he was motivated to protect Mr Levy 19 because he was "Gibraltar's biggest 20 rainmaker" and "one of the greatest sources 21 of business for the financial centre". 22 Mr Picardo even admitted that he was 23 motivated to prevent the RGP examining 24 Mr Levy's phone because it contained the 25 information of Mr Levy's many</p> <p style="text-align: center;">Page 31</p>
<p>1 a single factor which on its own obviously 2 should have prevented Mr Picardo playing 3 any role at all and was still very much in 4 application on 12 May. And that is the one 5 which he himself identified in his text to Ian 6 McGrail on 12 May: "Given my close 7 personal relationship with Mr Levy I will 8 not comment further." Mr Levy was 9 Mr Picardo's close friend, mentor. Even if 10 it was ever proper for Mr Picardo to get 11 involved in police operations, and it was 12 not, how could he ever act objectively in 13 relation to this investigation? That simple 14 point is at the heart of what began on 12 15 May because it explains Mr Picardo's 16 extreme anger: "Flared nostrils, disjointed 17 face, he really let rip." What it does not 18 help us with is what happened once 19 Mr Picardo calmed down and why it 20 happened, and I will come back to that. 21 Before I do, I want to address Mr Picardo's 22 extraordinary justification. I am at 23 paragraph 33. Mr Picardo believed, and 24 apparently still believes, that if a police 25 investigation raised a "jurisdictional" issue</p> <p style="text-align: center;">Page 30</p>	<p>1 international, very high net worth clients, 2 who were "without the protection of a 3 production order". 4 What should the Inquiry make of this? We 5 submit this excuse is really an attempt by 6 Mr Picardo to give himself license to 7 circumvent constitutional red lines. And 8 the licence was only for one investigation, 9 the one that happened to be of his close 10 friend and business partner. Perhaps his 11 theory was invented for this Inquiry to 12 justify Mr Picardo's actions relating to 13 Mr Levy. It certainly takes no account and 14 indeed ignores the fact that Gibraltar's 15 Constitution, in common with liberal 16 democracies worldwide, keeps politicians 17 out of operational policing. We say 18 Mr Picardo's major concern was to protect 19 Mr Levy and Hassans from the warrants 20 and from the criminal investigation and that 21 his reference to protecting Gibraltar as 22 a jurisdiction are just a way of saying that 23 protecting Mr Levy, Hassans and his own 24 position equates to protecting Gibraltar. 25 L' tat, c'est moi. I am the state. This is</p> <p style="text-align: center;">Page 32</p>

<p>1 a bad idea because it means any actions to 2 protect those individuals can be justified as 3 protecting the jurisdiction. The ends will 4 always justify the means and the individuals 5 will always be protected. 6 That is why Mr Picardo is unique perhaps 7 among any political leader in a democracy 8 in stating this view so brazenly, perhaps 9 some of them believe it but who actually 10 says it out loud? He stands alone in 11 claiming that he can intervene in police 12 investigations into important people. 13 Imagine if that was the policy of every 14 democratic political leader. It would lead to 15 chaos and it would drive a coach and horses 16 through the independence of police forces. 17 No other witness to this Inquiry agrees with 18 Mr Picardo's theory, except Mr Llamas, 19 who appears to have U-turned twice, from 20 what he said in his written evidence to what 21 he said in his oral evidence, and then from 22 what he said in his oral evidence to what is 23 said on his behalf in the government parties' 24 closing submissions. I think that leaves 25 him facing the same direction as on 12</p> <p style="text-align: center;">Page 33</p>	<p>1 unique. Mr McGrail's evidence, which is 2 supported by the documents he has 3 adduced, is that he approached Mr Picardo 4 for support relating to the creation of 5 a multiagency team to deal with the 6 investigation of a large money laundering 7 operation which was suspected to include 8 a lawyer. This is not the same. Mr Picardo 9 knew he should not get involved. He texted 10 just that, but he did it anyway and all hell 11 broke loose. 12 One more point before I get to the 12 May 13 meeting. There can be no doubt that at the 14 very latest Mr Picardo learned that James 15 Levy was a suspect in the investigation by 16 12 May. I am at paragraph 35 of my 17 submissions. Mr Picardo accepted in oral 18 evidence that if he had been told Mr Levy 19 was a suspect, "it might have made my 20 intervention inappropriate". This is as close 21 as he came in this Inquiry to admitting any 22 of his actions might have been 23 inappropriate. Of course there is no sign of 24 that semi-insight in these closing 25 submissions. We submit it is plain from</p> <p style="text-align: center;">Page 35</p>
<p>1 May. 2 Amongst the senior government and law 3 officers only Mr DeVincenzi seems to have 4 grasped the danger at the time. He says he 5 was especially anxious that concerns for the 6 good reputation of the jurisdiction and its 7 offices and institutions could not be 8 exploited by anyone with an incentive to 9 conflate Gibraltar's interests with their own. 10 Quite. We say Mr Picardo's fatal flaw was 11 being unable to separate his, Mr Levy's, 12 Hassans's interests from those of Gibraltar. 13 And it is a complete nonsense that he would 14 have acted the same or has acted the same 15 with any other prominent lawyers. 16 Mr Levy got the Chief Minister's 17 gold-plated protection package, reserved for 18 him alone. 19 In oral evidence Mr Picardo made a number 20 of references to Mr McGrail informing him 21 of the RGP's intentions to execute a search 22 warrant on another lawyer, as if to say, 23 "Well, he does it all the time." This is 24 a false analogy and simply proves the point 25 that the situation involving Mr Levy was</p> <p style="text-align: center;">Page 34</p>	<p>1 Mr Picardo's own evidence that he knew 2 Mr Levy was potentially a suspect of 3 a crime for a year before the search 4 warrants. He says in his evidence he had 5 been in touch with Mr Levy on a very large 6 number of occasions prior to 12 May. 7 Mr Picardo told Mr Levy he was sure the 8 investigation would exonerate him. This 9 begs the question, and one which I asked 10 Mr Picardo, exonerate from what? 11 Mr Levy must have told him he knew or 12 feared that he was being investigated. But 13 anyway, regardless of that, Mr Picardo 14 knew Mr Levy was likely to be a suspect by 15 the time he texted Mr McGrail at 12.34 pm 16 on 12 May. He flip-flopped on this in his 17 evidence somewhat. Mr Gibbs referred to 18 this yesterday. He said in oral evidence that 19 on 12 May when he met Mr McGrail and 20 Mr Llamas he was: 21 "Not labouring under the apprehension that 22 I was intervening in respect of someone 23 who was a suspect." 24 But he also said that when he replied to 25 Mr McGrail's WhatsApp message he said:</p> <p style="text-align: center;">Page 36</p>

<p>1 "Search warrants are not executed against 2 people who are not suspects. By that stage 3 I was starting to become concerned that he 4 might be a suspect." 5 And Mr Levy called Mr Picardo when he 6 was on his way to the Hassans office. This 7 is a conversation which has taken a number 8 of years to unearth, though Mr McGrail 9 suspected it had happened on the day. 10 Mr Picardo recalled in oral evidence that in 11 this conversation Mr Levy said: 12 "How can they believe that I would be 13 involved in anything that is untoward?" 14 That was an important moment. 15 Mr Picardo was at this moment standing on 16 the north bank of the Rubicon River. 17 Would he cross? It was at this moment, at 18 the latest, that the red line which precluded 19 him being involved in the investigation 20 should have been apparent and would have 21 been apparent to Mr Picardo. And it was at 22 this moment he decided to cross it. 23 I now move on to the second of my three 24 sections, 12 May onwards. This part is 25 called: all hell breaks loose and the bull in</p> <p style="text-align: center;">Page 37</p>	<p>1 Mr Levy he said in oral evidence that he 2 believes he perhaps said, "You have got to 3 challenge this. It will not stand. If you put 4 this through the ringer you will be able to 5 show it has been improperly obtained. I am 6 sure they will never be able to justify the 7 suggestion you would destroy evidence." 8 Mr Picardo's entirely premature view on the 9 search warrant is no surprise because he 10 had already expressed his view on 11 Mr Levy's innocence repeatedly to Mr Levy 12 in the preceding months. And of course he 13 was Mr Levy's great friend. This is one of 14 the reasons why conflict of interest rules 15 exist because people cannot be objective 16 when an issue involves their close friend, 17 family member, business partner. 18 Following the text message Mr Picardo 19 exploded in anger and called Mr McGrail to 20 a meeting with Mr Llamas where he berated 21 him, not for lying but for the RGP's actions 22 in executing the search warrant against 23 Mr Levy. Flared nostrils, disjointed face. 24 The impact of the Chief Minister's actions 25 were so great that Mr McGrail is still</p> <p style="text-align: center;">Page 39</p>
<p>1 the china shop. A huge amount is now 2 being made of the alleged deficiencies in 3 the warrant application and the warrant 4 process. But the truth is that Mr Picardo 5 knew none of that at the time and neither 6 did Mr Llamas. As we have said 7 consistently in answering the core questions 8 in this Inquiry, the Inquiry must focus on 9 not what the key players know now, not on 10 the criticisms eminent King's Counsel have 11 made of the police or of the warrant four 12 years later, but only on what the key players 13 knew at the time, what was actually in their 14 minds. And on that it is crucial context that 15 Mr Picardo's actions on 12 May were taken 16 when he knew nothing, was unconcerned 17 by and was reckless to two whether Mr 18 Levy had committed the crime he was 19 accused of. He formed a concluded view 20 on the propriety of the search warrant 21 immediately upon hearing about it, despite 22 having no expertise or experience in police 23 investigations and not having seen the 24 underlying evidence. 25 On 12 May when Mr Picardo spoke to</p> <p style="text-align: center;">Page 38</p>	<p>1 feeling them today, as demonstrated by the 2 emotion he showed when giving oral 3 evidence on that meeting. Mr Picardo 4 claims in his witness evidence that he raised 5 this matter about Mr McGrail after the 6 event. In fact it was raised whilst the RGP 7 were attempting to execute the search 8 warrant. His oral evidence on this 9 contradiction was somewhat stretched. He 10 said, "Mr McGrail was telling me he had 11 already executed the warrant." Whereas 12 Mr McGrail's message said: "Detectives are 13 executing a search warrant." When 14 challenged Mr Picardo shifted his position, 15 saying, "The damage had been done 16 because they were executing a search 17 warrant in a law firm in Gibraltar and that 18 could lead to serious reputational damage to 19 Gibraltar." Later in his oral evidence he 20 reversed again saying, "I approached this on 21 the basis that the warrant had been 22 executed." But it demonstrably was not and 23 he must have known it was not. This is 24 self-serving and demonstrates again 25 Mr Picardo's tendency to dissemble.</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 No notes were taken of the 12 May 2 meeting. But that afternoon and evening 3 Mr McGrail wrote notes to himself which 4 the RGP have confirmed were indeed 5 emailed that day. Those notes are the most 6 detailed contemporaneous record of the 7 meeting made shortly after it finished. 8 Their contents are not really disputed 9 except for the description of what 10 Mr McGrail told the Chief Minister and 11 Attorney General about the DPP's advice. I 12 have set out Mr McGrail's account in that 13 email at paragraph 40.4 of my submissions. 14 It has been well rehearsed in the oral 15 evidence, there is not any dispute that the 16 Chief Minister very angrily criticised 17 Mr McGrail and threatened consequences if 18 he was right and Mr McGrail was wrong, or 19 that the Attorney General said he could not 20 entertain Mr McGrail again. 21 What was the impact? Well, by forcefully 22 expressing his view about an operational 23 matter and threatening consequences if he 24 was proven right and the RGP proven 25 wrong, Mr Picardo was effectively</p> <p style="text-align: center;">Page 41</p>	<p>1 with [James Levy], I will not comment 2 further?" 3 "Answer: I don't remember him writing it. 4 I mean, I remember the message, yes, if 5 that's the question. 6 "Question: And did he tell you that he had 7 sent that message? 8 "Answer: I don't remember. I don't think 9 so. 10 "Question: In your view, was that the only 11 right way for him to react? 12 "Answer: Perhaps. He certainly didn't feel 13 it that way. 14 "Question: I mean, without rehearsing what 15 everyone has already asked you about, the 16 share ownership, the friendship, the 17 Hassans co-partnership -- 18 "Answer: Yes. 19 "Question: -- all of the reasons why -- 20 "Answer: Yes. 21 "Question: -- he could not comment further. 22 Do you now agree he simply could not? 23 "Answer: Yes, I suppose so. 24 "Question: In the words of another, do you 25 agree he, because of all his connections and</p> <p style="text-align: center;">Page 43</p>
<p>1 instructing the police to take certain steps in 2 the investigation. This would have been 3 a line which Mr Picardo accepted in oral 4 evidence should absolutely not be crossed. 5 Certainly at no point did he say words to 6 the effect of: this is just my opinion, I am 7 very upset, I just wanted to express myself, 8 you of course must follow the evidence and 9 do what the police do. Nothing like that. In 10 fact nothing like that was ever said to any 11 police officers about Mr Levy by anyone in 12 power. Nobody ever uttered the simple 13 words: you do your job and I will do mine. 14 Nothing of the sort. In his oral evidence the 15 Attorney General agreed the Chief Minister 16 should not have commented further after 17 sending the text message and that he, the 18 Attorney General, failed to assist the Chief 19 Minister to draw the red lines beyond which 20 he should not have involved himself. 21 I am just going to quote a section from Day 22 12, page 176 of the transcript. 23 "Question [I think this is Mr Gibbs]: Do 24 you remember Mr Picardo's immediate 25 reaction being, 'Given my close relationship</p> <p style="text-align: center;">Page 42</p>	<p>1 his positions had to stay 100 miles away 2 from this? 3 "Answer: That's a matter for him. 4 "Question: Yes, but do you agree that -- it 5 being a matter for him, that was what he 6 had to do? 7 "Answer: Perhaps. I'm not in his mind." 8 And then you, sir, asked: 9 "You have said on a number of occasions 10 that the boundaries or the lines, or even the 11 red lines are for the Chief Minister to draw. 12 Did it not strike you as part of your duty as 13 Attorney General to assist him to draw 14 those lines? 15 "Answer: My involvement with him was 16 largely on that day, in this investigation, on 17 the 12th. That I did nothing -- I didn't think 18 I could act on the spot on the 12th, because 19 it was all happening very quickly. Whether 20 I failed thereafter to do the things, and say 21 the things you are suggesting, yes, it's 22 something which I accept." 23 This evidence from the Attorney General is 24 important. A rare moment of insight. You 25 might have expected at the least for the</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 Attorney General's insight to have carried 2 through to the government parties' closing 3 submissions. Sadly not. They say at 4 paragraph 128.7: 5 "The Attorney General is entirely satisfied 6 that the Chief Minister did not cross any 7 line of legal propriety or that may have 8 been relevant to the Attorney General's 9 legal duties as guardian of Gibraltar's laws." 10 No concessions, no insight. 11 My next topic is Mr McGrail did not 12 mislead. I will begin from borrowing from 13 Mr Cruz's submissions: 14 "The RGP observes that the nature of the 15 angry interference in operational matters in 16 the 12 May meeting should not have 17 happened and inevitably created a breeding 18 ground for possible misunderstanding." 19 Pausing there, it is very important, sir, that 20 what the Royal Gibraltar Police say. They 21 do not have a brief for Mr McGrail. They 22 have been on a bit of a journey in terms of 23 what they have said in this Inquiry, but 24 having heard the evidence, they say the 12 25 May meeting should not have happened and</p> <p style="text-align: center;">Page 45</p>	<p>1 The Chief Minister never contacted 2 Mr McGrail after 12 May. He did not ask 3 him to clarify what he had said. But in any 4 case, it is clear we submit from the balance 5 of evidence: during the course of an angry 6 and fractious meeting (which Mr Picardo 7 should never have called) Mr Picardo 8 misinterpreted a comment by Mr McGrail 9 to the effect that the DPP had been 10 consulted on the grounds to deal with Mr 11 Levy. Mr McGrail may have said the 12 investigating officers went to the "AG's 13 chambers" as this had been (until recently) 14 the term commonly used to mean the DPP's 15 office. But it is absurd to suggest that lied 16 about the Attorney General advising on the 17 warrant to the Attorney General. The fact 18 that Mr Picardo and Mr Llamas both now 19 say that he did demonstrates the extent to 20 which they are willing to exaggerate the 21 dishonesty of Mr McGrail, to paint the bad 22 McGrail. Mr McGrail accurately told Mr 23 Picardo and Mr Llamas that the DPP had 24 been advising the investigating team, that 25 he was privy to the evidence involving Mr</p> <p style="text-align: center;">Page 47</p>
<p>1 that inevitably it created a breeding ground 2 for possible misunderstanding. That is the 3 starting point. That 12 May meeting should 4 not have happened in the first place. It was 5 unfair to put Mr McGrail on the spot and 6 expect him to account for any detail of 7 an investigation which he was not running 8 himself without the investigative officers 9 present, in fact they were at Hassans's 10 office, Mr Richardson was, without any 11 forewarning or chance to prepare, without 12 any chance to follow up and having to 13 respond to angry criticism, as Mr McGrail 14 described it, the dressing down of his 15 35-year career. This was not an ordinary 16 meeting. That was a shouting match. And 17 even if there was a genuine 18 misunderstanding which arose in those 19 circumstances, it is hardly surprising that it 20 did. 21 (10.50) 22 You might reasonably consider, sir, that it 23 is deeply unfair to Mr McGrail to then 24 remove him from post without even 25 attempting to resolve the misunderstanding.</p> <p style="text-align: center;">Page 46</p>	<p>1 Levy and he agreed with his classification 2 as a suspect. Remember, sir, Mr McGrail 3 had requested that obtain the DPP's advice 4 on the plan to treat Mr Levy as a suspect 5 and thereafter take operational action 6 against him. And Mr McGrail had been 7 informed by Mr Richardson that the DPP 8 had given the "green light". There is a 9 separate issue about whether the DPP 10 should have put the advice in writing; but 11 even leaving that aside, Mr McGrail was 12 not there to hear the advice, he got it second 13 hand. The DPP had been told about the 14 search warrant, but had not formally 15 advised on it. That is why Mr McGrail said 16 "the grounds [sic] to deal with Mr Levy had 17 been consulted with DPP": because that is 18 what he understood to be the position. This 19 was interpreted by Mr Picardo and Mr 20 Llamas as Mr McGrail saying the DPP had 21 advised explicitly on the search warrant. 22 There are two pieces of relevant evidence 23 from 12 May itself which I say support that. 24 First of all, Mr McGrail's email to self. 25 Now, contrary to some of the assertions in</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 evidence, this was sent before Mr McGrail 2 was told by Mr Llamas on the 13th that the 3 Chief Minister thought he had lied. It is 4 very important, that, because he was just 5 writing down what he thought had 6 happened. And in that email he said "all 7 the grounds [sic] to deal with Mr Levy had 8 been consulted with DPP". That is what he 9 said he said. And then there is Mr Llamas's 10 text message to Mr Picardo at 3.43pm in 11 which he states, after saying the DPP 12 "strongly advised against" the warrant, 13 which turned out to be wrong, he said "he 14 certainly gave us the impression that [the 15 search warrant] decision was sanctioned by 16 DPP". If Mr Llamas thought he had been 17 lied to, he would have said it. He is not 18 afraid of using strong language. He might 19 even have said it was clear beyond 20 peradventure. When Mr McGrail was 21 discussing the matter with Mr Richardson 22 the following day, and the transcript is 23 taken from what had happened in the car, 24 he said (and excuse the few umms and ahs 25 in it), "Yesterday the CM and, erm, I said --</p> <p style="text-align: center;">Page 49</p>	<p>1 obtained and executed the search warrant 2 against Mr Levy in reliance of legal advice 3 from the Director of Public Prosecutions, 4 who had confirmed it was appropriate to 5 seek such a warrant and proceed in that 6 way. That is the language Mr Picardo used 7 in the 5 June letter. All of this could have 8 been cleared up with a simple phone call or 9 a meeting. Mr Picardo accepted in oral 10 evidence, in the context of Mr Levy's 11 extraordinary and unfounded accusation 12 against Mr Richardson that when someone 13 is very emotionally affected they might 14 make allegations which turn out to be 15 spurious, and that "you do not judge them 16 and their record with you or anything else 17 based on what happens in that period of 18 heightened emotions". He applied this 19 principle to Mr Levy, but of course he did 20 not apply it to Mr McGrail. It is important 21 that the Chief Minister did not put in 22 writing what he now claims Mr McGrail 23 said to him until almost four weeks later. 24 The first time the allegation appears in the 25 detail that I have just read out was in the</p> <p style="text-align: center;">Page 51</p>
<p>1 and I said: well, look, this is not a question 2 of shrugging responsibility. We've actually 3 been engaged with the DPP, and I have his 4 advice on the question of having to do 5 these, er, things, interventions. Now, he's 6 taken that as the DPP advising on the 7 warrant, when I'm referring to: is the DPP 8 advising or is it that Jaime has", and then 9 Mr Richardson says that the DPP would not 10 advise and did not advise. So, what he says 11 to Mr Richardson is, "I have his advice on 12 the question of having to do these 13 interventions". And that reflects, similar to 14 what he wrote in the email. And I accept 15 these are not clear statements. Mr McGrail 16 is not a lawyer, and was under a huge 17 amount of pressure in that angry meeting. 18 And I accept his statement was open to 19 being interpreted in different ways, but that 20 certainly was not his intention. The 21 Attorney General and the Chief Minister 22 have no criminal law expertise, and do not 23 know how the police operate or what advice 24 they would have obtained. But what Mr 25 McGrail said is certainly not that he had</p> <p style="text-align: center;">Page 50</p>	<p>1 letter to the GPA of 5 June, sent 24 days 2 after the 12 May meeting. This letter was a 3 response, as you will know, sir, to the letter 4 from Gomez & Co of 29 May, which 5 alleged Mr Picardo's real reason for 6 wanting to oust Mr McGrail was the 7 warrant against James Levy. It was only 8 after this allegation was made that Mr 9 Picardo raised the lie in writing for the first 10 time. I will return to Mr Picardo's 11 reluctance to put certain matters in writing 12 shortly. But next, the Chief Minister's 13 inappropriate interventions. The starting 14 point is that Mr Picardo should have been 15 nowhere near the Op Delhi investigation. 16 The 12 May meeting should not have 17 happened. And Mr Picardo may have used 18 the excuse he was angry and emotional, and 19 went too far. We say that would not be a 20 reasonable excuse. But what he did next, 21 when he must have had time to calm down 22 and think things through, is important. Did 23 he wake up on 13 May and think: goodness, 24 I overstepped a bit yesterday, I was angry; 25 I'd better call Mr McGrail and apologise for</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 crossing that line, make sure I did not do 2 anything else like that? To paraphrase the 3 Ministerial Code: did he ensure that no 4 conflict arose, or one which could 5 reasonably be perceived to arise, between 6 his public duties and his private interest, 7 financial or otherwise? No, he did not. 8 After the 12 May meeting he doubled 9 down. To borrow Mr Gibbs's phrase, Mr 10 Picardo went to bat for team Levy. How is 11 it best to describe what Mr Picardo did? 12 His activities can be divided into two 13 tracks. The first was taking actions to limit 14 the exposure of Mr Levy to the Op Delhi 15 investigation; I will call that the Levy track. 16 The second was to remove Mr McGrail 17 from his post; I will call that the McGrail 18 track. On the Levy track, what did he do? 19 Mr Picardo and Mr Llamas exchanged 20 messages about various options to use the 21 AG's powers under the Constitution to 22 discontinue the prosecution or take over the 23 search warrant from the police. And it is 24 clear from these messages that Mr Picardo 25 wanted the warrant to be undermined,</p> <p style="text-align: center;">Page 53</p>	<p>1 written statement from him." Of course, 2 that admission that he "persuaded" the RGP 3 in his view with the DPP does not appear 4 anywhere else. Given how closely Mr 5 Picardo and Mr Llamas worked, and the 6 free and somewhat unmoored exchanges of 7 text messages relating to the warrant, it is 8 simply implausible they were not 9 discussing these meetings and coordinating 10 their approach. Pausing on the Attorney 11 General for a moment. We submit that the 12 balance of evidence shows that the Attorney 13 General was not one to challenge the Chief 14 Minister's actions. He seems to have acted 15 more as a facilitator of the Chief Minister's 16 wishes, a kind of in-house lawyer. These 17 were highly contentious and sensitive issues 18 at stake in the Op Delhi investigation, 19 especially because of the Chief Minister's 20 links to the facts as well as to James Levy, 21 and there was an obvious need for clear and 22 balanced, sober, legal advice. There is no 23 evidence the Attorney General did any of 24 that, even when he was nudged with some 25 force by Mr DeVincenzi. But there is</p> <p style="text-align: center;">Page 55</p>
<p>1 overturned or for the Attorney General to 2 take control of it. It is also clear that the 3 AG was not objecting to that, and was 4 positively engaging with, Mr Picardo's 5 suggestions. Mr Llamas accepted in oral 6 evidence that at that point on 17 May 7 "perhaps" he should have told Mr Picardo 8 he could not discuss the criminal 9 investigation because Mr Picardo had a 10 direct personal interest in it. Of course, that 11 does not appear in closing submissions. It 12 stands to reason that Mr Picardo and Mr 13 Llamas were, during that period, 14 discussing the AG's meetings and 15 communications with RGP. It would be 16 strange for them not to have been 17 discussing those meetings, given the text 18 message exchanges that were happening. 19 And the aim of those meetings, we submit, 20 was to limit Mr Levy's exposure to the 21 investigation. As Mr Llamas wrote in his 22 not to his lawyers on 3 June 2020, the "only 23 issue which DPP and I have persuaded the 24 CoP to do is to 'park' the interview under 25 caution of Mr Levy and instead accept a</p> <p style="text-align: center;">Page 54</p>	<p>1 ample evidence relating to the ownership 2 issue, to James Levy's involvement, to the 3 dispute between the RGP and Hassans, that 4 the AG facilitated the Chief Minister's wish 5 that the RGP attention on Mr Levy was 6 reduced. What other actions did Mr 7 Picardo take on the Levy track? Well, he 8 was in regular communications and 9 meetings with Mr Levy; Mr Levy's son 10 Moshe, whom he appears to have met on 14 11 May shortly prior to first contacting Mr 12 Pyle about him "losing confidence"; and 13 with Mr Levy's lawyer Mr Baglietto, 14 including meeting with Mr Levy and Mr 15 Baglietto at Mr Picardo's home on 17 May. 16 Mr Picardo offered advice to Mr Baglietto 17 on how to secure the return of Mr Levy's 18 property from the RGP by litigation, 19 including "at length how best he should 20 raise these issues in his representations of" 21 Mr Levy, and whether Mr Levy "should be 22 advised to judicially review the RGP's 23 actions". And that is in Mr Picardo's 24 statement. As he said, when he thought he 25 had provided a particularly juicy section of</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

1 the HMIC report for Mr Baglietto to
 2 include in his letter to the RGP, "Boom".
 3 Mr Picardo also provided inside
 4 information which he had obtained in his
 5 communications with Mr Llamas,
 6 informing Mr Baglietto or Mr Levy
 7 (inaccurately, it turned out) that the DPP
 8 advised against the making of the search
 9 warrant applications. He could not have
 10 done much more for the cause. Well, we
 11 now know that, anyway; certainly, he did
 12 not reveal it at the time. In his letter to
 13 GPA on 5 Jun he said, "At no time have I
 14 sought to intervene in or interfere to prevent
 15 Mr Levy being investigated, or to prevent a
 16 search warrant being obtained and executed
 17 against him at the offices of Hassans." It
 18 might be said: apart from all the things he
 19 did to prevent Mr Levy being investigated.
 20 So, that is the Levy track, what about the
 21 McGrail track? We said in our oral opening
 22 submissions that the central question in this
 23 Inquiry is why Mr Picardo so fiercely
 24 advocated for Mr McGrail's removal. We
 25 said that if you answer that question, all the

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1 Picardo's own statement. Mr Baglietto does
 2 not deny it, although he does not remember
 3 it or anything. And it also fits with the
 4 messages between Mr Picardo and Mr
 5 Baglietto. Mr Picardo proposed
 6 disciplinary sanctions to Mr Baglietto by
 7 text message (including loss of pension),
 8 and shared with Mr Baglietto "views as to
 9 the mechanisms to see Mr McGrail
 10 removed and the consequences thereof". In
 11 oral evidence, Mr Picardo for the first time
 12 claimed the text about disciplinary
 13 sanctions related to Mr Richardson, whom
 14 he said Mr Levy alleged was acting out of
 15 bad faith and because he had secured future
 16 employment with Bland's, an allegation
 17 which Mr Picardo claimed was nonsensical
 18 and fanciful. But this explanation is
 19 implausible, because if Mr Picardo
 20 considered the allegation against Mr
 21 Richardson to be nonsensical why was he
 22 proposing disciplinary sanctions to Mr
 23 Baglietto relating to it? That explanation
 24 was not provided in any of Mr Picardo's
 25 statements, but by contrast he accepted he

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1 other issues fall into their proper places. It
 2 is at this point in the narrative that I say that
 3 question can be answered. Mr Picardo's
 4 position is that he fiercely advocated for Mr
 5 McGrail's removal because Mr McGrail had
 6 lied to him, twice. He said it over and over
 7 again, and he said it was only because of
 8 that. His position is that his actions to
 9 remove Mr McGrail had nothing to do
 10 directly with James Levy or the search
 11 warrant: they were two separate tracks. Mr
 12 Picardo is saying the two tracks have to be
 13 separate, that removing Mr McGrail from
 14 post had nothing to do with Mr Levy, that
 15 the Levy track ran parallel to but never met
 16 the McGrail track. That is not just his
 17 evidence to the Inquiry, it is all over the
 18 contemporaneous documents. It is what he
 19 told the Governor and the GPA. But, sir, it
 20 is not the truth. Because if removing Mr
 21 McGrail from post was purely about being
 22 lied to, why was Mr Picardo discussing "the
 23 mechanisms to see Mr McGrail removed"
 24 with Mr Baglietto? It is not controversial
 25 that he did so: those words are from Mr

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1 discussed with Mr Baglietto removing Mr
 2 McGrail "and the consequences thereof".
 3 The Inquiry may consider that this
 4 allegation against Mr Richardson is in fact a
 5 smoke screen to draw attention away from
 6 the fact that Mr Picardo was sharing ideas
 7 for punishing Mr McGrail with Mr Levy's
 8 lawyer. But if Mr Picardo is to be believed
 9 about the reason for the text message, it
 10 does not help him; in fact, it is worse.
 11 Because he has then admitted that he was
 12 discussing with Mr Baglietto and Mr Levy:
 13 1, removal of Mr McGrail, the
 14 Commissioner of Police; and, 2,
 15 punishment of the senior investigating
 16 officer who was investigating Mr Levy.
 17 Why would the Chief Minister discuss
 18 punishment of two senior RGP officers (the
 19 very officers who were involved in the
 20 investigation) with the criminal suspect's
 21 lawyer and the criminal suspect himself. It
 22 must be assumed that Mr Levy's and Mr
 23 Baglietto's strategic focus was towards
 24 reducing, or ideally stopping entirely, the
 25 RGP's investigation of Mr Levy. And we

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<p>1 do not say that is inappropriate: in fact, it is 2 the natural thing that lawyers should do for 3 a criminal suspect. But how did the 4 removal of Mr McGrail and the punishment 5 of Mr Richardson fit into that strategy? It 6 obviously was not incidental; otherwise, 7 why was it being discussed so extensively? 8 I just want to read from the Chief Minister's 9 fourth affidavit. This is hiding in plain 10 sight, this point. He says at paragraph 12, 11 "I spoke with Mr Baglietto KC repeatedly 12 about this and about how let down I felt by 13 Mr McGrail and about the fact that I would 14 never be able to trust him again because I 15 believed he had, as I have already stated in 16 my earlier Affidavits, lied to me about the 17 advice he had taken and received about the 18 appropriateness of the execution of a search 19 warrant as opposed to a Production Order. 20 Mr Baglietto KC and I discussed at length 21 how best he should raise these issues in his 22 representation of Mr Levy KC." "these 23 issues". "We discussed whether Mr Levy 24 KC should be advised to judicially review 25 the RGP's actions in this respect. In this</p> <p style="text-align: center;">Page 61</p>	<p>1 time, I think, and I therefore have no issue 2 with that having been said." For his part, 3 Mr Levy denies that he ever discussed Mr 4 McGrail's position with Mr Picardo, but we 5 submit that is probably not the truth. And 6 after the meeting of 17 May, Mr Baglietto 7 texted Mr Picardo, "Thanks for your time 8 today bro, I think it reassured him a lot". 9 Reassured about what? About Mr Picardo's 10 plan to remove Mr McGrail pour 11 encourager les autres, to make an example 12 of him. Where does this all lead? First, it 13 demonstrates that in Mr Picardo's mind and 14 his actions, the removal of Mr McGrail and 15 the disciplining of Mr Richardson were 16 connected to the efforts Mr Levy and Mr 17 Baglietto were making, to put it simply, to 18 get the RGP to back off from Mr Levy. 19 That is why he was so keen to discuss Mr 20 McGrail's removal with Mr Levy and Mr 21 Baglietto. Second, it raises the strong 22 inference that the two tracks (the Levy track 23 and the McGrail track) were in fact one 24 track. Because punishing the senior RGP 25 officers involved in the warrant would</p> <p style="text-align: center;">Page 63</p>
<p>1 context, I believe (though I have no precise 2 recollection of the detail of the discussion) 3 that I would have shared with Mr Baglietto 4 KC also the fact that I was very open with 5 the Gibraltar Police Authority and the then 6 Governor that Mr McGrail no longer 7 enjoyed my confidence and my views as to 8 the mechanisms to see Mr McGrail 9 removed and the consequences thereof." 10 On 17 May, Mr Picardo met with Mr 11 Baglietto and Mr Levy, and this is Mr 12 Picardo's account from the meeting, this is 13 at paragraph 17 of his fourth affidavit. "At 14 the meeting with Mr Levy KC I remember 15 we discussed, again, how legally improper 16 it had been, in our view, for the RGP to 17 have proceeded by way of search warrant 18 and not Production Order, how outraged I 19 was by the fact that I believed that Mr 20 McGrail had lied to me about the advice 21 he'd had in that respect and my subsequent 22 complete loss of confidence in him." Mr 23 Baglietto, for his part, did not remember the 24 specifics but said in oral evidence that "it 25 was entirely consistent with his mood at the</p> <p style="text-align: center;">Page 62</p>	<p>1 undoubtedly have a chilling effect on the 2 RGP: it would send a message, and it would 3 help Mr Levy to get the RGP off his back 4 (in Mr Picardo's calculus, anyway). And 5 that is why the two things were both 6 extensively discussed between Mr Picardo, 7 Mr Baglietto and Mr Levy. It also, sir, at 8 the very least raised another absolute red 9 line. Because whilst Mr Picardo was 10 involved in the defence of Mr Levy, who 11 was being investigated, he could not at the 12 same time be involved in the removal of the 13 Commissioner. He was completely 14 conflicted, just by those points, regardless 15 of the relationships and all of that. How 16 could he do both things at the same time, 17 and expect them not to cross-pollinate? 18 Well, he had a reason for that. And this is 19 also, we say, why Mr Picardo so carefully 20 and studiously avoided mentioning Mr 21 Levy, the warrant, the lie or Op Delhi in 22 written documents at the time: because he 23 must have known he was acting improperly. 24 It is easy to forget that it was not until Mr 25 Picardo's fourth witness statement, dated 18</p> <p style="text-align: center;">Page 64</p>

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<p>1 March 2024, that he revealed the extent of 2 his communications and meetings with Mr 3 Levy and Mr Baglietto in relation to the 4 warrant. And it was only in mid-November 5 2023 that he produced the text messages 6 between him and Mr Baglietto, 18 months 7 after being asked for all relevant evidence 8 and (and I will be corrected if this is wrong) 9 after persistent chasing by Mr McGrail's 10 lawyers that the Chief Minister's relevant 11 WhatsApps be disclosed. But this fits with 12 a pattern, and I think this is my final topic 13 before the break if that works for you, sir. I 14 call this topic Mr Picardo's reluctance. Mr 15 Picardo has since 12 May 2020 been very 16 reluctant to reveal his involvement in 17 supporting Mr Levy's claims against the 18 RGP. He had multiple opportunities before 19 5 June 2020 to set out in detail the 20 allegation that Mr McGrail had misled him, 21 in documents he either wrote or assisted in 22 writing, and refer at least to the context of 23 the warrant and Op Delhi; but, he did not. 24 If the lie was as explicit as Mr Picardo now 25 claims it to be, and was the true central</p> <p style="text-align: center;">Page 65</p>	<p>1 write his note to Dr Britto, and if we can go 2 to B1360 we can see how this translated 3 across. 1360. There, at C. "The Chief 4 Minister also shared another event 5 occurring last week which had left him also 6 in a situation where the Commissioner had 7 expressly misled him and which left him 8 unable to believe the Commissioner." Note 9 the removal of the brackets which said "re 10 James Levy QC warrants". Why was it 11 removed, why the reluctance? And then the 12 22 May GPA letter, which Mr Picardo 13 extensively edited: nothing about the 14 warrants or the lie. I say the clear inference 15 is that Mr Picardo knew the mere mention 16 of the Levy search warrant would be 17 radioactive, because he knew what the GPA 18 and Nick Pyle had no idea about, but what 19 Mr McGrail was beginning to suspect: that 20 at the same time as seeking to have the 21 Commissioner of Police removed, he was in 22 deep, regular consultation with Mr Levy 23 and Mr Baglietto about discharging the 24 warrant; with the Attorney General about 25 discharging the warrant; and with Mr</p> <p style="text-align: center;">Page 67</p>
<p>1 reason for ousting Mr McGrail, why did he 2 not include it in those contemporaneous 3 documents? And when I talk about those 4 documents, I will start with the lengthy text 5 message sent to Mr Pyle on 14 May, setting 6 out the reasons why he was starting to lose 7 confidence. Nothing in it, apart from: I will 8 alert you to an issue later. Second 9 document, his detailed note to Mr Pyle of 10 the issues, as he saw them, under section 34 11 of the Police Act, in an email of 17 May. 12 Third, his detailed note of his and Mr Pyle's 13 meeting with Dr Britto which took place on 14 18th May, and which Mr Picardo said in 15 evidence was based on the 17 May email. 16 And I just want to put up two documents, if 17 I may, just to make this point good. C3949. 18 Sorry, I did not say that clearly enough, 19 C3949. Here he says, and this is the email 20 he says that his note to Joey Britto was 21 based on, ""I have shared with you also the 22 reasons this week why I have lost 23 confidence in the probity and integrity of 24 the Commissioner himself (re James Levy 25 QC warrants". Now, he uses this email to</p> <p style="text-align: center;">Page 66</p>	<p>1 Baglietto about removing Mr McGrail. 2 Only he, at the time, knew what we all 3 know now, which is that like the bull in the 4 china shop he had crashed through all of the 5 red lines in defence of his great friend. 6 What did Mr Picardo say about this in oral 7 evidence? Well, let us just go to it. On 8 why he did not refer to the specifics of the 9 Mr Levy warrant in his text with Mr Pyle 10 on 14 May he said, "it's already a fairly 11 lengthy message, and typing these things 12 with two thumbs takes time". The message 13 contained detail about all of the other issues 14 which Mr Picardo raised, and he has 15 repeatedly stated that the 12 May meeting 16 was the most important issue for him. Why 17 the reluctance to mention it in writing? 18 Then, what about the note he drafted for 19 him, Mr Pyle and Dr Britto, which refers 20 only to "another event occurring last week 21 which had left him also in a situation where 22 the Commissioner had expressly misled 23 him". Mr Picardo claimed in oral evidence 24 that he did not have the time to include the 25 detail of Op Delhi in the note. This was a</p> <p style="text-align: center;">Page 68</p>

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<p>1 five-page note, it was about 2000 words 2 long. He referred to other matters which 3 were of far less concern to him in 4 substantial detail. Why the reluctance? 5 What about his explanation for not referring 6 to the search warrant and the events of 12 7 May in the GPA's detailed letter of 22 May, 8 which he edited. He said in oral evidence 9 that he did not "think Mr McGrail needed 10 the position of 12 May to be made clearer" 11 because he was "fully aware of that", and 12 that the warrant was "vox populi in 13 Gibraltar", and therefore did not need to be 14 referred to. These explanations, in my 15 submission, are implausible to the point of 16 being absurd. Of all of the issues referred 17 to in the letter, Op Delhi was the only one 18 where there is no evidence of press or other 19 public knowledge relating to it. It was the 20 issue which the Chief Minister now says 21 was the very one that caused him to lose 22 confidence in Mr McGrail. Why the 23 reluctance? Because he knew that if he 24 even mentioned the word Levy as part of 25 his reasons for losing confidence in Mr</p> <p style="text-align: center;">Page 69</p>	<p>1 was known to both Mr Picardo and Mr 2 Llamas within days of the mistake being 3 made. There is no evidence that the 4 mistake was corrected until Mr Llamas 5 gave oral evidence to this Inquiry four years 6 later, when Mr Llamas accepted in oral 7 evidence that he had "got confused" about 8 what he had reported to Mr Picardo on 12 9 May, and that this was not what the DPP 10 told him. This has important implications. 11 First, in relation to what Mr McGrail is 12 likely to have said about the DPP's advice 13 on 12 May. I have already said that Mr 14 Picardo did not put that in writing until 15 about four weeks later. In the interim, the 16 AG had wrongly reported to him that the 17 DPP had advised against the warrant. The 18 implication being that the RGP had 19 proceeded against the advice of the DPP. 20 The error founded the allegation of 21 dishonesty, because at the least Mr McGrail 22 had culpably omitted to tell Mr Picardo and 23 Mr Llamas at the 12 May meeting this 24 important fact. It also founded an 25 allegation of reckless, possibly improper,</p> <p style="text-align: center;">Page 71</p>
<p>1 McGrail, it would have caused an 2 explosion. And more simply, he knew that 3 what he was doing was wrong. Would that 4 be a convenient moment to pause? 5 THE CHAIRMAN: Certainly. 6 MR WAGNER: Thank you, sir. 7 THE CHAIRMAN: Very good. 8 (11.18) 9 (Adjourned for a short time) 10 (11.30) 11 THE CHAIRMAN: Yes. 12 MR WAGNER: Thank you, sir. The 13 DPP's advice. Mr Picardo now says that the 14 real reason he lost confidence in Mr 15 McGrail was simply that he lied to him. 16 That has not always been the position. One 17 of the key reasons Mr Picardo cited to Mr 18 Pyle for losing confidence in Mr McGrail 19 was that he "went against the advice of the 20 DPP". This is recorded in Mr Pyle's first 21 affidavit at paragraph 26.6, and it was in Mr 22 Pyle's email update to the FCDO. This 23 supposed advice was also cited to the RGP 24 in Hassans' letter on 15 May 2020. This 25 was untrue, and the fact that it was untrue</p> <p style="text-align: center;">Page 70</p>	<p>1 conduct of the RGP. Why would they have 2 gone against the advice of the DPP on such 3 an important and highly sensitive matter: a 4 warrant against one of Gibraltar's most 5 senior lawyers. It was obviously a serious 6 error. In oral evidence, Mr Picardo 7 accepted that "if they had acted contrary to 8 advice of course it would be worse", though 9 he then flip-flopped as to whether the error 10 was material. The Government parties' 11 submissions of course say, "it is not 12 accepted that Mr Llamas' misdescription of 13 the DPP's position made things appear 14 worse than they were." No concessions, no 15 insight. Mr Picardo also suggested that 16 "advised against" and "absence of advice" 17 were just a "form of words". That is an 18 obviously absurd proposition which Mr 19 Picardo must know is untrue. Mr Picardo 20 accepted in evidence that he would have 21 known about the error within a maximum 22 of 48 hours, ie by 14 May. The AG agreed 23 the error would have been realised quickly. 24 But it is clear that Mr Picardo had on 15 25 May told Mr Pyle that Mr McGrail had</p> <p style="text-align: center;">Page 72</p>

<p>1 "gone against" the advice of the DPP, and 2 by 15 May had also told this to one or both 3 of Mr Baglietto and Mr Levy, with the 4 result that Hassans included it in their letter 5 to the RGP of 15 May. In relation to Mr 6 Pyle, this mistake formed part of the basis 7 of his decision-making up to and including 8 when Mr McGrail retired. He agreed in 9 oral evidence that the error caused a 10 fundamental flaw in the reasoning and a 11 serious flaw in the process leading to Mr 12 McGrail's retirement. As to Hassans, at no 13 point was the allegation that the RGP had 14 gone against the advice of the DPP 15 withdrawn. Despite Mr Picardo knowing 16 that he had told it to Hassans and Mr 17 Llamas having read the letter, there is no 18 evidence that at any point they corrected the 19 mistake. This timeline demonstrates that Mr 20 Picardo must have chosen not to correct the 21 error either with Hassans or with Mr Pyle, 22 despite knowing it had been made. He had a 23 clear motive for not doing so: the 24 allegations that Mr McGrail had gone 25 against the strong advice of the DPP, and</p> <p style="text-align: center;">Page 73</p>	<p>1 information, and I will return to that. A 2 second implication is that it damages the 3 credibility of what Mr Picardo eventually 4 referred to as "the lie", an allegation which 5 was not put in writing until weeks later. 6 And at this point I will address what I call 7 Mr Picardo's novel theory of 8 confidentiality. Mr Picardo repeatedly 9 stated in oral evidence that he considered he 10 could share any information he was given 11 by the AG, Mr McGrail or the RGP with Mr 12 Levy and his lawyer, and anybody else he 13 chose. He said it was "very likely" he told 14 both Hassans and Mr Levy "as soon as I 15 was told myself" about the DPP's advice. 16 He said he "probably told everyone who 17 talked to me about this one", and that "I 18 believe that I was able to share that 19 information widely and I shared it widely", 20 including to "all and sundry". He claimed 21 he did not consider any of this information 22 he was provided by Mr McGrail or the 23 Attorney General to be confidential. He 24 justified telling Mr Levy about what he 25 thought was the DPP's advice by saying: it</p> <p style="text-align: center;">Page 75</p>
<p>1 that Mr McGrail had failed to tell Mr 2 Picardo and Mr Llamas this, were serious 3 and were likely to influence the Governor 4 to take action against Mr McGrail. 5 By not correcting the error with Hassans, 6 this meant that the serious allegation made 7 by Hassans on behalf of Mr Levy that the 8 RGP had gone against the advice remained 9 live, to the benefit of Mr Levy. Recall that 10 Mr Picardo said in his witness evidence that 11 "I spoke with Mr Baglietto KC repeatedly 12 about this and about how let down I felt by 13 Mr McGrail" etc, and that he had "lied to 14 me about the advice he had taken and 15 received about the appropriateness of the 16 execution of a search warrant as opposed to 17 a Production Order. Mr Baglietto KC and I 18 discussed at length how best he should raise 19 these issues in his representation of Mr 20 Levy KC." We submit that it was dishonest 21 for Mr Picardo not to correct the error, and 22 misleading both of him and Mr Llamas not 23 to refer to the error in their Inquiry 24 affidavits. It was also inappropriate for him 25 to share what was obviously confidential</p> <p style="text-align: center;">Page 74</p>	<p>1 was not sensitive information, the defendant 2 is entitled to know everything there is 3 against him, the RGP had gone outside their 4 circle of privilege, and the principle of 5 "open justice" applied to the information. 6 Nobody else agrees with Mr Picardo's novel 7 theory. The Attorney General agreed in oral 8 evidence that it would not be proper for a 9 suspect to be informed as to the DPP's 10 advice on executive action to be taken 11 against him. The DPP stated that it would 12 have been improper for him to divulge that 13 information as a prosecutor to Mr Baglietto 14 at that stage. Mr Picardo's theory 15 demonstrates, as much as any other issue 16 before this Inquiry, that Mr Picardo does 17 not understand the core responsibilities of 18 public office; or, he knows them very well, 19 but chose to ignore them. I propose the 20 latter interpretation is the most likely, for 21 these reasons. One: as a lawyer with 30 22 years' experience, a King's Counsel and 23 Chief Minister, Mr Picardo must have 24 understood that when the Attorney General 25 shares a summary of the DPP's advice about</p> <p style="text-align: center;">Page 76</p>

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<p>1 a suspect in a live criminal investigation, he 2 does so on a confidential basis. Two: Mr 3 Picardo's claim that he believed he was 4 entitled to share what he thought was the 5 DPP's advice with the criminal suspect is 6 implausible, because of that knowledge. 7 Mr Picardo's claim that he believed he was 8 entitled to share what he thought the DPP's 9 advice was with "Mr Smith down Main 10 Street" (that is, whomever he pleased) is 11 even more implausible. In fact, it is 12 patently ridiculous. Mr Picardo only 13 admitted that it was he who shared what he 14 thought was the DPP's advice after it 15 became clear, late in the proceedings of this 16 Inquiry, that it must have been he or Mr 17 Llamas who shared the advice with 18 Hassans, because only he and Mr Llamas 19 were operating under the false impression 20 that the DPP had advised against the 21 warrant. Mr Picardo's explanation that he 22 felt entitled to share the advice with anyone 23 because it was not confidential and that in 24 Gibraltar, "we believe that documents 25 should be public as soon as possible" is a</p> <p style="text-align: center;">Page 77</p>	<p>1 DPP, it was somebody else. Because 2 otherwise, why would Mr Levy say it was 3 "Certainly not" the Attorney General who 4 had hung him out to dry? The Attorney 5 General's evidence that he can excuse that 6 text message because it was late and he was 7 tired and busy is not an excuse. In our 8 submission, it is difficult to imagine any 9 situation where it Attorney General to speak 10 directly to a criminal suspect, and certainly 11 not in this case, certainly not without notes, 12 and certainly not followed by a text 13 message telling him "don't worry". On 12 14 May, Mr Llamas spoke to Mr Baglietto. 15 We do not say it will always be 16 inappropriate for the Attorney General to 17 speak to a suspect's lawyer, but this was no 18 ordinary situation. Lewis Baglietto is Mr 19 Llamas's "very good friend". Mr Llamas 20 had not been advising on the investigation, 21 and was not fully briefed. He did not tell 22 anyone on 12 May that he was speaking to 23 Mr Baglietto. He did not consult with the 24 DPP, who had been advising on the 25 investigation. He did not consult with the</p> <p style="text-align: center;">Page 79</p>
<p>1 self-serving, late and implausible excuse. 2 In light of that, we submit you would be 3 entitled to conclude, sir, that Mr Picardo's 4 oral evidence to this Inquiry that he 5 believes he can share the DPP's advice with 6 anyone is so absurd that it is likely to be a 7 lie concocted to justify what he knows is 8 improper conduct. The Attorney General's 9 inappropriate interventions. Mr Llamas 10 inappropriately was in contact with Mr 11 Levy and Mr Baglietto on the day of the 12 search warrant and after that. Mr Llamas 13 spoke to Mr Levy on the day of the warrant, 14 and on 13 May Mr Llamas replied to Mr 15 Levy texting him "I feel I have been hung 16 out to dry. Certainly not by you" with 17 "don't worry", therefore raising the strong 18 inference that he intended to intervene to 19 protect Mr Levy, which is what then 20 occurred. Just pausing there, it is 21 mysterious as to what Mr Llamas and Mr 22 Levy spoke about, but if that message came 23 after their conversation it stands to reason 24 that Mr Llamas said words to the effect of: 25 it was not me, it was the RGP, it was the</p> <p style="text-align: center;">Page 78</p>	<p>1 RGP; indeed, he never told them about this 2 conversation. When he did suggest to Mr 3 McGrail, the Commissioner of Police, that 4 they both meet Mr Baglietto, the 5 Commissioner told him he thought it would 6 be inappropriate. Mr Llamas took no 7 notice, and he took no notes. Mr Llamas 8 justified privately meeting with Mr 9 Baglietto, even after the Commissioner of 10 Police said it would be inappropriate, by 11 saying it was "crisis management". But it is 12 plain from the comments he made about the 13 purpose of the 7 April meeting that the 14 crisis he was referring to was that senior 15 members of the Gibraltar community were 16 being investigated for criminal offences, 17 and the reputation of Gibraltar (as he saw it) 18 was at stake by the investigation of Mr 19 Levy. Mr DeVincenzi, the Former Solicitor 20 General, in his oral evidence said that "it 21 just didn't seem quite right to me that they 22 were meeting with him in private". When 23 he found out about the nexus in terms of 24 Hassans and the political and administrative 25 spheres of government he said that it</p> <p style="text-align: center;">Page 80</p>

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<p>1 "vindicated my hunches that this was a very 2 delicate matter to draw lines around". 3 The DPP's inappropriate interventions. On 4 27 May, Mr Rocca had two teleconferences 5 with Mr Baglietto (according to Mr 6 Baglietto's note), and made a number of 7 statements in those meetings which (if the 8 note is correct) we say it is plainly 9 inappropriate for the DPP to have made. 10 First, he proposed answers which Mr Levy 11 could give in interview to the RGP. The 12 DPP giving the suspect's lawyers potential 13 answers that the suspect could give in his 14 interview. Two, Mr Baglietto appears to 15 have shown Mr Rocca Mr Levy's draft 16 statement, and Mr Rocca advised on the 17 same. How could he do that, as the DPP? 18 Third, Mr Rocca told Mr Baglietto he did 19 not think there was enough evidence at the 20 moment to "go to jury". Four, Mr Rocca 21 shared his view that it was necessary to 22 "tick box and pursue line of enquiry as 23 otherwise risked abuse arguments", as if to 24 say: just come in for the interview; don't 25 worry, nothing will happen. The meetings</p> <p style="text-align: center;">Page 81</p>	<p>1 further investigation and that he would not 2 proceed with the prosecution. That is clear 3 from the comments which follow, and also 4 Mr Llamas's reference to "you" and not "I", 5 which logically must mean a reference to 6 the DPP. Therefore, this is not a reference 7 to the nolle. Mr McGrail said, "we as the 8 investigators, we are doing a job, we 9 produce the evidence, we've consulted with 10 the DPP..... the DPP sees that there is a 11 case to be put to..... trial..... I cannot pull 12 it, you can. You can, Michael". Mr Llamas 13 responds "it hasn't got to get to that Ian". 14 Mr McGrail responds "well then, then who 15 stops it, I cannot stop it..... I cannot say 16 there is no offence..... I would not raise 17 any objections if this is pulled, but..... the 18 RGP cannot pull it." Logically, given the 19 stage of the investigation of Mr Levy, this is 20 a reference to the AG's discretion to tell the 21 RGP that he will not proceed with a 22 prosecution even before charges are 23 proffered. A nolle, of course, can only be 24 issued once charges are laid. Mr McGrail 25 also said that if the DPP said that he did not</p> <p style="text-align: center;">Page 83</p>
<p>1 of 13, 15 and 20 May. We say, taken 2 together, these were a successful attempt by 3 Mr Llamas and Mr Rocca to coax the RGP 4 into not treating Mr Levy as a suspect, and 5 to prevent Mr Picardo being implicated. I 6 will not take you through the detail of those 7 meetings, sir; my submissions are in 8 paragraph 55.5. I will make just a few 9 points of emphasis. At the 13 May meeting, 10 Mr Llamas's focus was ascertaining the 11 extent to which Mr Picardo was implicated 12 in Op Delhi, and made clear that he would 13 "fight until I die" for the "reputation of the 14 Chief Minister". Mr Llamas's claim that Mr 15 McGrail referred to a nolle prosequi "four 16 times" at that meeting is wrong: Mr 17 McGrail did not raise a nolle at all. In 18 response to Mr Llamas saying that he 19 would "fight until I die" for the reputation 20 of the jurisdiction, Mr McGrail says that 21 "you" have the "magic wand", to which Mr 22 Llamas responds "if it's the case, I would 23 ask you to get it out as soon as possible". 24 Clearly, Mr McGrail is referring to the 25 DPP's discretion to advise against any</p> <p style="text-align: center;">Page 82</p>	<p>1 want to run with the investigation of Mr 2 Levy, and he provided that advice in writing 3 "that would be the end of the matter for 4 me". Again, not a reference to the nolle. 5 But the DPP then responded, "Michael, I (?) 6 can't enter a nolle". Mr Llamas responds, 7 "Hombre, it's something that I'd rather not 8 do". This is the first reference to the nolle, 9 and it is raised by the DPP. Why did Mr 10 Llamas claim that Mr McGrail was the one 11 who repeatedly raised the nolle, evidence 12 which the Chief Minister also emphasised? 13 It is hard to say, but perhaps because bad 14 McGrail was really the one who wanted the 15 criminal investigation to end. And how 16 does that fit with the Op Delhi defendants' 17 version of bad McGrail, who was doing 18 James Gaggero's bidding to prosecute at all 19 costs? It is hard to keep up. Just pausing 20 briefly on the Op Delhi defendants. We do 21 not blame them for using their status as core 22 participants in this Inquiry to attempt to 23 relitigate the criminal prosecution which 24 was discontinued by Mr Llamas, and to 25 claim their innocence, or to promote their</p> <p style="text-align: center;">Page 84</p>

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<p>1 case theory of James Gaggero being behind 2 the prosecution and it really being a 3 commercial dispute (which was, after all, 4 their theory and the Government's from the 5 beginning, well before they saw the 6 evidence to this Inquiry. That is their 7 prerogative. But it would be wrong to view 8 it as anything but self-serving. And the idea 9 that Mr McGrail was in James Gaggero's 10 pocket has no basis in reality. Their version 11 of bad McGrail is even more baseless than 12 that of the Government parties. But, back 13 to the meetings. 15 May. Mr Llamas 14 opened the meeting by proposing the 15 interview of Mr Levy still went ahead, but 16 not have it under caution. He accepted in 17 oral evidence that it was he who had made 18 the suggestion first, not Mr Richardson as 19 he was attempting to suggest. Mr Llamas 20 and Mr Rocca argued for Mr Levy not 21 being treated as a suspect (this was the key 22 move in the meeting; in fact, it was the key 23 move in all three of the meetings) and not 24 to be interviewed under caution, despite the 25 deep reservations expressed by Mr</p> <p style="text-align: center;">Page 85</p>	<p>1 This topic is entitled 'Gross Unfairness'. I 2 am now at paragraph 58 of my closing 3 submissions. Mr Pyle enters the scene. Mr 4 Picardo messaged Mr Pyle on 14 May 2020 5 to say that he was starting to lose 6 confidence and raising a range of issues in 7 terms of the past three months alone. He 8 did not mention Operation Delhi but says 9 obliquely, "I will alert you to a particular 10 matter when we meet." It was this meeting 11 which triggered the actions which would 12 ultimately lead to Mr McGrail retiring on 9 13 June. There is, sir, no evidence from the 14 time that Mr Pyle was considering taking 15 any action to remove Mr McGrail from post 16 prior to the 14 May text message. No 17 reports to the GPA, no text messages, no 18 emails to his superiors. You might 19 consider, sir, that it is highly unlikely that 20 Mr Pyle would have taken steps alone to 21 remove the Commissioner of Police in that 22 period. This is particularly so, given that 23 we know from text messages between him 24 and the Chief Minister, that he knew by 10 25 May 2020 that Sir David Steel, the next</p> <p style="text-align: center;">Page 87</p>
<p>1 Richardson and Mr McGrail. And it is 2 important that Mr Richardson, Mr Wyan 3 and Mr DeVincenzi, who all attended the 4 meetings and had no reason to exaggerate 5 or dissemble, all felt something was wrong 6 about how the investigation was being 7 approached by the AG and the DPP. And 8 that evidence is at paragraph 55.6.2. Mr 9 Picardo, Mr Llamas and Mr Rocca's 10 interventions had the desired effect. The 11 RGP decided not to execute the search 12 warrant, to allow Mr Levy to obtain the 13 return of his phone without it being 14 examined, and to give a statement rather 15 than being interviewed under caution, 16 perhaps the first time the RGP had 17 permitted this. 18 (11.50) 19 Of course, they did not know that the RGP 20 were not being supported by the statutory 21 office holders and that is what happened in 22 those meetings. I move now to the 23 circumstances which ultimately led to Mr 24 McGrail retiring on 6 June 2020 and, 25 particularly, the involvement of Mr Pyle.</p> <p style="text-align: center;">Page 86</p>	<p>1 Governor, was due to arrive three and a half 2 weeks later, on 10 June. The Governor has 3 no power to remove the Commissioner if 4 the GPA is not in default. My submission 5 on this is that it would simply be unreal to 6 conclude that Mr Pyle, who had only three 7 and a half weeks left of his position as 8 Governor, and knew he only had three and 9 a half weeks, would have done anything to 10 remove Mr McGrail in those three and a 11 half weeks if he had not been approached 12 by the Chief Minister. At paragraph 62, I 13 set out the timeline of communications 14 between Mr Picardo and Mr Pyle, the detail 15 of which you will be well familiar with. In 16 summary, we submit Mr Picardo 17 manipulated Mr Pyle by promising that the 18 next RGP Commissioner will be recruited 19 from outside Gibraltar, knowing this was a 20 longstanding strategic priority for Mr Pyle. 21 Of course, Mr Picardo immediately 22 rescinded that offer the moment Mr 23 McGrail left office. Mr Picardo 24 manipulated Mr Pyle by exploiting what he 25 knew was Mr Pyle's longstanding grievance</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 about the RGP's handling of the Airport 2 Incident, and pretending to also have 3 concerns over this, despite there being no 4 record or evidence prior to 14 May of Mr 5 Picardo expressing anything but the 6 strongest of strong support for the RGP's 7 actions and criticism of the Ministry of 8 Defence's actions. This is another example, 9 we say, of Mr Picardo's economy with the 10 truth. Mr Picardo took advantage of Mr 11 Pyle's prejudiced view towards Mr McGrail 12 and the RGP, amply demonstrated in Mr 13 Pyle's oral evidence and summarise by my 14 learned friend, Mr Cruz, yesterday. Mr 15 Picardo falsely claimed that Mr McGrail 16 had lied to him about obtaining DPP's 17 advice, a fact that he knew was false, within 18 a couple of days of 12 May, so either on the 19 day he approached Mr Pyle or shortly 20 afterwards. Mr Pyle's concerns. We say 21 they were vague, they were ill-formed and 22 he failed properly to investigate them 23 before taking action, which caused a clear 24 breach of natural justice. I will not list all 25 the factors, they are at paragraph 65 of my</p> <p style="text-align: center;">Page 89</p>	<p>1 position to take because it risks becoming a 2 licence to rely on prejudices to end 3 someone's career. Mr Pyle's constitutional 4 recklessness. At paragraph 66 of my 5 written submissions I set out the reasons 6 why we say that Mr Pyle failed to discharge 7 his constitutional responsibilities. As 8 Interim Governor, Mr Pyle had "ultimate 9 responsibility" under s. 11 of the Police Act 10 for "the integrity, probity and independence 11 of policing in Gibraltar". He failed to 12 discharge that responsibility. When Mr 13 Picardo met with Mr Pyle on 15 May and 14 was "visibly angry" and the "bit between 15 his teeth", as Mr Pyle described the meeting 16 to his superiors, relating to an ongoing 17 criminal investigation and a search warrant 18 against Mr Levy, that should have rang 19 alarm bells and it must have rung some 20 alarm bells because Mr Pyle says in the 21 emails to his superiors, "the person is Mr 22 Levy!" and he says he is a bit worried about 23 that. When Mr McGrail, through his 24 lawyers, in the 29 May letter, raised 25 allegations of corruption, those alarm bells</p> <p style="text-align: center;">Page 91</p>
<p>1 written submissions. The basic point is that 2 a number of Mr Pyle's concerns on and 3 around 14 May 2020 were somewhat blurry 4 and he did nothing to sharpen them. I will 5 come to Mr Pyle's concerns around 6 communications on the Incident at Sea, 7 which I say fall into the vague and ill- 8 informed category. To add to that, the 9 Airport Incident, the bullying allegations, 10 the helicopter incident, even the rumours of 11 bad practice and behaviour. The simple 12 point is this. Mr Pyle's position is that these 13 issues, except for the Incident at Sea, were 14 not determinative on their own but led to a 15 progressive loss of confidence. That is just 16 another way of saying that he had no 17 responsibility to investigate whether they 18 were well-founded. The government 19 party's submission on this is essentially that 20 confidence is a bit like pregnancy. You 21 either have it or you do not and if you do 22 not, that is the end of the story. That is not 23 how public life works and it drives a coach 24 and horses through principles of fairness 25 and due process and it is a dangerous</p> <p style="text-align: center;">Page 90</p>	<p>1 should have been deafening. This was the 2 Commissioner of Police raising allegations 3 of corruption against the Chief Minister to 4 the Governor. Mr Pyle accepted in oral 5 evidence that despite not knowing whether 6 the allegations that Mr McGrail was 7 making in the 29th letter from his lawyer 8 were true, he did nothing to investigate 9 them. This was a dereliction of duty. We 10 say it is clear from the evidence that due 11 process and constitutional caution were lost 12 in the unseemly rush to remove Mr McGrail 13 before the new Governor, Sir David Steel, 14 arrived on 10 June. It is for you, sir, to 15 decide why it was there was such an 16 unseemly rush. Perhaps Mr Pyle was keen 17 to have the issue resolved, so he could be 18 seen as having succeeded in a difficult 19 situation whilst he was interim Governor. 20 Perhaps he was keen to offer Mr McGrail's 21 removal as a sweetener for the negotiations 22 with Spain, which were due to take place 23 that week. Indeed, that is the evidence. Mr 24 Pyle says that he was convinced by Mr 25 Picardo that Mr McGrail had to be removed</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 before he meets the Spanish on Tuesday, so 2 the Governor could be seen as taking 3 decisive action. That is at B1832, an email 4 that he sent to his superiors. Mr Pyle 5 suggested to London, after Mr McGrail 6 retired, that the outcome also plays well in 7 our ongoing negotiations with Spain and 8 both Mr Picardo and Mr Pyle wanted to 9 resolve the situation before the new 10 Governor arrived. Why so? Perhaps Mr 11 Picardo knew that once Sir David arrived, 12 he would not be so pliant. There is, sir, a 13 curiosity in the evidence that Mr Pyle says 14 he fully briefed Sir David Steel before he 15 arrived, but there was an interview, a recent 16 interview with Viewpoint and Sir David 17 Steel said he was not fully briefed. He was 18 only briefed after he arrived. Who knows 19 what the truth is? The Gibraltar Police 20 Authority's flawed process. I am at 21 paragraph 67. In one sense, this is amongst 22 the least controversial issues to this inquiry. 23 Everyone seems to agree, including the 24 GPA, that its process was fundamentally 25 flawed and the GPA should be commended</p> <p style="text-align: center;">Page 93</p>	<p>1 Governor and the Chief Minister and, in 2 that sense, he inadvertently or recklessly 3 allowed himself to be pressured and, in the 4 end, aided Mr Picardo's plan to remove Mr 5 McGrail before the new Governor arrived. 6 Dr Britto is clearly a deferential man but 7 deference does not quite cover it. We say 8 the better word is subservient. He said in 9 oral evidence, "I started in 1983 working 10 for government and for me, whatever the 11 Chief Minister says, how can I not trust? 12 Or the Governor, both of them, how can I 13 not trust them? But that's me." See 14 paragraph 69.3 for more instances and 15 similar comments. But sir, we say this 16 failure is not just Dr Britto's. It is also Mr 17 Picardo's and Mr Pyle's. Together, they 18 attempted, almost successfully, to 19 circumvent the s. 34 process and the careful 20 constitutional balance which it reflects. 21 Indeed, they ultimately broke the process if 22 you consider there was some sort of default 23 and that the s. 13 powers were engaged. 24 That was all caused by the Governor and 25 the Chief Minister. They did all this by</p> <p style="text-align: center;">Page 95</p>
<p>1 for coming clean on this. They are the only 2 public authority in this case to have made 3 concessions. I will not dwell on it, except 4 to make one narrow point and one wider 5 point, which is not broadly agreed. The 6 GPA stands or falls on its independence 7 because if it is not independent, it cannot 8 protect the independence of the police and 9 it must not be directed by either the 10 Governor or the Chief Minister. We say 11 that Dr Britto failed to uphold that 12 independence. He failed to uphold it 13 because: (1) He allowed himself to be 14 directed by the Chief Minister and the 15 Governor. At times, he was quite literally 16 directed. The Chief Minister set out the 17 sequence of steps he should take and I have 18 described how that worked at paragraph 71. 19 (2) He allowed, in fact invited, the Chief 20 Minister to substantially edit GPA 21 correspondence, including adding phrases 22 which were in the voice of the GPA. (3) He 23 communicated the decision without giving 24 Mr McGrail a chance to respond because he 25 had succumbed to the pressure from the</p> <p style="text-align: center;">Page 94</p>	<p>1 pressuring Dr Britto into rushing to a 2 decision under threat that Mr Pyle would 3 exercise his powers as Governor to remove 4 Mr McGrail if the GPA did not do what it 5 was told and by claiming the loss of 6 confidence as a black box which could not 7 be looked into at all. In their closing 8 submissions, they say at paragraph 8.1(ii) 9 "a particular contributing reason for loss of 10 confidence does NOT have to be 11 objectively well founded or correct." What 12 a thing to say. This is a recipe for bad 13 decision making and it reflects the circular 14 logic which was already present on 18 May 15 2020. You either have confidence or you 16 do not and once it is gone, it can never 17 come back. There is another point which 18 seems not to have been considered at all. 19 Mr Pyle had lost confidence in Mr McGrail 20 but by the time the GPA met, he was only 21 going to be Governor for about another two 22 and a half weeks. Why was it 23 determinative that he had lost confidence in 24 the Commissioner when he was about to be 25 replaced? Mr Picardo had lost confidence</p> <p style="text-align: center;">Page 96</p>

1 in Mr McGrail but he did not have clean
 2 hands. He had himself behaved improperly
 3 and if that proposition is correct, the right
 4 outcome would have been for Mr Picardo to
 5 resign for the good of Gibraltar, not Mr
 6 McGrail. Why did it have to be Mr
 7 McGrail in these circumstances? The GPA
 8 did not consider either of these points, but I
 9 say they are important in the context of the
 10 government party's confidence is a black
 11 box submission. It is wrong to say the GPA
 12 did not know about Mr McGrail's concerns.
 13 Sir, if you read the minute that is made of
 14 the meeting that they had, it references that
 15 Mr McGrail thought this was all about the
 16 criminal investigation, so they knew it. Mr
 17 Picardo and Mr Pyle both knew Dr Britto
 18 well enough that it must have been on their
 19 minds when they texted they needed to
 20 "discreetly bring Joey Britto into our
 21 thinking", that it was likely he would very
 22 quickly fall in line. This was, in a different
 23 way, a failure by the then Governor and
 24 Chief Minister, to respect the independence
 25 of the GPA. They rode rough shod over it.

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1 statutory independence of his office and of
 2 the RGP as crime investigators was being
 3 improperly interfered with, his duty as the
 4 holder of such an office would have been
 5 stay and defend the RGP's independence by
 6 resisting any unjustified pressure unlawful
 7 attempts to remove him, but the
 8 government parties accept in their opening
 9 submissions, when a political power to
 10 which you are accountable expressed loss
 11 of confidence in you, you go. Which is it?
 12 Perhaps Sir Peter will square the circle after
 13 lunch. In any event, Mr Pyle and Mr
 14 Picardo placed enormous and intolerable
 15 pressure on Mr McGrail. That pressure was
 16 so much that it caused a breach of natural
 17 justice in and of itself and left Mr McGrail
 18 with no choice but to fall on his sword. I
 19 set out in detail that pressure at paragraph
 20 70 of my written submissions but in
 21 summary, Mr Pyle and Mr Picardo, on 19
 22 May, decided to make the onerous request
 23 for information under s. 15 of the Police
 24 Act, using the new of potential claims
 25 against the RGP relating to the Incident at

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1 The GPA then withdrew its process, not of
 2 its own motion but because the 29 May
 3 letter from Mr McGrail's lawyers
 4 highlighted what should have been obvious
 5 about the flaws in the process. This is one
 6 of the ways the 29 May letter, which caused
 7 such offence to Mr Picardo, Mr Pyle and
 8 Mr Llamas got things exactly right. It was
 9 prescient. Maybe that is why it caused such
 10 offence. The most obvious failure of all
 11 was that Mr McGrail had not been given the
 12 detail of the allegations against him and,
 13 anyway, had been given no opportunity to
 14 respond to the unparticularised allegations.
 15 Leaving aside the s. 34 process not being
 16 set out in detailed steps, there being no
 17 guidance and all of that, it should have been
 18 blindingly obvious to everyone that basic
 19 principles of fairness were not being
 20 followed. What happened after the GPA
 21 withdrew its decision? I want to place this
 22 final part of the narrative in the context of
 23 the government parties' submissions. The
 24 government parties say if Mr McGrail had
 25 genuinely thought that the required

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1 Sea as a peg or trigger, that is their words.
 2 Mr Picardo set the deadline for Mr
 3 McGrail's response to the s. 15 report at
 4 seven days, deciding to do so within three
 5 minutes of proposing to Dr Britto that the
 6 GPA provide Mr McGrail with the same
 7 seven days to respond to the 22 May letter.
 8 Mr Picardo's response on 21 May to Mr
 9 McGrail's reasonable request for counter-
 10 representation for the RGP in the proposed
 11 and not issued claims relating to the
 12 Incident at Sea was over blown and
 13 unjustified. He absolutely exploded but
 14 why? Because as he said in evidence, from
 15 after 12 May everything RGP was my
 16 business. The effect of these actions,
 17 whether deliberate or inadvertent or
 18 reckless, was to place intolerable pressure
 19 on Mr McGrail. In his oral evidence, he
 20 said he felt "there was a pack of wolves
 21 hounding me." His mindset in the days
 22 before he resigned is well recorded in the
 23 conversation that he had with Mr Llamas
 24 which Mr Richardson recorded on 22 May
 25 2020, the day he received the decision from

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25 (Pages 97 to 100)

<p>1 the GPA. He said, "Michale, I don't know 2 what to do. I'm at a loss. I've been 3 attacked. My options are either think about 4 Gibraltar or save my skin and think about 5 Gibraltar or create a constitutional crisis. 6 That's where I am, Michael. That's where I 7 am. What do I do now? Either I keep quiet 8 and I leave and that's it" and then he says, 9 "I'll leave. I'll leave or I'll stir things up and 10 we all stand to lose. Me and Gibraltar. 11 They've jumped the gun where with this 12 very precipitated but what I'd like to do is 13 clear this up for everyone's benefit. I'm 14 being pinned against the wall." It is 15 obvious from this that he decided to go 16 because the was thinking about Gibraltar, 17 rather than create a constitutional crisis by 18 remaining in post, a public servant to the 19 end." The Incident at Sea. No evasion, no 20 misleading. I am at paragraph 74 of my 21 written. I am not going to rehearse the 22 detail that is in there, but I will make three 23 points. The first is what was Mr Pyle's 24 actual concern? He did not tell Mr McGrail 25 at any point before he resigned, or retired,</p> <p style="text-align: center;">Page 101</p>	<p>1 with Spain were concerned." So it really 2 was a single and simple allegation, but also 3 a very serious one because Mr Pyle 4 accepted when I questioned him it was an 5 allegation of dishonest. If that allegation 6 had been put to Mr McGrail, he could have 7 answered it and this, sir, is the second point. 8 The allegation was based on a 9 misunderstanding that when Mr McGrail 10 referred to the incident, he meant the whole 11 incident, including collision and chase and 12 when Mr Pyle referred to the incident, he 13 meant just the collision. There is simply no 14 evidence, even by inference that Mr 15 McGrail was being deliberately evasive and 16 I set out the detail of this point at paragraph 17 80 in my submissions. The more serious an 18 allegation, the more important it is to give a 19 chance to response and this case shows 20 why. Just in relation to that point about 21 incident. The government parties raise a 22 number of instances where there are 23 references to incident in the context of an 24 incident report. No doubt this will come up 25 in the oral submissions. Sir, these are bad</p> <p style="text-align: center;">Page 103</p>
<p>1 what the particulars of his concern were. 2 The only detailed contemporaneous account 3 is his letter of 3 June, which was not shown 4 to Mr McGrail until after he said he would 5 retire. What was said in that letter? He 6 said, "I suspected at the time of the 7 immediate aftermaths of the incident, that 8 the COP's disclosure of information to me 9 was evasive, in particular in relation to the 10 critical issue of whether or not the incident 11 had happened within British Gibraltar 12 Territorial Waters. I know that when the 13 COP was telling me that it was not clear 14 where the incident had occurred, he was 15 informing the Chief Minister that the 16 incident had indeed occurred outside 17 BGTW. Indeed It occurred 7.5 nautical 18 miles beyond Gibraltar's baseline and, 19 therefore, well outside of BGTW. I find 20 this evasiveness on a key issue to 21 demonstrate a total lack of respect to the 22 office of Governor, particularly since the 23 COP knew at the time this was a crucial 24 issue for both the UK and Gibraltar 25 governments as far as diplomatic relations</p> <p style="text-align: center;">Page 102</p>	<p>1 points. An incident report is something 2 completely different and it is nothing to do 3 with that question about incident and 4 collision. Mr Pyle accepted in oral 5 evidence that it may have been a 6 misunderstanding and accepted "I didn't 7 know whether the lack of full disclosure 8 was deliberate or an oversight." This 9 demonstrates the impact of Mr Pyle's 10 failure to put the allegation to Mr McGrail 11 because we know have looked at it in detail, 12 but he did not at the time. There was an 13 unseemly rush to judgment. Once you see 14 it was a misunderstanding, it puts paid to 15 the central allegation. My third point is 16 about the worst that can be said. Mr 17 McGrail is adamant that he would have 18 given Mr Pyle substantially the same 19 briefing as the Attorney General in the 20 midst of a fast moving and delicate crisis, a 21 real crisis, but the worst that can be said is 22 that Mr McGrail and the other police 23 officers who were in the meeting on 8 24 March, along with the Attorney general, 25 should have shown Mr Pyle a map of the</p> <p style="text-align: center;">Page 104</p>

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<p>1 provisional coordinates of the collision, but 2 the impact of that, even it was an oversight, 3 was negligible because he was told what he 4 wanted to know by the Attorney General a 5 few hours later and was able to report the 6 same to his superiors in London the 7 following morning. So at most, there was 8 an oversight which had very little real 9 impact, if any, but the key is if that had 10 been the complaint, an oversight that had 11 very little, if any, impact, it would never 12 have made it onto a list of reasons for 13 removing the Commissioner. It would have 14 been put down to an oversight, which is all 15 that it was. On the Incident at Sea 16 generally, it was unfair and premature to 17 reach any conclusions as to Mr McGrail's 18 direct responsibility or otherwise for the 19 Incident at Sea in May and June 2020. That 20 was because Mr McGrail had 21 commissioned an independent investigation 22 into the incident and that investigation had 23 not reported at the time Mr McGrail and Mr 24 Picardo lost confidence in him. It truly was 25 putting the cart before the horse and the</p> <p style="text-align: center;">Page 105</p>	<p>1 private consultancy report relating to the 2 bullying allegations. Most importantly, he 3 was the one that called for this inquiry. 4 Those are not the actions of someone who 5 is unaccountable and does not take 6 responsibility. Then evidence has been 7 cherry picked, suggesting he did not take 8 responsibility for the Incident at Sea. In his 9 evidence, he was asked - I said, "In your 10 evidence you said that the two officers had 11 been accountable -- have to be accountable 12 for their actions. Do you think the 13 Commissioner of Police has to be similarly 14 accountable for failings of the force when 15 he has statutory responsibility for the 16 overall governance?" Mr McGrail 17 answered, "Failures, at what level are you 18 talking about?" "For example, and touch 19 wood that it never happened, if a firearms 20 officer was to discharge a firearm and cause 21 a fatality, and it transpired there systemic 22 failings, then yes and if it transpires that it 23 is an individual action by the officer, then it 24 doesn't necessarily follow." In our 25 submission this is a fair response. I will</p> <p style="text-align: center;">Page 107</p>
<p>1 Incident at Sea ended up being a peg to 2 hang Mr McGrail on. In any event, Mr 3 McGrail's probity and integrity was such a 4 central focus of the concerns about Mr 5 McGrail that were put to the GPA and 6 indeed put to Mr McGrail, but after he 7 retired, that it is simply unreal to imagine 8 he would have acted as he did with that 9 concern. Taking responsibility. This is a 10 short point. It is the government's 11 submission that Mr McGrail did not take 12 responsibility and was not able to. This is 13 wrong and somewhat ironic, coming in 14 submissions where no responsibility 15 whatsoever is taken. It is a feature of the 16 Bad McGrail. Two simple points in 17 response. (1) Mr McGrail regularly called 18 for independent scrutiny from the HMIC, 19 FRS, even though he was being told, 20 probably a bit early, Ian (inaudible) and 21 when that report arrived, he proposed 22 publishing it and answering questions about 23 it at a press conference. He asked for an 24 independent report from the Met Police into 25 the Incident at Sea. He commissioned a</p> <p style="text-align: center;">Page 106</p>	<p>1 now deal with a few of the peripheral 2 issues. The HMIC reports. This is dealt 3 with at paragraph 91 of my submissions. 4 There is no evidence that Mr Pyle or Mr 5 Picardo considered the report justified 6 removing Mr McGrail on its own. There is 7 good evidence that both Mr Pyle and Mr 8 Picardo were perfectly willing to work with 9 Mr McGrail on the recommendations and, 10 whilst neither saw it as a positive 11 development, there was a way forward with 12 Mr McGrail leading the RGP. The Justice 13 Minister communicated her support for Mr 14 McGrail. The reactions were no more than 15 mild and the report makes no reference to 16 Mr McGrail who had only been in post for 17 18 months when the inspection occurred. 18 On the other hand, the report did contain 19 suggestions that the work of the RGP was 20 hampered by a lack of resources, 21 deficiencies in legislation and failure to 22 provide support for vulnerable offenders 23 and victims. Commissioner Ullger, when 24 he gave evidence, confirmed that he had to 25 make difficult decisions in order to comply</p> <p style="text-align: center;">Page 108</p>

<p>1 with the recommendations, which had a 2 significant impact on frontline policing. 3 This demonstrates the fact that there were 4 difficult decisions he had to make to 5 comply with the recommendations and it 6 was not as straightforward as Mr McGrail 7 clicking his fingers to do so in the 18 8 months before the inspection. The Airport 9 Incident. This is dealt with at paragraph 10 108 of our closing. Three points. First, this 11 is not an inquiry into the Airport Incident. 12 One was mooted but perhaps for diplomatic 13 reasons, it was never called. The MOD 14 may have simply wanted to move on after 15 the Chief of Defence Staff sent his letter 16 saying that the MOD had been operating on 17 a mistaken understanding of the law and of 18 their jurisdiction. The events on the runway 19 were investigated by the GPA but Mr 20 McGrail was not directly involved in those 21 events. He was involved in the subsequent 22 arrests. His actions were independently 23 investigated following complaints. The 24 Police Complaints Board rejected those 25 complaints and the GPA rejected a further</p> <p style="text-align: center;">Page 109</p>	<p>1 THE CHAIRMAN: Yes, well I have made 2 my point. I do not accept what you say. 3 MR WAGNER: But the second point is 4 that in any event, it does not feature in any 5 of the contemporaneous documents, apart 6 from the text from the Chief Minister to Mr 7 Pyle. So it does not feature in the GPA 8 notes. It does not feature in the GPA letter 9 and it does not feature in the -- 10 THE CHAIRMAN: Yes, there was a very 11 good reason for that as well. Anyway, do 12 not let's get distracted by that. 13 MR WAGNER: We say secondly, that the 14 Airport Incident is useful in one way, in 15 that it demonstrates how easily Mr Picardo 16 dissembles to suit his interests. As I set out 17 in paragraph 116 of my written 18 submissions, Mr Picardo entirely backed 19 the RGP at all times. Indeed, he was 20 enthusiastically saying that they should go 21 for the jugular and mooting another turn of 22 the screw and referring to the MOD 23 personnel as idiots and clowns. Then 12 24 May happened and he made an about turn 25 very, very sharply. Suddenly on 14 May,</p> <p style="text-align: center;">Page 111</p>
<p>1 appeal. 2 THE CHAIRMAN: Well, those complaints 3 were only by two comparatively junior 4 officers. 5 MR WAGNER: Well, my second point is 6 we have not heard from any - we have not 7 heard that evidence. We have not heard 8 from anybody who was there. 9 THE CHAIRMAN: Well, I do not think 10 you can gloss over the arrests of the three 11 senior officers so lightly. 12 MR WAGNER: But if there were no 13 complaints and this inquiry is not hearing -- 14 has not heard those officers, it has not asked 15 Mr McGrail. 16 THE CHAIRMAN: We have their 17 evidence, it is in writing, but it has not been 18 called. 19 MR WAGNER: I do not want to distract 20 you, but I do not accept that point. 21 MR WAGNER: But -- sir, it is important 22 that the Airport Incident, first of all, has not 23 been -- those arrests have not been 24 considered in detail by this inquiry. Yes, 25 there is evidence relating to it.</p> <p style="text-align: center;">Page 110</p>	<p>1 he was referring in a text to Mr Pyle to the 2 runway incident where we had to go into 3 bat for them, despite all aspects having 4 clearly been mishandled by the RGP. You 5 may wish to include in your report, sir, 6 what to make of that reversal of position. 7 THE CHAIRMAN: That is a better point. 8 MR WAGNER: We say that, given the 9 lack of evidence of any concerns by Mr 10 Picardo prior to 14 May, it is likely a pretty 11 transparent attempt to take advantage of 12 what he knew to be Mr Pyle's longstanding 13 grievance about the Airport Incident. 14 Third, in any case, not in the 15 correspondence. The recordings and the 16 documents. It is not an issue on the issues 17 list and it was not known to Mr Picardo, Mr 18 Pyle, Mr Llamas or anyone on the GPA at 19 the time Mr McGrail left office, so it cannot 20 have been a reason for him leaving office 21 but the government parties and Op Delhi 22 defendants have relied heavily on it as if to 23 say look, whatever you say about what we 24 did, Bad McGrail is the real villain for 25 recording meetings without people knowing</p> <p style="text-align: center;">Page 112</p>

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<p>1 and allegedly destroying documents. I have 2 dealt with the recordings from paragraph 3 133 in my closing submissions. The 4 summary is this. Before 12 May, Mr 5 McGrail had good relations with Mr Pyle, 6 Mr Picardo, and Mr Llamas. On 12 May 7 there was a sudden, radical and wholly 8 unexpected changed in Mr Picardo and Mr 9 Llamas's behaviour towards Mr McGrail. 10 Mr Picardo flew off the handle, flared 11 nostrils, disjointed face. Mr Llamas's 12 response added to Mr McGrail's fears. He 13 said he could no longer entertain Mr 14 McGrail. It left Mr McGrail with a deep 15 sense of discomfort and he said in oral 16 evidence he felt vulnerable, extremely 17 worried. Mr Picardo's exchanges with Mr 18 Baglietto on 12 and 17 May show that Mr 19 Picardo's anger quickly turned into actions 20 as he as he assertively joined in Mr Levy's 21 defence and with Mr Llamas on 17 May 22 and 20 May. Mr McGrail suspected that 23 Mr Picardo was batting for Mr Levy but 24 could not prove it. The alleged sabotage 25 was said to have happened at the time of</p> <p style="text-align: center;">Page 113</p>	<p>1 risks of injustice. It is notable that 2 important aspects of the inquiry where 3 conversations were not recorded have led to 4 difficulties. Even the government parties 5 say the recordings were useful, though 6 reprehensible. Reasonable people will 7 debate, sir, whether they themselves would 8 have done the same. Would they have 9 recorded meetings without telling the 10 people how were in them? Mr McGrail 11 himself has frankly said he is not proud that 12 he did it, showing insight which has been 13 lacking in others, but we say his decision 14 was one reasonable option in the extreme 15 and unique circumstances he found himself 16 in, motivated by suspicions which turned 17 out to be well founded. Retention and 18 deletion of documents. This issue, we 19 submit, has been cleared up by the fourth 20 statement of Deputy Commissioner Yeats 21 and the exhibits. This is the permission in 22 summary. For the same reasons as he 23 decided to record meetings, Mr McGrail 24 retained a copy of various documents 25 relating to Op Delhi. These were on a hard</p> <p style="text-align: center;">Page 115</p>
<p>1 high security risk, this relates to Op Delhi. 2 Mr McGrail was so concerned he had 3 reported the matter to the then Governor 4 and Commander in Chief, General Edward 5 Davis. But Mr Llamas appeared to be more 6 interested in the reputational fall out of the 7 alleged sabotage, Gibraltar plc. It was in 8 this precarious position and the hostile 9 environment of the meeting of 12 May that 10 Mr McGrail was moved to conclude that he 11 had no option but to record meetings to 12 protect himself and the RGP in the absence 13 of internal supportive mechanisms. He 14 decided the recordings were necessary to 15 ensure a full and accurate record. He was 16 also concerned that the RGP database, 17 including everything to do with Op Delhi, 18 was hosted by the government's technology 19 and logistics department and, therefore, 20 could be accessed from outside the RGP. 21 Mr McGrail has only used the recordings 22 for the purposes of this inquiry. Their 23 production in evidence has assisted the 24 inquiry's work and avoided potential 25 conflicts of evidence with the attendant</p> <p style="text-align: center;">Page 114</p>	<p>1 drive and some printed copies of the same 2 documents, which were also on the hard 3 drive. He did this because he was deeply 4 concerned the RGP systems were not secure 5 and he was facing a conspiracy to protect 6 Mr Levy, including removing him from 7 post. He later returned the hard drive to the 8 RGP, exactly as he had received it and told 9 the RGP he would delete the spare copies 10 he had retained but then said he would not 11 do so until he could provide these to the 12 inquiry. That provision was delayed by 13 some months because the inquiry itself 14 suffered a serious data breach and sacked 15 its solicitors. The RGP officer who was 16 managing the data protection issues asked 17 him twice to confirm whether he had yet 18 deleted the documents. Once he had 19 disclosed them to the inquiry, he duly 20 deleted them. The RGP knew about all of 21 this and none of the documents which were 22 deleted or destroyed were not contained in 23 the hard drive, which the RGP has and 24 therefore the inquiry has. Mr McGrail has 25 also been accused of not providing his day</p> <p style="text-align: center;">Page 116</p>

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1 books. He left them in a bag in his office
 2 when he left at some speed and that is the
 3 last he heard of them. He was desperate for
 4 the RGP to locate them during his criminal
 5 trial. Despite that, the relevant pages
 6 relating to Op Delhi had already been
 7 scanned when he was in office and for the
 8 purpose of a witness statement in the
 9 proceedings and the inquiry has those from
 10 the RGP. Mr McGrail has no idea what has
 11 happened to those day books but he left
 12 them with the RGP. Finally, Mr McGrail
 13 has been accused of taking his laptop but
 14 that has now been located. In fact, the
 15 government IT department had it all along,
 16 it seems. Now, my third and final section.
 17 What happens next and the C word. In the
 18 four years which have followed the events
 19 of May and June 2020, the handling of Mr
 20 McGrail has continued. He has been
 21 subjected to what can only be described as a
 22 campaign of persecution, some of it
 23 government sponsored. Sponsored, quite
 24 literally, with the public's money. Hostile
 25 witnesses appear to have been encouraged

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1 The agreements were honoured
 2 immediately, regardless of what happens to
 3 those individuals in the RGP. Some even
 4 managed to avoid RGP disciplinary
 5 investigations by taking the deals. So Mr
 6 Morello had his pension puffed up for three
 7 years, seemingly in exchange for giving
 8 evidence against Mr McGrail, whereas Mr
 9 McGrail lost two years of his salary and his
 10 pension entitlement for being forced out
 11 two years early. This is nothing short of
 12 grotesque. The witness inducement
 13 campaign was orchestrated by the Chief
 14 Minister and facilitated by Hassans, who
 15 acted for all the witnesses. Mr Morello
 16 seems to have said that Mr Levy may have
 17 been present at some of the meetings. The
 18 Picardo Hassan partnership is a common
 19 theme in this inquiry. In recent weeks,
 20 since the oral hearings concluded, the
 21 gloves have come off in the public
 22 campaign to further discredit Mr McGrail,
 23 to grind him into the ground. Just
 24 yesterday, in the middle of final
 25 submissions, the Government of Gibraltar

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1 with tens and perhaps hundreds of
 2 thousands of pounds of public funds to give
 3 evidence against Mr McGrail. Mr
 4 McGrail's physical safety was threatened, to
 5 the extent that Commissioner Ullger had to
 6 warn him about it at the same time as
 7 warning him that witnesses were being
 8 induced to give evidence against him. One
 9 witness to this inquiry, the former GPF
 10 Chair, Mr Morello, in his own words had
 11 his pension puffed up by three years. In
 12 other words, he was offered not alternative
 13 employment, but to retire three years early
 14 with his pension entitlement increased as if
 15 he had worked those three years. What a
 16 great deal. He even signed an agreement
 17 with the Chief Minister himself and was
 18 promised an ex gratia payment. We
 19 calculated this payment could be in the
 20 hundreds of thousands of pounds of public
 21 money, all spent against Mr McGrail. Even
 22 though the agreement said they would only
 23 be on it if the individuals' positions became
 24 untenable, Mr Picardo admitted in evidence
 25 the govt did not wait for this to happen.

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1 issued a press statement, saying amongst
 2 other things, the former Commissioner of
 3 Police, who has admitted on oath to
 4 destroying unused material in a criminal
 5 investigation -- that is not true -- and other
 6 scandalous behaviour and allegations which
 7 the public will wish to be reassured about,
 8 and that is in an official government press
 9 release. Moving away from the
 10 government, or so you might think,
 11 defamatory and intimidatory articles have
 12 been published in a newspaper called The
 13 New People. They have targeted,
 14 systematically, not just Mr McGrail but also
 15 other witnesses who punctured the
 16 government's narrative in this inquiry. Mr
 17 DeVincenzi, the Chief of Police,
 18 Commissioner Ullger, Mr Richardson,
 19 whilst in the meantime countless articles
 20 have appeared backing Mr Levy and
 21 Hassans. Who owns The New People? To
 22 find out, you need to do a bit of digging
 23 through an array of companies but those
 24 who have followed this inquiry might not
 25 be surprised to learn that shares in New

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<p>1 People Publishing Limited are held in the 2 name of a web of companies which all 3 ultimately lead to the partners of Hassans, 4 including Mr Levy and Mr Baglietto and 5 Fabian Picardo. The registered ultimate 6 beneficial owner of The New People 7 Publishing is Fabian Picardo. Perhaps Sir 8 Peter will be able to take instructions over 9 lunch and confirm whether Mr Picardo has 10 had any involvement in those articles and I 11 do not mean writing them, I mean 12 involvement in. The Hassans witnesses 13 have very belatedly, a working day before 14 the hearing, at one minute before midnight 15 in inquiry terms, submitted a 40-page 16 submission, which I will not deal with here, 17 save to say that the picture painted in those 18 submissions of good, but wounded lawyers 19 who have done nothing but stand up for 20 fundamental rights is rather punctured by 21 the fact that Hassans Partners is listed as 22 shareholders in companies which are linked 23 to a publication which has been spewing 24 out vicious and defamatory articles against 25 those who have stood up to it in this</p> <p style="text-align: center;">Page 121</p>	<p>1 or vicious retaliatory attack taken against 2 him. The Chief Minister admitted in 3 evidence that he is wealthier than he ever 4 imagined, in part because of his holding of 5 the office of Chief Minister. Ian McGrail is 6 not wealthy. Ian McGrail is an honest 7 police officer who served Gibraltar with 8 distinction for three and a half decades and 9 earned exactly as much money as you 10 would expect him to earn when doing that 11 job. When his pension was being 12 threatened, as we now know was being 13 casually texted by the Chief Minister to 14 Lewis Baglietto, though he claims without 15 support from anyone that it was about Mr 16 Richardson, when Mr McGrail's pension 17 was being threatened, his mental health 18 spiralled out of control because he does not 19 have a nest egg like others do. He therefore 20 cannot afford to fight the endless 21 defamation suits against Picardo's 22 newspaper or fight a multinational firm of 23 lawyers like Hassans. Why is this relevant? 24 Because of my final topic, 25 Recommendations. I endorse what a</p> <p style="text-align: center;">Page 123</p>
<p>1 inquiry. What kind of a law firm is 2 involved in such things? No doubt this 3 persecution will continue after the inquiry 4 pulls up stumps and leaves the space 5 entirely and as if to add insult to injury, just 6 to demonstrate beyond doubt that nothing 7 has been learned, who is now to replace Dr 8 Britto as chair of the Gibraltar Police 9 Authority? A senior consultant and former 10 partner of Hassans. After Ian McGrail was 11 acquitted of sexual assault and the Chief 12 Magistrate who acquitted him suddenly lost 13 his job, he was replaced by, you guessed it, 14 a partner at Hassans. Not just any partner, 15 the very partner who acted for the witnesses 16 who were given special deals by Fabian 17 Picardo after offering to give evidence 18 against Mr McGrail. Moving forward, the 19 Gibraltar public will no doubt be exposed to 20 increasingly outlandish allegations against 21 Mr McGrail. They will hear a lot more 22 about Bad McGrail. All that we ask is that 23 the public understand that there is more 24 than meets the eye and Ian McGrail does not 25 have the resources to challenge every libel</p> <p style="text-align: center;">Page 122</p>	<p>1 number of core participants said yesterday, 2 sir. This is an important opportunity not 3 just to speak truth, which will have the 4 greatest effect, but also to make some 5 recommendations to ensure that things do 6 not stay the way they are because, judging 7 by the government parties' submissions, no 8 concessions, no insights and the campaign 9 of persecution which Ian McGrail has 10 faced, and faces to this day, it will take a lot 11 to change things for the better. In that light, 12 we propose four recommendations. They 13 are in a separate document which is on the 14 inquiry website. They are (1) a Conflict of 15 Interest Act. This is modelled on the 16 legislation in Canada, which led to the 17 Trudeau Report, which Lloyd DeVincenzi 18 unsuccessfully raised with Mr Llamas. It is 19 a statutory scheme to put conflict of interest 20 rules on a legal footing and ensure there is 21 accountability for serious breaches. 22 Perhaps Mr DeVincenzi would be a good 23 choice for the first Conflict of Interest 24 Commissioner. Second, we propose 25 various protocols and training for the</p> <p style="text-align: center;">Page 124</p>

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<p>1 Attorney General to help him deal with 2 conflicts of interest. Third, various 3 recommendations relating to training and 4 protocols for the GPA. Fourth, redress for 5 Mr McGrail. He is an honest man and a 6 dedicated public servant who has been 7 treated disgracefully. Mr Pyle admitted as 8 much. The truth is his central focus but he 9 should be given some kind of redress and 10 that should be independently administered. 11 I finish with this, sir, and I should give a 12 trigger warning for the government parties. 13 I am going to use the C word. Corruption is 14 defined when a person in power abuses 15 their power for personal gain. In our first 16 submissions to you, sir, on 20 June 2022, 17 we quoted from the Council of Europe 18 Corruption Convention which Gibraltar is a 19 part of, which says this, "Corruption 20 threatens the rule of law, democracy and 21 human rights, undermines good 22 governance, fairness and social justice, 23 distorts competition, hinders economic 24 development and endangers the stability of 25 democratic institutions and the moral</p> <p style="text-align: center;">Page 125</p>	<p>1 other people referred yesterday, to Dr 2 Britto's reference to deference. He 3 definitely used that word. You say it is 4 subservience. Now my note, which 5 obviously other people have not noted 6 because no one has referred to it, my 7 recollection is that he said that his approach 8 to life was to show deference to his betters. 9 That is what I recall, but nobody else seems 10 to have remembered that. 11 MR WAGNER: Presumably, it is not in the 12 transcript. 13 THE CHAIRMAN: Well that is what I am 14 really asking. 15 MR WAGNER: I am sure Mr Santos can -- 16 MR SANTOS: It is in the transcript. 17 MR WAGNER: Oh, it is in the transcript? 18 MR SANTOS: It is day 15, page 224. I 19 just performed a quick search. 20 THE CHAIRMAN: Right, well I am -- 21 MR SANTOS: 224, line 26. 22 THE CHAIRMAN: That seemed to me to 23 be quite an important -- 24 MR WAGNER: To his betters. 25 THE CHAIRMAN: Yes.</p> <p style="text-align: center;">Page 127</p>
<p>1 foundations of our society." When a 2 politician uses their power to undermine a 3 police investigation into their close friend, 4 that is corruption. When the leader of the 5 police force is hounded from office because 6 the police investigated a powerful 7 individual who is a close friend of a 8 political leader, that is corruption. When 9 witnesses are given financial incentives by 10 a politician as part of giving critical 11 evidence which helps that politician, that is 12 corruption. What happens next, sir, will 13 determine whether that corruption is 14 allowed to fester again. Thank you, in 15 advance, for the robust and fair report 16 which we trust you will produce. Thank 17 you to the inquiry team, including counsel 18 to the inquiry, and the solicitors to the 19 inquiry for facilitating that process. My 20 plea is that you do not waste this 21 opportunity to take the bull by the horns. 22 Thank you. 23 THE CHAIRMAN: Can I ask a question? 24 MR WAGNER: Yes. 25 THE CHAIRMAN: You have referred, and</p> <p style="text-align: center;">Page 126</p>	<p>1 MR WAGNER: Exactly and the 2 implication of that, yes. 3 THE CHAIRMAN: Yes, I mean, he went 4 to it, his attitude being well, you know, they 5 are telling me what to do, that is -- 6 MR WAGNER: And he also said that he 7 did not read everything that he was -- he did 8 not understand everything that was being -- 9 THE CHAIRMAN: Well I have got that, I 10 know that. 11 MR WAGNER: Yes. 12 THE CHAIRMAN: Okay, thank you, you 13 both have cleared that up. 14 MR SANTOS: I think it is fair to say that 15 his answer was with my betters, well not 16 my betters but with Governors and Chief 17 Ministers, so I think he ultimately -- 18 THE CHAIRMAN: Well, it is clear to me 19 what he meant. What is the precise time? 20 Yes, if we started at quarter to two, Sir 21 Peter, that would not cause you any 22 problems would it? 23 SIR PETER CARUANA: No. 24 THE CHAIRMAN: Okay, well, let's do 25 that.</p> <p style="text-align: center;">Page 128</p>

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<p>1 (12.39) 2 (The short adjournment) 3 (13.48) 4 THE CHAIRMAN: Yes, Sir Peter, you 5 choose the convenient moment to take the 6 afternoon break. 7 SIR PETER CARUANA: After what sort 8 of interval would you like it, sir? Because I 9 can -- 10 THE CHAIRMAN: I will leave it entirely 11 up to you. 12 SIR PETER CARUANA: You had better 13 remind me. 14 THE CHAIRMAN: Yes, just keep an eye 15 on it. 16 SIR PETER CARUANA: Yes, exactly. 17 Thank you, sir. 18 So, sir, the government parties are grateful 19 to you for this opportunity to address 20 submissions more publicly than the written 21 submissions that you will consider in your 22 own time and that all the core participants 23 have submitted. And these oral 24 submissions, sir, on behalf of the 25 government parties are articulated in terms</p> <p style="text-align: center;">Page 129</p>	<p>1 foreseen and said by the government at the 2 time. 3 A word, sir, if I may, about 4 recommendations. The government does 5 not think it appropriate to comment on the 6 recommendations suggested to you, sir, by 7 other core participants and they will not do 8 so. Some, particularly some of those 9 suggested by the Royal Gibraltar Police, 10 seem to the government to be unrealistic 11 and in any event would appear to stray or 12 would appear to invite you, sir, to stray into 13 matters which are well outside the scope of 14 this Inquiry's terms of reference. So in 15 making recommendations you will wish to 16 bear in mind the provisions of section 24(2) 17 of the Inquiries Act which provides that 18 recommendations must be relevant to the 19 terms of reference. Now, the terms of 20 references are very wide and therefore you 21 have quite a wide remit in terms of making 22 recommendations. But unlike some of the 23 submissions that have been made to you in 24 effect, they are wide but not unlimited and 25 it would be my respectful submission to</p> <p style="text-align: center;">Page 131</p>
<p>1 that acknowledge the desirability of comity 2 between public authorities and institutions 3 that work together in the public interest. 4 A word first about the Inquiries Act. As 5 foreseen and stated by the government at 6 the time that it did so, the enactment of the 7 new Inquiries Act and the making by the 8 government of a restrictions notice under it 9 have enabled the government to protect the 10 vital unrelated to this Inquiry public interest 11 of Gibraltar without any material impact, 12 adverse implications, for the conduct of the 13 Inquiry and the government is grateful to 14 you, Mr Chairman, and to some other core 15 participants, and CTI, for the manner in 16 which you have been able to accommodate 17 this. As you, Mr Chairman, have yourself 18 envisaged and stated, there has been no 19 curtailment of the Inquiry's ability to 20 investigate anything it has wanted to 21 investigate. And that domestically and 22 internationally damaging comment and 23 criticism levelled against these measures 24 have therefore proved to be entirely 25 unwarranted and unjustified, as also</p> <p style="text-align: center;">Page 130</p>	<p>1 you that some of the submissions that have 2 been made to you about recommendations 3 invite you, sir, to stray outside the proper 4 bounds of section 24(2). 5 The government will of course, sir, give 6 careful consideration to those 7 recommendations that you include in your 8 report and, in respect of those 9 recommendations that the government may 10 accept, will take appropriate policy or 11 legislative action as the case may be. It is 12 not possible to inquire into any complex 13 human endeavour in such depth and at such 14 length without uncovering lessons that can 15 be learned and thing that can be done better, 16 even things that have not in the past been 17 done well. There is always room for 18 improvement, here as in the UK and 19 everywhere else. The opportunity for this is 20 indeed one of the benefits of the public 21 inquiries, of public inquiries generally. 22 And all this said by the government meant, 23 the government does not accept as implicit, 24 for example, in the RGP's submissions on 25 recommendations, that unless you make</p> <p style="text-align: center;">Page 132</p>

<p>1 bold, courageous and ambitious 2 recommendations it will not be possible to 3 ensure the rule of law in Gibraltar or to 4 safeguard the RGP's operational 5 independence. Nor does the government 6 accept the implications behind Mr Gibbs's 7 rhetorical and leading question: what will 8 happen here in Gibraltar when you have left 9 if you do not include recommendations in 10 your report to protect Gibraltar from the 11 dangers that have been laid bare in this 12 Inquiry? There being no higher 13 independent authority to speak truth to 14 power. Will it simply be business as usual? 15 Sir, I suppose that the answer to Mr Gibbs's 16 question is that the courts of Gibraltar all 17 the way to Her Majesty and counsel will 18 remain available to anyone who wishes to 19 complain about unlawful acts or abuse of 20 powers by the government, any minister, 21 any statutory authority, the police, or 22 anyone else that enjoys statutory functions, 23 duties or powers. The criminal law 24 administered by the RGP will remain 25 available against any person, including</p> <p style="text-align: center;">Page 133</p>	<p>1 operational independence of the RGP and 2 the rule of law in Gibraltar is not assured in 3 the future. None of which should be 4 thought to mean that valuable lessons 5 cannot be learned and valuable 6 recommendations cannot emerge from this 7 Inquiry. They can and no doubt will. 8 So, sir, some general principles. As you 9 have acknowledged yourself many times, 10 this Inquiry is limited in scope by and to the 11 terms of reference, which are to inquire into 12 and report to the government on the reasons 13 and circumstances leading to Mr McGrail 14 ceasing to be the Commissioner of Police in 15 June 2020 by taking early retirement. I will 16 call that, if I may, sir, the scope. For this 17 purpose, Mr Chairman, you have identified 18 a number of issues that you want to 19 investigate and you have rightly and again 20 often acknowledged that your interest in 21 these issues is necessarily limited to the 22 extent, if at all, that they constituted 23 a reason or circumstance leading to 24 Mr McGrail's retirement, i.e. relevance. 25 So, the short point is that this Inquiry is not,</p> <p style="text-align: center;">Page 135</p>
<p>1 politicians, however senior, that may 2 engage in corruption or other unlawful 3 activities, all presumably as in the UK. But 4 unlike as in the UK, in Gibraltar there is 5 an additional safeguard and that is that the 6 UK Government will continue to retain its 7 role and powers, which are enshrined in the 8 constitution, to ensure the peace, order and 9 good government of Gibraltar, and these are 10 specifically reserved under Her Majesty, or 11 His Majesty, I beg your pardon, which 12 means UK ministers and counsel, under 13 paragraph 11 annex 2 of the Gibraltar 14 Constitution. 15 And of course it is to be supposed that 16 much the same would happen in Gibraltar 17 as happens in London following the 18 procurement by successive mayors of the 19 early retirement outside of the statutory 20 process of two successive Metropolitan 21 Police Commissioners, the RGP's 22 operational independence, still less of the 23 rule of law. And that without bold, 24 courageous and be ambitious 25 recommendations from you, sir, the</p> <p style="text-align: center;">Page 134</p>	<p>1 as one might be forgiven from listening to 2 some of the submissions that have been 3 made to you, sir, is not a sort of roving 4 general inquiry into the conduct of public 5 affairs generally in Gibraltar. Nor about or 6 concerned with the general considerations 7 of the appropriateness or inappropriateness 8 of any person's conduct or behaviour, 9 personal style, nature or manner of 10 expression, levels of emotion or passion or 11 approach to the conduct of their functions 12 and responsibilities. Nor baldly and 13 speculatively alleged supposed corruption 14 in Gibraltar, apparently not shared by those 15 with constitutional responsibility to ensure 16 good governance here. Gibraltar's system 17 of governance and/or the extent to which 18 things are done, necessarily done differently 19 in Gibraltar than in the UK by virtue of our 20 very different and smaller size, also is not 21 generally in play. Nor supposed conflicts 22 of interest or any other matter, unless all or 23 any of the above are relevant, that is to say, 24 are a reason or circumstances that led to 25 Mr McGrail's retirement. And that of</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

1 course is a matter entirely for you, sir.
 2 It is submitted that a reason is a cause of or
 3 motive for an action or event,
 4 a circumstance is a fact or condition that
 5 accompanies or influences an event or
 6 action and, as the CTI has said, the words
 7 "leading to" reinforce the need for a link
 8 between the reasons and circumstances on
 9 the one hand and Mr McGrail ceasing to be
 10 Commissioner of Police on the other,
 11 because the latter one is the event. This
 12 introduces a requirement of a causal link
 13 between the reasons and circumstances and
 14 the event or action. And in our case, as I
 15 say, the event is Mr McGrail ceasing to be
 16 Commissioner of Police. None of the loss
 17 of confidence reasons, issues, if I could call
 18 them that, were the direct cause of or reason
 19 of Mr McGrail's retirement. My learned
 20 friend Mr Wagner is quite right when he
 21 says that this is not an inquiry into the
 22 airfield incident, I think is the example he
 23 gave this morning. I agree. Similarly, it is
 24 not a roving inquiry into the Operation
 25 Delhi matter or any of the other issues.

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1 Minister to decide that they had lost
 2 confidence in Mr McGrail as the person
 3 able to take and should continue to take the
 4 GRP forward was, in the case of the
 5 Governor the incident at sea, and in the case
 6 of the Chief Minister his belief that he had
 7 been lied to by Mr McGrail in their meeting
 8 on 12 May. These were the immediate
 9 catalysts for their decision.
 10 The other loss of confidence issues were
 11 matters, some very historical, that were
 12 brought to mind by them and contributed in
 13 different measure, if at all, in the case of
 14 each of the Governor and the Chief
 15 Minister, to the final joint assessment in
 16 May 2020 that each of them had lost
 17 confidence in him, that taking into account
 18 also the more historical matters, the
 19 thresholds for action had been reached,
 20 leading them to their joint decision to seek
 21 his removal by the Gibraltar Police
 22 Authority. I will not take you, sir, to the
 23 transcripts, but you will recall, sir,
 24 Mr Picardo speaking of all these items and
 25 things came together like the strands of

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1 These thoughts, sir, to the extent that you
 2 may agree with them, inform the issue of
 3 relevance and that is what needs to be or
 4 should be reported on and what should not
 5 be. So to be relevant a reason or
 6 circumstances must have led to
 7 Mr McGrail's retirement.
 8 Issues will have contributed to the view that
 9 the Governor and the Chief Minister had of
 10 Mr McGrail in May 2020 in an incremental
 11 or accumulating way over a period of time.
 12 A person's decision at a given time,
 13 May 2020, for example, that in his mind the
 14 threshold for taking an action has been met,
 15 may be influenced by the cumulative effect
 16 on that person's mind of relevant
 17 influencing factors that have occurred in the
 18 past, even though those same issues
 19 individually did not produce that effect. In
 20 short, a proverbial glass that is filling or
 21 a camel's back that has been laden over
 22 time. So in the end it, in May 2020, the
 23 issues that caused the proverbial glass to
 24 overflow or the proverbial camel's back to
 25 break and cause the Governor and the Chief

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1 circumstantial evidence and became a cord
 2 that "for me was the straw that broke the
 3 camel's back." And in not dissimilar vein
 4 Mr Pyle said:
 5 "I do not think I had started to draw the
 6 threads together of this, cannot go on,
 7 something you know, the stage I started to
 8 get in my mind or believe that a change of
 9 leadership was needed was growing, but I
 10 did not have enough weight or even talk
 11 through it with the Chief Minister, let alone
 12 Dr Britto."
 13 So, nor, sir, are the facts that these things
 14 are not less true or genuine because the
 15 Governor or the Chief Minister did not
 16 previously or contemporaneously raise or
 17 bring to Mr McGrail's or the GPA's
 18 attention or complain about a matter upon
 19 which they separately and to different
 20 degrees, if at all, later rely or refer to in
 21 relation to their loss of confidence threshold
 22 crossing decisions. It is submitted
 23 therefore, sir, that this does not speak to the
 24 merits of the issue, especially in the context
 25 of subjective cumulative effect of past

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<p>1 events on a person's later decision. 2 So, sir, you do need to be satisfied of 3 course, and nothing that I have just said is 4 intended to refute that, that there was 5 a subjectively genuine loss of confidence, 6 that is the key issue. It would not matter 7 that you did not think that the reasons were 8 sufficient to justify a loss of confidence 9 because of course loss of confidence is 10 a subjective thing, but certainly there has to 11 be a genuine loss of confidence. It cannot 12 just be ungenueine in the sense of capricious. 13 So, sir, why did Mr McGrail cease to be the 14 Commissioner of Police in June 2020? The 15 short answer is that he chose to apply for 16 early retirement, but plainly his decision to 17 seek early retirement did not reflect any 18 spontaneous desire on his part in June 2020 19 to no longer wish to be Commissioner of 20 Police for reasons unrelated to anyone else. 21 So why did he seek early retirement? What 22 were his reasons for doing so? We know 23 that on 15 May 2020 the Governor and the 24 Chief Minister met, agreed that they had 25 both lost confidence in Mr McGrail (albeit</p> <p style="text-align: center;">Page 141</p>	<p>1 they invited the GPA to consider whether 2 there were grounds to exercise its statutory 3 power to call upon Mr McGrail in 4 exercising its powers under section 34 and 5 whether it wished to do so. The meeting 6 was followed up at Dr Britto's request with 7 a note that we have heard about, prepared 8 by the Chief Minister, and approved in draft 9 by the Governor. Reflecting what had been 10 said at the meeting, the note, as confirmed 11 by Dr Britto in his own evidence, makes it 12 perfectly clear that it was for the GPA to 13 consider the matter and make its own 14 decision. 15 The GPA, it says, are therefore being 16 invited by the Governor and the Chief 17 Minister together to consider whether they 18 believe all or any (note it is a disjunctive, 19 not conjunctive list) of the following five 20 have been impacted. And it also says that it 21 is now a matter for the GPA to decide how 22 to act and to decide that they want to 23 engage section 34 power. So, contrary to 24 Mr McGrail's self-serving allegations, there 25 was therefore no guidance or instruction by</p> <p style="text-align: center;">Page 143</p>
<p>1 for different reasons) as the person to lead 2 the RGP, wanted him removed from office 3 for that reason, sought to bring that about. 4 And their different reasons for this are dealt 5 with later, I will deal with later but briefly, 6 some of them briefly. 7 So the Governor and the Chief Minister 8 were entitled to lose confidence in the 9 Commissioner of Police, even though 10 neither of them had the power to remove 11 him from office at that time and indeed the 12 Chief Minister never had the power to 13 remove him from office. The right to lose 14 confidence in someone is distinct from and 15 does not depend on having the legal power 16 to remove the person in consequence of that 17 loss of confidence. But they did have the 18 right to act as they did, namely, to bring 19 their loss of confidence to the Gibraltar 20 Police Authority's attention and that is what 21 they did. And they did it at a meeting on 18 22 May with the Gibraltar Police Authority's 23 chairman, Dr Joey Britto, at which they set 24 out to him their reasons for losing 25 confidence in Mr McGrail. At that meeting</p> <p style="text-align: center;">Page 142</p>	<p>1 either the Governor or the Chief Minister 2 about what the GPA should, let alone had 3 to, decide as to whether or not to invite 4 Mr McGrail to retire. Dr Britto himself 5 makes this perfectly clear in his own 6 witness statements. The Interim Governor 7 and the Chief Minister stated that it was 8 a matter for the GPA, having been 9 appraised of these concerns, whether in its 10 discretion it wanted to invoke the powers 11 vested it in pursuant to section 34. The 12 Interim Governor stated that should the 13 GPA be minded to call upon Mr McGrail to 14 retire both should be deemed to have 15 consulted and agreed. And they pointed out 16 that if the GPA were to consider inviting 17 Mr McGrail to retire the first step would be 18 to allow Mr McGrail to make 19 representations if he wished to do so. 20 So, Mr McGrail's closing written 21 submissions at paragraph 69 that the 22 Governor and the Chief Minister presented 23 Dr Britto with a fait accompli or 24 circumvented the section 34 process or my 25 learned friend Mr Cruz's submissions for</p> <p style="text-align: center;">Page 144</p>

<p>1 the RGP that this was somehow tantamount 2 to an instruction is, in our respectful 3 submission, not supported by the evidence. 4 As is therefore also untrue the statement at 5 paragraph 71 of my learned friend 6 Mr Wagner's written closing submission, 7 that the Chief Minister directed the 8 sequencing and content of the process. The 9 GPA board held its emergency meeting on 10 21 May. It read the memo of the 11 chairman's meeting with the Chief Minister 12 and the Governor at The Convent, heard 13 orally from the chairman, itself decided 14 collectively and unanimously, without 15 further intervention of the Governor or the 16 Chief Minister, to invite Mr McGrail to 17 retire. And it did so, as we have heard, 18 principally because they had taken the 19 view, they took the view, that having lost 20 the confidence of both the Governor and the 21 Chief Minister his position had become 22 untenable. And, secondly, and subsidiarily, 23 because it also considered that the incident 24 at sea had been serious. 25 Extraordinarily, in my respectful</p> <p style="text-align: center;">Page 145</p>	<p>1 made their decision, which was reflected in 2 the letters to invite Mr McGrail to retire. 3 So the Chief Minister's involvement in their 4 drafting did not in any way affect or 5 influence the GPA's decision or its 6 independence. The fact that he helped, 7 whether you take the view rightly or 8 wrongly, justifiably or unjustifiably, 9 appropriately or inappropriately, the fact 10 that he helped them draft the letter does not 11 make him a party to the decision, it does not 12 assault the independence of the decision 13 and it certainly, still less, does not make 14 him a participant in the decision, as 15 submitted on behalf of Mr McGrail. It did 16 not undermine any of these things. 17 Respectfully, sir, in my submission, this is 18 something of a red herring. 19 Of course, I do not know what to make of 20 what some people submit in relation to 21 helping draft emails and letters. We have 22 heard how in relation to the airfield incident 23 the RGP sent the Commander of British 24 Forces a lengthy email that had been 25 drafted by the Chief Minister, in respect of</p> <p style="text-align: center;">Page 147</p>
<p>1 submission, sir, Dr Britto's alleged fragility 2 or nervous disposition has been used to 3 suggest that this request to consider 4 constituted undue pressure on him by the 5 Governor and the Chief Minister. Leaving 6 that point to one side, which is obviously 7 denied, it ignores the fact that it was not he 8 who made the decision but the whole board 9 collectively and unanimously, who 10 presumably do not all suffer from 11 Dr Britto's supposed fragility or excess of 12 deference for higher office or betters or for 13 anybody else. The GPA did not consider, 14 as we know now, the reasons why the 15 Governor and the Chief Minister had lost 16 confidence in Mr McGrail or the merits of 17 those reasons. They simply decided that 18 having lost the confidence of both of them 19 his position as Commissioner of Police had 20 become untenable. And after the GPA 21 board had made the decision Dr Britto 22 asked the Chief Minister to help him draft 23 the letters to Mr McGrail informing him 24 about that decision. But the members of the 25 Gibraltar Police Authority had already</p> <p style="text-align: center;">Page 146</p>	<p>1 a matter that was still an ongoing police 2 investigation. And, I mean, I do not think 3 and I do not suppose they thought at the 4 time that by agreeing to adopt and send 5 something drafted by somebody else they 6 were undermining their own independence, 7 operational independence. The GPA's and 8 it is certainly not the government parties' 9 obligation or role to justify or defend the 10 decision of the GPA to call for 11 Mr McGrail's retirement, but the 12 government parties agree with the basis of 13 the decision, which was the loss of 14 confidence of them both. In a way that 15 affected the effectiveness and efficiency of 16 policing in Gibraltar. The effectiveness and 17 efficiency of policing in Gibraltar is 18 engaged and Mr McGrail could not 19 realistically continue in post in those 20 circumstances, assuming that the reasons 21 were genuine, a view that Mr McGrail 22 himself shares. 23 As the examples of two recent Metropolitan 24 Commissioners have shown, this is true in 25 Gibraltar as much as it is in London. Both</p> <p style="text-align: center;">Page 148</p>

<p>1 the two previous Metropolitan Police 2 Commissioners had opted to take early 3 retirement after losing the confidence of the 4 incumbent Mayor of London. And this 5 simply reflects the practical reality. It is not 6 a legal requirement. I have not said that 7 there is a legal obligation. All I have said is 8 that that appears to be, even in London, the 9 practical reality. And then only to make the 10 point that it engages effectiveness and 11 efficiency of policing, regardless of whether 12 the incumbent deserves it or does not 13 deserve it, it is a matter of practical reality, 14 which of course does not dispose of the 15 matters that you have to decide, sir, in this 16 Inquiry. 17 It is this reality that was recognised by the 18 Gibraltar Police Authority in its decision to 19 call on Mr McGrail to retire because his 20 position had become untenable. Beyond 21 that, the untenability of Mr McGrail's 22 position became even more stark and 23 obvious following the very serious 24 allegations of corruption, undermining the 25 rule of law, etc, etc, conspiracy, etc, etc,</p> <p style="text-align: center;">Page 149</p>	<p>1 policing and that he should cease to be 2 Commissioner of Police. Indeed, sir, 3 Mr McGrail had already since 13 May been 4 covertly recording meetings with the 5 Attorney General, the DPP, the Solicitor 6 General and colleagues. This showed 7 a degree of loss of confidence by him in 8 senior figures with whom he would have to 9 continue to work long before any 10 suggestion that his job was on the line as to 11 make it entirely inappropriate that he should 12 remain Commissioner of Police. He should 13 have asked to retire himself there and then. 14 But for subsequent events indeed he would 15 have remained as Commissioner of Police 16 despite having covertly expressed the loss 17 of confidence implicit in having recorded 18 those meetings. 19 But as the Inquiry has heard, sir, the GPA's 20 decision to call Mr McGrail to retire was 21 fatally flawed for the reasons that we have 22 heard, the meeting was not quorate and he 23 had not, despite the invitation, despite the 24 Governor and the Chief Minister having 25 specifically pointed it out in the note of 18</p> <p style="text-align: center;">Page 151</p>
<p>1 very serious allegations made by 2 Mr McGrail against all of the Governor, the 3 Chief Minister and the Attorney General in 4 his lawyer's letter dated 29 May to the 5 GPA. It was inconceivable that he could or 6 should continue in office thereafter. 7 Indeed, sir, Mr McGrail himself had already 8 come to the very same conclusion. At A42 9 of his witness statement he says: 10 "The other part of me was saying that my 11 time was up as it was going to be 12 impossible to work with these officials ever 13 again - in my view, my position was 14 untenable but not for the reasons they 15 claimed. I suppose by that point the loss of 16 confidence was a mutual issue between 17 them and I." 18 Mr McGrail himself thus rightly 19 acknowledged the inextricable link between 20 loss of confidence and the efficiency and 21 effectiveness of policing under his 22 leadership going forward. Accordingly, all 23 of the government parties, GPA and 24 Mr McGrail, considered loss of confidence 25 engages efficiency and effectiveness of</p> <p style="text-align: center;">Page 150</p>	<p>1 May, they failed to give Mr McGrail the 2 obviously required opportunity to make 3 representations before the GPA could 4 statutorily exercise its power under 5 section 4. And they therefore withdrew it 6 for that reason. 7 Mr Cruz and the RGP ignore ... I should 8 perhaps say that not only did the GPA 9 withdraw, rightly, their invitation to 10 Mr McGrail to retire, but further stated that 11 as then constituted it would be unable to 12 pursue the matter. So Mr Cruz and the 13 RGP ignored this last critical point when 14 they argue that section 30 does not enable 15 the Governor to act just because the GPA 16 refused to act or the Governor did not like 17 their decision. I agree with both those 18 propositions. But that is not what 19 happened. It was not a case of the GPA 20 refusing to act but of not being able to act 21 and it was not a case of the Governor not 22 liking their decision, but of the GPA being 23 legally unable it make a decision. Both 24 constituted defaults for the reasons, sir, that 25 I have explained in the government's view</p> <p style="text-align: center;">Page 152</p>

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<p>1 in a schedule to the written submissions and 2 which it is not necessary for me to go into 3 orally. 4 So Mr McGrail is highly critical of the 5 Governor and the Chief Minister for the 6 procedural flaws and alleged lack of natural 7 justice in the GPA's section 34 decision. 8 But, in my respectful submission, sir, such 9 criticism in wholly phoney and 10 unwarranted. Because, firstly, the section 11 34 is a GPA process which is a matter for 12 the GPA, not for the Governor or the Chief 13 Minister to supervise the manner of its 14 exercise by the GPA. Neither the GPA's 15 decision nor the procedural flaws in the 16 manner in which it was made are the actual 17 responsibility of the Governor or the Chief 18 Minister, save that they invited the GPA to 19 consider whether there were grounds for 20 and whether they wished to exercise its 21 powers to do so. It is not incumbent on the 22 Governor and the Chief Minister to comply 23 with any procedural requirements in the 24 manner in which they articulate their 25 complaint or their views or their position to</p> <p style="text-align: center;">Page 153</p>	<p>1 which is simply not imposed on either the 2 Governor or the Chief Minister in that 3 process. 4 (14.21) 5 So as I say, we have submitted that there 6 was a default. Why? The GPA thought that 7 Mr McGrail's position had become 8 untenable, and that he therefore had to 9 cease being Commissioner of Police in the 10 interests of the efficiency and effectiveness 11 of policing; but, had rendered itself legally 12 incapable of implementing its own 13 judgment, its own assessment and its own 14 decisions. This remained so regardless of 15 the fact that for procedural reasons they had 16 to withdraw it. This was the default, sir, 17 that in our submission gave the Governor 18 his power under section 13, under the 19 provisions of which the governor may 20 where there has been a default, amongst 21 other things, "suspend from duty, or call for 22 the resignation of the Commissioner." And 23 of course, it is worth noting that Mr Pyle 24 received legal advice to that effect both 25 from the Attorney General and from the</p> <p style="text-align: center;">Page 155</p>
<p>1 the GPA. 2 The note of their meeting of 18 May with 3 Dr Britto is not part of the GPA's section 34 4 process or of any other process that engages 5 the principles of natural justice in Article 6 6 of the European Convention of Human 7 Rights, which as you know, sir, is replicated 8 substantively in section 8 of our 9 Constitution. It was up to the GPA to 10 decide what further information it may 11 require for the purposes of the proper 12 conduct of its section 34 process and to 13 have requested it from the Governor and the 14 Chief Minister as they thought necessary. 15 Accordingly, sir, in our submission, the 16 criticism of the Governor and the Chief 17 Minister for the alleged inadequacy or 18 incompleteness of the contents of the 18 19 May note insofar as fairness to Mr McGrail 20 is concerned, or the flawed GPA 21 decision-making process, is misconceived 22 in the context of compliance or 23 non-compliance of statute or compliance or 24 non-compliance with natural justice 25 principles, the obligation in respect of</p> <p style="text-align: center;">Page 154</p>	<p>1 Foreign and Commonwealth office legal 2 advisor in London. Very briefly and in 3 passing, my learned friend Mr Cruz 4 suggested that one option that might have 5 been available to the GPA was to delegate 6 their decision-making process. Well, I 7 think my learned friend is overlooking the 8 principle that a statutory power holder 9 cannot delegate his powers unless the 10 statute specifically authorises him to do so. 11 In case somebody wants to do some deeper 12 research into this question, there are 13 provisions of the Interpretation and General 14 Clauses Act which do give some officials 15 the power to delegate their authority, but 16 not statutory bodies like the Gibraltar Police 17 Authority. So, delegation of their exercise 18 of the section 34 powers was not a legally- 19 available option to the GPA. And so, 20 consequent upon what we say is the GPA's 21 default, the Governor acted. And at this 22 stage, only the Governor had the legal 23 power to bring about Mr McGrail's removal 24 by calling for his resignation. The Chief 25 Minister did not have the power to remove</p> <p style="text-align: center;">Page 156</p>

<p>1 Mr McGrail from office or call for his 2 resignation, and he did not do so, although 3 he was in full agreement with the Governor 4 that he should exercise his power to do so if 5 necessary. So, once the GPA had 6 withdrawn its decision, Mr Picardo, the 7 Chief Minister, was completely powerless 8 to bring about what Mr McGrail 9 subsequently feared and caused him to opt 10 to take early retirement. The Governor 11 prepared to act under section 13.(1), but Mr 12 McGrail asked to retire before he began that 13 process. To begin the process of 14 consideration by him of using the section 15 13 power, Mr Pyle called Mr McGrail to a 16 meeting with him on 5 June. That was a 17 Friday; at that meeting, the Governor told 18 Mr McGrail that he would study the papers 19 over the weekend with a view to consider 20 whether to exercise his powers under 21 section 13 (?) again on Monday. But at that 22 very meeting -- at that very meeting on the 23 Friday, Mr McGrail handed Mr Pyle an 24 email that his lawyers had already sent to 25 the GPA's lawyers, stating that Mr McGrail</p> <p style="text-align: center;">Page 157</p>	<p>1 sir, is that when you hear submissions about 2 the imminence of the new Governor's 3 arrival and what should or should not have 4 happened before he arrived, it is important 5 to emphasise that Mr McGrail (through his 6 lawyers) twice had said that he wanted to 7 retire and that all that they wanted to do 8 with the new Governor was negotiate the 9 terms of his retirement, not whether he 10 should retire or whether he should not 11 retire. Mr Pyle did not improperly rush 12 through Mr McGrail's removal. Indeed, Mr 13 Pyle did not exercise any power to remove 14 Mr McGrail. He did not need to, since Mr 15 McGrail (as we have seen) asked to take 16 early retirement. But be that as it may, it 17 was in any event the common view of the 18 Governor, the Chief Minister and the FCDO 19 in London that it would be preferable if the 20 matter could be resolved before the new 21 Governor's arrival, so that his new tenure 22 would not commence with such a complex 23 and controversial extant issue. In those 24 circumstances, and the meeting on Sunday 25 attended also by Mr Llamas (who was then</p> <p style="text-align: center;">Page 159</p>
<p>1 "feels that he must apply for early 2 retirement from the Royal Gibraltar Police". 3 That was before, therefore, Mr Pyle 4 formally even initiated the process to 5 consider using his section 13 powers. The 6 Governor wrote to Mr McGrail by email the 7 next day, Saturday, when he had read that 8 email, in the light of his stated feelings that 9 he must apply for early retirement, asking 10 Mr McGrail to confirm by midday on the 11 next day, Sunday, that he would therefore 12 be tendering his letter of resignation on 13 Monday with immediate effect. Of course, 14 sir, the reference to resignation was an 15 error, since the issue was retirement not 16 resignation. Mr Gomez, Mr McGrail's 17 lawyer, immediately corrected that in an 18 email of 7 June to the Governor, making it 19 clear that Mr McGrail would not be 20 resigning but confirmed his intention to 21 retire subject to agreement of terms and 22 saying that he would be writing to the new 23 Governor next week with what he believes 24 will be reasonable terms for retirement. 25 The reason why I am making these points,</p> <p style="text-align: center;">Page 158</p>	<p>1 legally advising Mr Pyle), Mr Pyle and the 2 Chief Minister agreed to conclude Mr 3 McGrail's departure from office before the 4 arrival of the new Governor. And Mr Pyle 5 decided with the Chief Minister's agreement 6 that should Mr Pyle have to invoke his 7 powers he would suspend Mr McGrail with 8 immediate effect, not call for his 9 resignation, precisely so as to allow Mr 10 McGrail to lobby the new Governor but not 11 take us back to square one. That is to say, 12 to lobby the new Governor on retirement 13 terms, which is what Mr Gomez had 14 requested on Mr McGrail's behalf in the 15 email to which I have just referred. And of 16 course, this is also the course that had been 17 mooted by Mr Pyle with the FCDO in 18 London and which was preferred by both of 19 them. You will see the email to that effect 20 at at C4841. So, indeed, the new Governor 21 who is implicitly said to have been deprived 22 of the opportunity to bring a new 23 perspective on the issue, the new 24 perspective that the new Governor (who 25 was imminently to arrive on the Thursday),</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

1 the new perspective that the new Governor
 2 was deprived of bringing, as we have seen
 3 from these emails, is not whether Mr
 4 McGrail should retire but simply the terms,
 5 the financial terms, of his retirement. And
 6 even that cannot be fairly used to
 7 demonstrate that Mr Pyle rushed anything,
 8 because Sir David Steel himself (while still
 9 in London, and before he had arrived)
 10 emailed Mr Pyle and emailed in response to
 11 an email that Mr Pyle had sent to him,
 12 "Thank you. This matter has been the
 13 reason that I too have not been troubling
 14 you", ("this matter" being the whole Mr
 15 McGrail issue), "as I know that you have
 16 had much on your plate at the moment. I
 17 discussed the whole issue with", name of
 18 senior official redacted, "this morning, as
 19 well as the Permanent Undersecretary" at
 20 the Foreign and Commonwealth office in
 21 London, "both think you are doing a
 22 cracking job in difficult circumstances. I",
 23 (that is to say, Sir David Steel, imminently-
 24 to-arrive Governor), "hope that the actions
 25 you are taking will address the issue." To

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1 Government's (with respect to him)
 2 submission, Mr McGrail did not retire for
 3 the reasons that he cited to the GPA. In his
 4 lawyers' email that I have been referring to
 5 (the one on 5 June to the Gibraltar Police
 6 Authority), Mr Neish for Mr Gomez asking
 7 to retire, which Mr McGrail had handed to
 8 the Governor at the meeting of Friday the
 9 5th, he gave two reasons. Namely that he
 10 had been unfairly treated by the GPA in the
 11 flawed section 34 process, and that
 12 improper pressure had been put upon him to
 13 alter the course of a live criminal
 14 investigation (which is why we are debating
 15 Operation Delhi for the last few months: a
 16 reference to that police operation). It is
 17 submitted that neither of those reasons were
 18 plausible or true. As to the alleged
 19 interference in the live criminal
 20 investigation, and without prejudice to the
 21 primary contention of the Chief Minister
 22 and the Attorney General that there was no
 23 such interference (to which I will come), on
 24 the afternoon of 22 May, the day that Mr
 25 Britto had come to New Mole House to

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1 that end, Mr McGrail and Mr Pyle met on
 2 Monday, Mr McGrail confirms his intention
 3 to retire. Mr McGrail then negotiates with
 4 the Chief Secretary pension and other bits
 5 and pieces (claims for legal costs and the
 6 pay for unworked years, all that sort of
 7 thing). Where agreement could be reached,
 8 agreement was reached. It was sealed on
 9 that evening (on the 8th, that is to say) and
 10 therefore on the 9th Mr McGrail wrote to
 11 the Interim Governor confirming in (?)
 12 handing in this letter of early retirement.
 13 So, although an unsuccessful attempt to
 14 remove him had indeed been made by the
 15 GPA, and although the Governor had
 16 previously indicated an intention to
 17 consider using his section 13 powers over
 18 (?) the GPA to not (inaudible) Mr McGrail,
 19 and the Governor called Mr McGrail to a
 20 meeting to initiate that process, Mr McGrail
 21 was in fact not removed from office by the
 22 governor or anyone else. Mr Pyle was not
 23 required to invoke his powers under section
 24 13 and the process did not commence,
 25 because he chose to retire. In the

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1 give the letters to Mr McGrail informing
 2 him of the GPA's decision (?), Mr McGrail
 3 had convened the entire senior management
 4 team of the RGP in his office to tell them
 5 that he was engaging with the RGP to resist
 6 him having to retire. Also on 22 May, Mr
 7 McGrail had a telephone conversation with
 8 the Attorney General. We have seen the
 9 transcript of one half of that conversation.
 10 Nothing in that conversation suggests any
 11 sense of principled need to retire as
 12 Commissioner of Police; if anything, the
 13 contrary sense emerges from that
 14 conversation. And importantly, on 29 May
 15 Mr McGrail's own lawyers had written to
 16 the GPA saying that his removal would be
 17 unjustified and a travesty, he should not be
 18 removed, to do so would be an affront by
 19 the GPA to the rule of law and a breach of
 20 its duties under the constitution, and that the
 21 only rational and just position was that he
 22 should remain in post. Well, absolutely
 23 nothing happened relevant to the alleged
 24 interference in the Operation Delhi
 25 investigation between 22 and 29 May (on

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1 which Mr McGrail was determined that he
 2 should be allowed to stay on) and 5 June
 3 (the day on which he says that he was
 4 retiring because of the alleged interference).
 5 So, the supposed interference could not
 6 have been his reason, for the logic that I
 7 have just explained. Everything about the
 8 alleged interference had already occurred
 9 long before he expressed not just that he
 10 wished to stay but that he did not feel that
 11 there was any obstacle to him staying. And
 12 as to the unfair treatment by the GPA, by 22
 13 and 29 May all the unfair treatment by the
 14 GPA had occurred before the above-cited
 15 expressions by Mr McGrail of his desire to
 16 continue. Indeed the only further,
 17 additional thing that happened was, not
 18 unfairly but fairly to Mr McGrail, as we
 19 have heard from Mr Neish, the GPA
 20 decided to withdraw their invitation to
 21 retire. So, that also is a wholly implausible
 22 reason for his decision to retire. It is the
 23 Government parties' submission, Mr
 24 Chairman, that it would be open to you to
 25 consider inferences as to why those reasons

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1 were given when they plainly were not
 2 correct. So, what were his real reasons for
 3 retiring? It is submitted on behalf of the
 4 government that the real reasons why Mr
 5 McGrail sought early retirement were that
 6 he knew that he had lost the confidence of
 7 the Governor and the Chief Minister, and
 8 that in consequence of that the GPA thought
 9 that his position was untenable and that he
 10 should retire. He knew that his position
 11 had, for the reasons, become untenable.
 12 Indeed, the GPA had called on him to retire
 13 for that reason. And he believed,
 14 importantly, that had he not sought early
 15 retirement there was the very real risk that
 16 the Governor would call publicly for his
 17 resignation under section 13, and he was
 18 wrongly concerned (wrongly but
 19 understandably, I suppose) that if the
 20 Governor sacked him as opposed to him
 21 retiring he may lose his pension or might
 22 otherwise adversely be affected in respect
 23 of his pension rights. This is evident, sir,
 24 from all the evidence that Mr McGrail
 25 himself contained in his witness statement;

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1 I will not take the time to go through them,
 2 they are cited in list form and in detail in
 3 our closing written submissions, where Mr
 4 McGrail explains (in submissions and in his
 5 witness statement) precisely what I have
 6 just said about the concerns for his pension.
 7 So, finally on this point, sir, Mr McGrail
 8 did not ask anyone whether that would be
 9 the case. In fact, he was not correct. So, he
 10 opted to retire to save his pension without
 11 checking that his pension would be in
 12 jeopardy if he did not do so. The reality,
 13 sir, is that these are the reasons why he
 14 retired, and the suggestion that he retired
 15 because there was some sort of corrupt
 16 conspiracy to interfere with the Op Delhi
 17 investigation is certainly something that if
 18 true would be serious, but it is not the
 19 reason why he retired and it is not any
 20 reason that led to his retirement, and that is
 21 what is relevant for the terms of reference
 22 in this Inquiry.
 23 THE CHAIRMAN: If you want a break
 24 now, by all means take it.
 25 SIR PETER CARUANA: I will just go a

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1 little (?) further on, so that means I have got
 2 to go to Delhi. I would just say, sir (very
 3 quickly, because I will run out of time), that
 4 of course Mr McGrail says in his written
 5 submissions that it is not his case that Mr
 6 Pyle is lying, but that he has been
 7 manipulated. I have listed, sir, in my
 8 closing written submissions all the evidence
 9 of what Mr Pyle said and did, which he
 10 swears on oath he said and did, which are
 11 simply not compatible with the suggestion
 12 that he was manipulated by the Chief
 13 Minister into doing something that did not
 14 reflect his (Mr Pyle's) view. And you just
 15 cannot reconcile the view that he was not
 16 lying with the view that he was being
 17 manipulated, because if he was being
 18 manipulated and acting in accordance with
 19 the Chief Minister's view but not his own,
 20 all of these things that he says on oath that
 21 he said, the initiatives that he took; the
 22 statements of his position that he explained
 23 to the GPA, that he explained to the Chief
 24 Minister, that he reported to London... All
 25 of these things would necessarily be sworn

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1 untruths and inconsistent with the case that
 2 he has not been lying. So, if his evidence is
 3 not untrue then it is also necessarily untrue
 4 that he was responsive to manipulation by
 5 the Chief Minister. And the respectful
 6 submission on our behalf is that whatever
 7 may have been the coincidence of their
 8 objectives, Mr Pyle was acting in a manner
 9 that reflected his own views, and was not
 10 somehow the unwitting instrument of the
 11 Chief Minister as has necessarily been
 12 argued. I should say, why do I say
 13 "necessarily"? Because of course, if he left
 14 because of interference with the Operation
 15 Delhi, the man whose actions he feared (the
 16 Governor's) did not act on the basis of
 17 Operation Delhi (about which he barely
 18 knew), how is he going to make good his
 19 allegations of corrupt interference against
 20 the Chief Minister and that he resigned for
 21 that reason, if the Governor did not act?
 22 So, he necessarily has to convert the
 23 Governor into his mouthpiece or into his
 24 manipulated instrument, because otherwise
 25 his entire -- would we say "lunch"? Or

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1 respect, to anyone who understands the
 2 dynamics of the relationship between the
 3 Foreign Office and the Government of
 4 Gibraltar is is not a plausible narrative.
 5 And so, I am just going forward very
 6 quickly just to touch on the trigger point
 7 that my learned friend says that Mr McGrail
 8 would still be the Commissioner -- or, I do
 9 not know, his retirement date might have
 10 come by now, but would have continued
 11 until his retirement date had it not been for
 12 the Chief Minister, and that is simply not
 13 the evidence. It may be true that it might
 14 not have happened precisely on the day that
 15 it happened, but happened it would unless
 16 you accept the manipulation point. Because
 17 the actual evidence of Mr Pyle, who would
 18 therefore have to be lying, too (it might be
 19 proved, but it is certainly not Mr McGrail's
 20 case) was that when asked would you have
 21 reached out at that time said, "Probably not,
 22 given what was in my in-tray at the time.
 23 But it wouldn't have taken long." I think
 24 Mr Pyle is perfectly clear that these were
 25 his growing concerns, he was bringing the

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1 narrative, that he retired because of this
 2 supposed interference falls away
 3 completely. Also, sir, you may wish to
 4 consider whether it is credible that Mr Pyle,
 5 who represented the Foreign and
 6 Commonwealth Office in London here in
 7 Gibraltar while he was Deputy Governor
 8 (less so whilst he is Governor, but certainly
 9 as Deputy Governor he is straightforwardly
 10 the Foreign Office's man in Gibraltar);
 11 whether Mr Pyle, who is the Foreign
 12 Office's man in Gibraltar, would do that and
 13 then report it all on a practically daily basis
 14 to the Foreign and Commonwealth Office,
 15 who send it all the way up to ministers of
 16 the UK, getting advice from the Foreign
 17 Office legal advisor about the powers that
 18 had been (?) invoked. And all of this,
 19 apparently, sir, is manipulation: lending
 20 himself to being manipulated by the
 21 Gibraltarian Chief Minister in full view of
 22 the Foreign Office in London, the same
 23 Foreign Office who held the constitutional
 24 responsibility for ensuring good governance
 25 in Gibraltar. Sir, with the greatest of

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1 cords together. Indeed, when the Chief
 2 Minister phoned him he said: what a
 3 coincidence, I was about to phone you too,
 4 to explain to you the concerns that I have
 5 developed about the leadership of the RGP
 6 and the need for change. Now, that is either
 7 a lie, too (contrary to Mr McGrail's case) or
 8 it is true. But that has an implication, it has
 9 an implication about disproving the
 10 narrative advanced. And of course, Mr
 11 McGrail did know about the lie, whatever
 12 might have been the shorthand way in
 13 which it was alluded to in other documents.
 14 The very next day, in their conversation at
 15 the end of the 13 May meeting -- so, the
 16 alleged lie was uttered on the 12th, the next
 17 day was the meeting of the 13th. At the
 18 end, Mr Llamas explained to Mr Britto that
 19 the Chief Minister thought that he had been
 20 lied to in relation to this matter. Also on the
 21 22nd. It is therefore not open to Mr
 22 McGrail to pretend that he was unaware of
 23 what the lie complained has been, as he
 24 appeared to have given Dr Britto the
 25 impression on 22 May when discussing this

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<p>1 issue with Dr Britto. He knew full well 2 from the end of the meeting of 13 May that 3 the Chief Minister thought that he had lied 4 to him in the manner alleged by the Chief 5 Minister in relation to that matter. And the 6 AG's role in relation to this whole area (the 7 decision to secure the removal of Mr 8 McGrail) was not as a participant in the loss 9 of confidence decision by the Governor and 10 the Chief Minister, nor in their decision to 11 invite the GPA to consider exercising their 12 section 34 power to invite him to retire. 13 The Attorney General participated only at 14 the end, at Mr Pyle's request and as his 15 legal advisor, to provide him with legal 16 advice in relation to GPA defaults during 17 the engagement of the section 13 issue and 18 in relation to such issues as whether Mr 19 Pyle shortly needed to have recourse to 20 section 13 (?) call for Mr McGrail's 21 resignation or just to suspend him, and Mr 22 McGrail's retirement terms. There is, sir, 23 no justification (still less, evidence) to 24 justify Mr McGrail's case narrative that the 25 Attorney General is somehow party to a</p> <p style="text-align: center;">Page 173</p>	<p>1 that is okay, that is fine. So, sir, moving on 2 to Operation Delhi. As you know, sir, very 3 serious allegations have been made by and 4 on behalf of Mr McGrail that he was forced 5 out of his post because he had executed a 6 search warrant against a friend of the Chief 7 Minister, in a brazen act of corruption 8 designed to protect the personal and 9 political interests of the Chief Minister and 10 other powerful figures. This very serious 11 allegation is based on two patently false 12 pillars. First, that it was the Chief Minister 13 who forced Mr McGrail out of office; it was 14 not. Second, that it was done to protect the 15 personal interests of the Chief Minister and 16 Mr Levy; this is untrue. It is a wild and 17 irresponsible allegation unsupported by 18 evidence and sustained only by the 19 speculative innuendo and hyperbole used to 20 construct his own self-serving case 21 narrative. I have already dealt with the 22 reasons and circumstances point, and why 23 Mr McGrail was not forced out the Chief 24 Minister. As to the claim that it was done to 25 protect the personal interests of the Chief</p> <p style="text-align: center;">Page 175</p>
<p>1 corrupt conspiracy in respect of the role that 2 he played in the loss of confidence decision 3 by the Governor and the Chief Minister. 4 This was not a joint decision between the 5 three of them; this was a decision between 6 the two of them, to which Mr Llamas was 7 simply not a party. It is therefore, not 8 unlike much of Mr McGrail's case 9 narrative, simply a speculative and bald 10 assertion to suit his necessary case 11 narrative. So -- sorry? Yes, sir. I will take 12 a break now, sir. 13 THE CHAIRMAN: Okay. 14 SIR PETER CARUANA: I have been 15 going for (?) quite a long time, thank you. 16 THE CHAIRMAN: A short break. 17 (14.46) 18 (Adjourned for a short time) 19 (14.52) 20 THE CHAIRMAN: It is very hot in here. 21 If you want to take another break, by all 22 means just ask. 23 SIR PETER CARUANA: I am okay. It is 24 very hot, sir. I had not realised they had 25 closed the door for reasons of glare. But</p> <p style="text-align: center;">Page 174</p>	<p>1 Minister and Mr Levy, the Chief Minister 2 took no steps whatsoever to prevent the 3 RGP from executing the search warrant, 4 reviewing the contents of Mr Levy's 5 devices or conducting their investigation of 6 him. I will come to that later. And Mr 7 McGrail's claim is neither logical nor 8 rational: removing Mr McGrail from office 9 would not prevent the RGP from doing 10 anything. He was not involved in this 11 investigation; he was not making the 12 decisions in relation to the investigation of 13 Mr Levy. Those who were responsible for 14 the investigation would remain free to do as 15 they pleased, as in fact they did. The 16 removal of Mr McGrail would therefore 17 provide the supposedly-sought protection of 18 Mr Levy to no extent whatsoever, and it 19 therefore is implausible that that was the 20 Chief Minister's motive. As to protection of 21 his financial interest, which means (?) his 22 holding as a partner of Hassans in 36 North, 23 the allegation that he may have been 24 motivated in anything that he did by his and 25 his friend's interest in that company; in fact,</p> <p style="text-align: center;">Page 176</p>

1 his behaviour and that of the Government
 2 was to the very opposite effect. When
 3 Bland's concerns about the attempts to
 4 divert the NSCIS management contract to
 5 36 North (the company in which the Chief
 6 Minister had an interest) were brought to
 7 Mr Picardo's attention, he intervened not to
 8 ensure that it came to 36 North but that it
 9 did not come to 36 North, by ordering that
 10 it should remain with Bland.
 11 (14.55)
 12 The Financial Secretary, also a partner of
 13 Hassans with a shareholding interest in 36
 14 North, when it was brought to his attention
 15 that Mr Caine Sanchez was withholding
 16 payments from Bland as a means of putting
 17 pressure on them, did not say yes, carry on
 18 withholding the payments from Mr Bland
 19 because if we put pressure on him, he is
 20 going to give the contract to the company
 21 which I am interested in. No, what he
 22 actually did was to order Mr Sanchez to pay
 23 the arrears to Bland. According to Mr
 24 Richardson's note of a telephone call from
 25 Mr Gaggero on 2 May, Mr Gaggero

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1 called this inquiry, would he have done so
 2 with such broad terms of reference, or at all,
 3 and appoint and experienced criminal judge
 4 such as yourself to conduct the inquiry if he
 5 had behaved corruptly, as Mr McGrail
 6 alleges, and had not in fact been lied to by
 7 Mr McGrail upon which he based the very
 8 decision that he appointed you to enquire
 9 into. This is not the actions of somebody
 10 who thinks he has anything improper to
 11 hide. The lie issue. Sir, contrary to Mr
 12 McGrail's theory, Mr Picardo did not lose
 13 confidence in Mr McGrail for this reason.
 14 Mr Picardo did not lose confidence because
 15 he a warrant had been issued, the primary
 16 reason was because Mr Picardo believed,
 17 and continues to believe, that Mr McGrail
 18 had lied to when stating during their 12
 19 May meeting that, in relation to the
 20 execution of the warrant, he was acting on
 21 the advice of the Director of Public
 22 Prosecutions. It is noteworthy, in terms of
 23 the forensic value of spontaneous reaction,
 24 it is noteworthy that the Chief Minister has
 25 immediately, within one minute and

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1 expressed the view that, in his judgment,
 2 the Chief Minister had "acted correctly
 3 throughout". This even in the knowledge,
 4 as appears by the same note, that the Chief
 5 Minister had been discussing the platform,
 6 the NSCIS platform, with Mr Levy, and
 7 that in Mr Gaggero's view, it was Mr Levy
 8 who was trying to lean on the Chief
 9 Minister. These are not the actions of
 10 people seeking to protect their financial
 11 interests as shareholders in 26 North or in
 12 the NSCIS management contract, rather sir
 13 I would submit the opposite. In any event,
 14 sir, by the time of Mr Picardo's supposed
 15 interference on 12 May, any possible
 16 financial interest in the NSCIS management
 17 contact had ceased to be so more than 18
 18 months earlier when he ordered that it
 19 should remain with Bland. Mr Chairman,
 20 also you may wish to consider whether a
 21 politician who is under no obligation to do
 22 so -- so Mr McGrail may want to take credit
 23 for calling for the inquiry, but it was Mr
 24 Picardo who decided to convene this
 25 inquiry and, having no obligation to have

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1 spontaneous response when told by Mr
 2 Llamas that the DPP had strongly advised
 3 against a search warrant was, to say in
 4 Spanish, well then he lied to both of us.
 5 That is a very quick way, a very, very short
 6 period of time in which to construct a
 7 defence to an inquiry that had not yet even
 8 been a twinkle in anybody's eye. He told
 9 the Gibraltar Police Authority six days later
 10 that the commissioner had expressly misled
 11 him which left him unable to believe the
 12 Commissioner. The fact that Mr Llamas
 13 may have misconveyed and misdescribed
 14 the precise message from the DPP is wholly
 15 irrelevant to the point. The point is, in the
 16 context of this inquiry, the point is that it
 17 was not true that the DPP had advised the
 18 use of a search warrant. Both the incorrect
 19 version and the correct version would have
 20 represented lies. Now just to deal with a
 21 point that my learned friend, Mr Wagner,
 22 made earlier today. He said this was a very
 23 serious error because it would have had an
 24 influence on the Governor, this terrible
 25 mistake about advised against or -- but sir,

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<p>1 with respect, logically, the opposite is the 2 case. It is less effective on the Governor, 3 not more effective on the Governor, the 4 error. Rejecting advice is not objectionable. 5 The RGP is operationally independent and 6 free to opt for the search warrant, even if 7 the DPP had advised against it. However, 8 lying to the Chief Minister is much more 9 serious. So contrary to Mr Wagner's case, 10 it did not suit the Chief Minister, the Chief 11 Minister's alleged motive, not to correct the 12 error sooner. It would have suited him 13 much more to correct it and to say to the 14 Governor he lied to me. Not he has gone 15 against the advice of the DPP, which is 16 something that he is entitled to do, and 17 much less damaging than the real version, 18 that he had acted on the advice of the 19 Director of Public Prosecution. As you will 20 recall, sir, in Mr McGrail's oral evidence, 21 he confirmed that on many occasions he 22 had used the word 'intervention' and it was 23 to refer to the search warrant, and these are 24 all set out at paragraph of our written 25 closing submissions. When the AGE put</p> <p style="text-align: center;">Page 181</p>	<p>1 referring to the search warrant, which he 2 believed Mr Richardson had indeed 3 discussed with the DPP is self-serving and 4 not to be preferred over both his own words 5 at the time and the sworn evidence of both 6 the Chief Minister and the Attorney 7 General. Indeed, within minutes of telling 8 the Attorney General that he could not 9 remember the words that he had used in the 10 12 May meeting the previous day, Mr 11 McGrail sat in the back of his car, in what 12 he thought was the privacy of his car, told 13 Mr Richardson that he had told the Chief 14 Minister that he had the advice of the DPP 15 on the question of having to do these 16 interventions. "I said to the Chief Minister 17 I have his advice on the question of having 18 to do these interventions." That is the 19 lying. Given his admission that when he 20 had frequently used the word 'interventions' 21 he had meant search warrant, it is simply 22 not plausible to suggest that he did not 23 mean search warrant when he used the 24 word intervention to Mr Richardson in the 25 car and, therefore, also on 12 May in his</p> <p style="text-align: center;">Page 183</p>
<p>1 the lie to Mr McGrail at the end of the 13 2 May meeting, the private one between 3 them, Mr McGrail's immediate response 4 was that he could not remember the words 5 that he had used in his meeting with the 6 Chief Minister the previous day. This 7 completely undermines his challenge to the 8 Chief Minister's and the AGE's explicit 9 evidence on oath that what he said to them, 10 no, no -- this is what Mr McGrail said to Mr 11 Llamas -- no, no, what you told me, Mr 12 Llamas saying to Mr McGrail, no no, what 13 you told me and him yesterday, you told us 14 yesterday that the decision to do the search 15 warrant was on advice of the DPP. I cannot 16 remember the words, Michael, was Mr 17 McGrail's reply. So on the following day, 18 the exchange with the Chief Minister, Mr 19 McGrail could not remember the words that 20 he had used but said Mr Richardson had 21 told him that there had been conversations 22 about the search warrant with the DPP. So 23 it is clear that Mr McGrail's evidence in this 24 inquiry, that during the 12 May meeting 25 with the Chief Minister, he was not</p> <p style="text-align: center;">Page 182</p>	<p>1 meeting with the Chief Minister. 2 Furthermore, sir, even if on Mr McGrail's 3 denied case, it is plain that he intended to 4 give, and did give, the Chief Minister and 5 the Attorney General at least the obvious 6 impression that the DPP had advised the 7 search warrant. The issue was search 8 warrant or operational or production order. 9 Answer, I have the advice of the DPP for 10 these interventions. What would any 11 human being interpret that to mean? What 12 impression would it leave with anybody? 13 Why else, indeed sir, would the Attorney 14 General telephone the DPP to ask whether 15 he had advised on the use of the search 16 warrant if that impression had not been 17 given? So nor so is it true that the RGP did 18 not seek the advice of the DPP. We know 19 that Mr McGrail has sought to build a 20 narrative that the RGP did not seek the 21 advice of the DPP in relation to the search 22 warrant and that the only thing that they had 23 consulted the DPP about was whether it 24 was appropriate for them to treat Mr Levy 25 as a suspect, but it is not true that the RGP</p> <p style="text-align: center;">Page 184</p>

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<p>1 did not seek the DPP's advice on the 2 question of the search warrant. Mr 3 McGrail's own oral evidence and 4 submissions confirm that they did. On day 5 16, page 165 to 167, Mr McGrail gave 6 evidence that he had asked Mr Richardson 7 to consult the DPP about the search warrant 8 and to run it past him. Mr McGrail's 9 attempt to draw a relevant distinction 10 between this and seeking the DPP's advice 11 is wholly phony and unpersuasive. The 12 point of consulting with the DPP about the 13 search warrant and running it past him 14 could only be to seek the DPP's legal view 15 on it and the DPP gave the RGP his 16 opinion. He thought a production order was 17 more appropriate. When a lawyer 18 expresses his view, and an opinion on a 19 legal matter referred to him or run past him, 20 he is giving advice. The fact that the advice 21 may not be a legal requirement or that could 22 be rejected because the decision was an 23 operational one for the RGP is not the point 24 that is relevant to this inquiry in the context 25 of the alleged lie by Mr McGrail to the</p> <p style="text-align: center;">Page 185</p>	<p>1 Chief Minister, the Attorney General and 2 now the DPP too. Nothing that amounts to 3 interference, still less improper interference, 4 was done by any of them. There was no 5 attempt to change the course of the police 6 investigation, still less halt it. The contrary 7 is true. No attempt to persuade the RGP not 8 to -- your Lordship will have seen the 9 number of times even orally today, whilst 10 the RGP was attempting to execute the 11 search warrant, litters my learned friend's 12 closing submissions like punctuation marks. 13 It is not true. Sir, you know that nobody 14 interfered with the RGP's attempt to -- they 15 did not attempt. They went and they 16 themselves decide not to execute the search 17 warrant because they accepted nine hours 18 later, Mr Levy's offer to do it voluntarily. If 19 they only attempted, rather than actually 20 executed, it was not, as is implied by the 21 used of the word attempt, because of some 22 interference by anybody else. It was by 23 their own decision and it is simply 24 completely mischievous to seek to use the 25 word in a context that implies that is</p> <p style="text-align: center;">Page 187</p>
<p>1 Chief Minister. Opinion and advice do not 2 cease to be opinion and advice because they 3 can be rejected and Mr Richardson, Mr 4 McGrail and the RGP are confusing and 5 conflating to quite separate issues here, 6 which are non-sequiturs. The relevant point 7 for this inquiry is that the DPP gave his 8 opinion, which is advice, and it was not in 9 support of the use of the search warrant, 10 however much the DPP said that it was an 11 operational decision for the RGP and that 12 he could defend recourse to search warrant 13 if challenged. So sir, it is not plausible that 14 there was a misunderstanding. The Chief 15 Minister's evidence is clear, that there was 16 no possibility of a misunderstanding. The 17 evidence suggests that it is not plausible. 18 Mr McGrail, by his own admission, cannot 19 remember the exact words that he used and 20 there is no proper basis to prefer his 21 evidence in the context of all of that. So as 22 to whether there was interference, the 23 position of the government parties is that 24 there was in fact no operational 25 interference, corrupt or otherwise, by the</p> <p style="text-align: center;">Page 186</p>	<p>1 somehow linked to the allegation of 2 interference. In any event, sir, there was no 3 attempt by anyone to secure the exclusion 4 of Mr Levy from the RGP's investigation or 5 any attempt to persuade the RGP not to 6 charge him even. After Mr McGrail's 7 retirement, the investigation continued by 8 the same senior officers. Charges were 9 brought against the same three individuals 10 against whom they were envisaged at the 11 time of Mr McGrail's retirement and the 12 RGP remained free to deal with Mr Levy as 13 they chose, including to interview him 14 under caution, inspect his devices and 15 charge him if they had thought it 16 appropriate. This is self-evident, sir, from 17 the RGP's own evidence about events post 18 20 May and Mr McGrail's retirement, 19 which of course Mr McGrail airbrushes 20 completely out of existence in his closing 21 submissions, which makes no reference at 22 all to anything that happened after 20 May, 23 as if what happened after 20 May in relation 24 to the police's freedom of action, was not 25 forensic about the alleged successful</p> <p style="text-align: center;">Page 188</p>

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<p>1 conspiracy by the Chief Minister, the 2 Attorney General and the DPP to protect 3 Mr Levy. They did not protect Mr Levy. If 4 Mr Levy got off in October from the RGP's 5 interest, because the RGP, as confirmed by 6 Sergeant Clark, by Mr Richardson, by now 7 Commissioner Ullger, it was because of a 8 perfectly proper decision made by the RGP, 9 free of interference by anybody, including 10 the Attorney General and the Chief 11 Minister, based on their correct policing 12 obligations and that is the reality of the 13 allegation of this motive of wanting to 14 protect Mr Levy. 15 (15.10) 16 It had never been the case and 17 Mr McGrail's dismissal is not evidence of 18 any motive to achieve that because when he 19 had gone everybody looked the other way. 20 What, they were suddenly no longer 21 interested in protecting Mr Levy? That is 22 the obvious insinuation of my learned 23 friends. So the motive that had led them all 24 to conspiratorially want to get rid of 25 Mr McGrail suddenly became so</p> <p style="text-align: center;">Page 189</p>	<p>1 documents, Mr McGrail's closing written 2 submissions mischaracterises the evidence 3 on this subject and this has been referred to 4 orally this morning too. 5 So in paragraph 32 it is said on 6 Mr McGrail's behalf that Mr Picardo raised 7 a number of justifications as to why he felt 8 it was appropriate to intervene in the Op 9 Delhi investigation, even notwithstanding 10 that his close friend and business partner 11 was a suspect. Damning. In paragraph 33 12 it is said that Mr Picardo believed, and 13 apparently still believes, that if a police 14 investigation raised a "jurisdictional" issue 15 then he was entitled as Chief Minister to 16 intervene in a police investigation. These 17 statements are untrue and mischaracterise 18 the Chief Minister's evidence. The Chief 19 Minister has not said that he was entitled to 20 intervene in a live criminal investigation in 21 those or any other circumstances. His 22 statements were related to his right to 23 criticise the RGP and to comment and 24 express his view to the Commissioner of 25 Police about the RGP's actions. It is</p> <p style="text-align: center;">Page 191</p>
<p>1 unimportant that the police were left 2 entirely free to do as they please, and we 3 know what they decided to do, properly 4 according to them, which is to lose interest 5 in Mr Levy for reasons to do with evidence 6 that they got from America, or whatever. 7 So, sir, the Chief Minister is said to have 8 interfered in three ways, by expressing 9 a negative opinion about the RGP's decision 10 to obtain a search warrant rather than 11 a production order, by angrily expressing 12 his disagreement to Mr McGrail on 12 May 13 and by communicating with Mr Levy and 14 Mr Baglietto. The Chief Minister did all of 15 those things, but none of them constituted 16 interference in the RGP's investigation, any 17 more than the RGP thought that he had 18 interfered in the airfield incident when the 19 then Commissioner of Police WhatsApped 20 the entire SMT, senior management team, 21 saying in relation to the airfield incident 22 that the Chief Minister wants us to go for 23 the jugular in a still open criminal 24 investigation. Unsurprisingly, as it is 25 a general characteristic of most of the</p> <p style="text-align: center;">Page 190</p>	<p>1 self-evident and clear to everyone, 2 including the Chief Minister, that no one is 3 entitled to interfere or intervene in a police 4 investigation in the sense of engaging in 5 behaviour that constitutes interference in, 6 the investigation. The point here is that that 7 is not what the Chief Minister did. 8 In similar vein, in paragraph 33.6 it is said 9 that Mr Picardo also did not consider that 10 intervening in a police investigation where 11 the suspect was a friend necessarily crossed 12 a red line, because of how small Gibraltar 13 is. Mr Wagner relies for that remarkable 14 proposition on what Mr Picardo is alleged 15 to have said on Day 16, page 92, line 1. 16 But it is evident from the Chief Minister's 17 oral evidence, at that citation in the 18 transcript, that he said nothing that sustains 19 this proposition. His comments were in 20 relation to dealing with friends generally in 21 a small place, not in relation to intervening 22 in a police criminal investigation. Indeed, 23 he had just three lines before agreed with 24 the CTI that absolutely a Chief Minister 25 should not intervene in a criminal</p> <p style="text-align: center;">Page 192</p>

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<p>1 investigation. 2 It is Mr McGrail's case that merely 3 expressing a negative opinion of something 4 that the RGP has done in a criminal 5 investigation constitutes improper 6 interference with the RGP's independence. 7 Nor do they apparently take much to 8 commit this criminal offence of interference 9 with the administration of justice, which is 10 what it would be. Apparently all that it 11 takes is to say that a police made a (quote) 12 "bad decision" (unquote). Terrible, terrible. 13 For the Chief Minister to give his views on 14 the warrant, giving your views on the 15 warrant is apparently an interference in the 16 investigation. It may not be any of his 17 business, but that does not mean he cannot 18 express a view about it. It is wholly 19 fanciful, sir, to suggest that this amounts to 20 interference in a police investigation. This 21 is the comment that prompted me to say 22 that Mr McGrail appears not to distinguish 23 between interference in a police 24 investigation and criticism of police 25 decisions and actions, he wrongly equates</p> <p style="text-align: center;">Page 193</p>	<p>1 expressed, Mr Picardo has the same rights 2 as anybody else to criticise the actions and 3 decisions of the RGP and its Commissioner 4 in respect of this and any other matter. 5 As Mr McGrail himself is keen to remind 6 the Inquiry when it suits him, the Chief 7 Minister has no operational policing 8 responsibilities. The Chief Minister does 9 have, I believe, a potential, a political 10 rather, and moral responsibility not to 11 undermine public confidence in policing 12 and in the administration of justice. But 13 that goes to how he criticises, not whether 14 he can criticise. Still less does it deny him 15 the right to criticise. He also has a political 16 duty to uphold and defend what he 17 considers to be a major pillar or our 18 economy. Of course, nor does the manner 19 and style in which the Chief Minister 20 expresses criticism determine his right to 21 level that criticism. Different people have 22 different manner and style of expression, 23 even of calmness and moderation in 24 levelling criticism of others. Some 25 ministers and politicians may choose not to</p> <p style="text-align: center;">Page 195</p>
<p>1 them both, and appears to have a misplaced 2 sense of police immunity from criticism and 3 of comment about their decisions and 4 actions and I regret that some of those 5 sentiments appear to have been adopted by 6 my learned friend on behalf of his clients 7 the RGP. Criticism and comment, however 8 angrily put across, are not interference in 9 the investigation. 10 The Chief Minister was strongly of the 11 view that the RGP decision to seek a search 12 warrant rather than a production order 13 against Mr Levy, for all the reasons that 14 you know, was wrong. He was concerned 15 about the effects on Gibraltar's finance 16 centre. He claims that he would have done 17 the same to me, which is very un reassuring. 18 He wanted to defend a critical pillar of our 19 economy, but his right to criticise the RGP 20 do not depend on the nature of his reasons 21 for doing so. He was entitled to that critical 22 view and to express it forcefully and 23 privately to the Commissioner of Police, 24 whether as Chief Minister or not, and 25 regardless of the merits of the view that he</p> <p style="text-align: center;">Page 194</p>	<p>1 criticise police decisions and actions. 2 Different people may have different views 3 about the manner in which Mr Picardo did 4 so. But this is not a matter for this Inquiry. 5 The relevant point for this Inquiry is that it 6 did not constitute interference in a live 7 police investigation, nor violation of their 8 operational independence, that assuming 9 that you have first decided that the whole 10 Operation Delhi piece is relevant in terms 11 of the causal link with Mr McGrail's 12 retirement. And criticism is not objectively 13 pressure or interference, not least when the 14 object of the criticism, the police, have both 15 the duty and the ability to resist and ignore 16 it. And it is simply insufficient for 17 Mr McGrail to declare that he interpreted 18 the Chief Minister's words as pressure or as 19 a request to call off the execution of the 20 search warrant. It would have to be 21 objectively so. But nothing was said or 22 done that amounts to either thing 23 objectively. So Mr McGrail's evidence, 24 oral evidence, that he took the Chief 25 Minister's words to be pressure and to mean</p> <p style="text-align: center;">Page 196</p>

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1 that he should call back the officers from
 2 the offices of Hassans is not credible and
 3 should not be accepted by the Inquiry,
 4 because, amongst other things, sir, nothing
 5 was said to suggest that or which could not
 6 be interpreted as such and if the Chief
 7 Minister had meant that he could just have
 8 said it.
 9 But more importantly, Superintendent
 10 Richardson, the senior investigating officer
 11 actually executing the warrant, was called
 12 out of Hassans by Mr McGrail. Why? To
 13 be briefed about the so-called berating.
 14 Perhaps it was Mr McGrail that was
 15 interfering. He was called about the
 16 so-called berating by the Chief Minister on
 17 the 12th. He gave no evidence,
 18 Mr Richardson, that the berating was
 19 interpreted as claimed by Mr McGrail who
 20 would surely have shared it. If Mr McGrail
 21 had said to him, "Look, I think the whole
 22 point of my berating was to call you out,"
 23 surely Mr Richardson would have said that.
 24 He did not. Indeed Mr Richardson's oral
 25 evidence is to the contrary. When testifying

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1 warrant" in Mr Gomez's letter of 29 May,
 2 which if true would surely have bolstered
 3 that letter and Mr McGrail's argument of
 4 improper interference. The absence of any
 5 mention of this issue in that letter is more
 6 telling because in the very next paragraph
 7 of that letter, after dealing with the 12 May
 8 meeting in which no reference is made to
 9 the interpretation of it as calling out the
 10 officers, he goes on to refer to the meeting
 11 of 13 and 15 May in respect of which he
 12 does specifically allege pressure being put
 13 on him at those meetings to change the
 14 RGP's investigative approach and to allege
 15 a breach of the rule of law in consequence.
 16 It beggars belief, sir, and is not credible that
 17 he would not have done the same thing in
 18 relation to the unwarranted demand by the
 19 Chief Minister, coupled with a personal
 20 threat to boot, according to him, if he had
 21 genuinely thought at the time that that is
 22 what had happened.
 23 Indeed, in the email to self, supposedly
 24 contemporaneous evidence, contradicts his
 25 claim that that is what he took the Chief

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1 to the fact that Mr McGrail recalled him to
 2 New Mole House so that he could brief him
 3 on the Chief Minister's dressing down,
 4 Mr Richardson said, "I would not say that
 5 that was an interference though in the
 6 investigation." That is Day 5, page 15. So
 7 Mr Richardson, the RGP senior
 8 investigation officer in the case, agrees with
 9 the government parties that what occurred
 10 between the Chief Minister and Mr McGrail
 11 on 12 May was not interference of the
 12 criminal investigation.
 13 Mr McGrail has filed seven witness
 14 statements. It was not until his fifth
 15 statement in August 2023 that he first
 16 alludes to this, having in previous witness
 17 statements dealt at length with what he
 18 describes as the berating and his
 19 interpretation of it and its effects. He had
 20 previously said that it was interference,
 21 a threat to his job, etc. But no suggestion
 22 that he took it to mean that he should call
 23 the officers back. There is no mention of
 24 this matter of "I took it to mean call the
 25 officers back from the execution of the

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1 Minister to mean at the time, in that email,
 2 purportedly prepared on 12 May, in which
 3 he recites in detail what the Chief Minister
 4 said and his interpretation of it. He says in
 5 this regard:
 6 "I felt the Chief Minister was questioning
 7 an operational decision on a live criminal
 8 matter and that this was not appropriate."
 9 There is no mention, even in the email to
 10 self, the very same day, there is no mention,
 11 according to him the very same day, there is
 12 no mention whatsoever in that email to self
 13 about any suggestion that he interpreted the
 14 words to mean an attempt to persuade him
 15 to call the officers out and to abandon the
 16 execution of the search warrant. Surely if it
 17 were true it would be in that note.
 18 It is, however, important, sir, for the
 19 Inquiry, and for you, sir, to accept that there
 20 had not been any personal threat against
 21 Mr McGrail because of course if there was
 22 a personal threat that could put a different
 23 complexion on it. Indeed, there was no
 24 threat to Mr McGrail by the Chief Minister,
 25 whose words plainly meant that there would

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<p>1 be consequences for the RGP and the 2 government as its funder from a damages 3 claim brought by Mr Levy in consequence 4 of, if the Chief Minister was right and 5 Mr McGrail was wrong, the execution of 6 an unlawful search warrant or improperly 7 obtained search warrant against him. In his 8 email to self, which as we know is dated the 9 12th, this is what he says about it. "I felt 10 that he was questioning", that is the 11 sentence I have read, and then it goes on: 12 "He said he hoped that I was right and that 13 he was wrong as there would be 14 consequences if he was found to be right in 15 that we had not conducted ourselves 16 properly on this matter." 17 So a threat is only if had not acted properly 18 in this matter, not if you did not call them 19 out. But finally and most tellingly 20 important, Mr McGrail does not mention 21 this notion of a personal threat to him or his 22 interpretation of this as a personal threat to 23 him either in his letter of 29 May. That 24 letter lists all the alleged wrongdoings by 25 the Chief Minister and the Attorney</p> <p style="text-align: center;">Page 201</p>	<p>1 by the Attorney General or the Chief 2 Minister. 3 (15.25) 4 "Is that interference by the attorney general or 5 the chief minister? A: No". Accordingly, such 6 problems as the RGP have faced at the time or 7 since are down to that, and not to the 8 supposedly constructed conspiracy to interfere. 9 It was of the RGP's own making. It is 10 therefore, sir, in our respectful submission, the 11 allegation of improper, or any interference by 12 Mr Picardo is simply fanciful, and without 13 possible foundation. It simply did not happen, 14 even on Mr McGrail's version of the facts that 15 occurred. The second ground is communicating 16 with Mr Levy and Mr Baglietto. It is alleged 17 that this amounted to interference in a live 18 criminal investigation. This too is roundly 19 rejected. Notwithstanding that he is Chief 20 Minister, he is entitled to speak to whoever he 21 pleases, about whatever he pleases, subject only 22 to legal and indeed, you could argue moral 23 constraints and considerations of official 24 confidentiality as to which I will say a word or 25 two in a moment. The Chief Minister is</p> <p style="text-align: center;">Page 203</p>
<p>1 General, it lists all the alleged wrongdoings 2 to which he was personally subject, 3 according to him, but it does not mention 4 this now alleged personal threat to 5 Mr McGrail. It is inconceivable that this 6 alleged unlawful request to call back the 7 police officers coupled with the threat to 8 Mr McGrail would not be mentioned if it 9 had occurred. If it were true, it would be by 10 far the most serious of the interferences that 11 he alleges and yet he does not mention it or 12 rather his lawyers do not mention it. 13 So it is denied that the Chief Minister put or 14 tried to put any pressure on Mr McGrail to 15 stop the search warrant. We know that 16 from Mr Richardson, Superintendent Wyan 17 and Commissioner Ullger, that the 18 deployment of the search warrant in relation 19 to Mr Levy went entirely as the police had 20 planned that it should go. When asked, 21 Wyan himself said in oral evidence that the 22 decision to allow Mr Levy nine to ten hours 23 to hand over his phone was a decision for 24 which each officer had to be accountable, 25 and that was not the result of interference</p> <p style="text-align: center;">Page 202</p>	<p>1 therefore free and entitled to communicate as he 2 pleases with Mr Baglietto and Mr Levy, and he 3 did so, frequently. He was equally free -- now 4 why this should be thought to be an interference 5 with the investigation, I do not know -- but he is 6 equally free to adopt a supportive and 7 sympathetic position towards a suspect -- not 8 least if the suspect is his friend. People are 9 innocent until proven guilty, and the fact that 10 somebody is merely a suspect under 11 investigation, does not require him to be put in 12 Coventry, even by the Chief Minister. So, 13 when the Chief Minister knew that Mr Levy 14 became a suspect is irrelevant. I am not quite 15 sure what to make of Mr Wagner's submission 16 that he knew he was a potential suspect for over 17 a year - I am not sure what a potential suspect 18 is, but certainly, to the Chief Minister's case, his 19 ability to engage in conversation -- subject to 20 what he tells them -- was not dependent on Mr 21 Levy not being a subject. The legal and 22 operational independence of the police is 23 precisely the reason why it is open to anyone, 24 including the Chief Minister, to criticise police 25 actions and comment on police investigations,</p> <p style="text-align: center;">Page 204</p>

<p>1 even with suspects. The Chief Minister has no 2 role in that. The relevant issue for this inquiry 3 is not whether a Chief Minister communicating 4 with a subject and his lawyers is appropriate or 5 inappropriate, aesthetically attractive, or 6 aesthetically unattractive, whether it is the sort 7 of thing that you would expect a Chief Minister 8 to do or not to do; the potentially relevant issue 9 is whether such communication constituted 10 interference in a live police investigation. 11 Plainly, it did not. Assisting or encouraging 12 somebody to challenge police action in an 13 investigation, which is the allegation here, is 14 not to interfere in the investigation itself. 15 Yesterday, Mr Gibbs said that the Chief 16 Minister passed Hassans whatever was told to 17 him in confidence, by the law officers, 18 including what they told him about the actions 19 and intentions of the police team who were 20 actively investigating the suspect, intending 21 imminently, to interview the suspect under 22 caution, waiting to examine the suspect's 23 mobile telephone for content relevant to the 36 24 North affair. This is clearly intended to create 25 the impression that the Chief Minister was</p> <p style="text-align: center;">Page 205</p>	<p>1 information, even if it had been correct, 2 confidential. Mr Richardson's evidence is that 3 he recalled a conversation with Mr Chincotta, 4 the managing partner of Hassans -- Mr Levy 5 thinks, that Mr Richardson told him himself, 6 but anyway -- Mr Richardson recalled a 7 conversation in the lift in Hassans' offices with 8 Mr Chincotta, the Hassans managing partner, 9 on 12 May where he told Mr Chincotta, "We 10 have taken advice from the highest level in 11 relation to the intervention." (Day 8, page 133.) 12 So, the RGP itself was taking the same view of 13 this not being confidential, and if it had ever 14 been confidential, the RGP had removed the 15 confidentiality, by telling Hassans themselves 16 on 12 May. So again, whatever view may be 17 taken on this, the relevant point for this inquiry 18 is that such communication, whether it was 19 confidential or not, whether it should have been 20 exchanged or not, whether it is elegant or not, is 21 irrelevant to this inquiry. The issue for you, sir, 22 is: did it constitute interference in the 23 investigation itself? Indeed, it was not even 24 information about the investigation. If that is 25 correct, then whether it was appropriate or not</p> <p style="text-align: center;">Page 207</p>
<p>1 passing to Hassans inside information-- indeed 2 my learned friend, Mr Wagner, has used the 3 phrase, "inside information", this morning -- 4 about the investigation. This is simply not true. 5 The Chief Minister has passed nothing to 6 Hassans, except the information that the DPP 7 had advised against the search warrant. Indeed, 8 no other information was given to the Chief 9 Minister by law officers, or by the RGP, so he 10 had no such information to pass. Indeed, one of 11 the things that they complain about is that the 12 Chief Minister did not know what the evidence 13 was, and therefore he did not know whether he 14 was a suspect or not. He told Mr Levy that the 15 DPP had advised against the recourse to a 16 warrant. As it happens, that was wrong. The 17 DPP had given, apparently, no such advice. So, 18 in fact, no confidential information, and indeed 19 no information at all, was thereby 20 communicated by the Chief Minister to Mr 21 Levy. Nor was that information, even if it had 22 been accurate - I suppose he could be accused 23 of an attempt, I do not know. Can you pass 24 disinformation in breach of confidence? I do 25 not know -- in any event, nor was that</p> <p style="text-align: center;">Page 206</p>	<p>1 is just one of these rolling points that I said at 2 the beginning is not a matter that should 3 concern us. It might concern us, but not in the 4 context of this inquiry. So, the Chief Minister's 5 position is that he was free to convey to Mr 6 Levy, and to whomever else he chose, the 7 information that Mr McGrail had misled him -- 8 the information that Mr McGrail had misled 9 him by misleading him, leaving aside the 10 inaccuracy of the reason given, wrongly telling 11 him that the DPP had advised the use of a 12 search warrant, when he had not done so. That 13 is not confidential information. "The DPP has 14 misled me"; it is not confidential information. 15 It is not information about the investigation, and 16 even if it had been, it would not constitute 17 interference in the investigation itself. Turning, 18 quickly but importantly, to the Attorney 19 General's role, sir, the Attorney General, Mr 20 Lammas, is adamant that absolutely nothing 21 occurred at the meeting of 7 April, that could 22 properly be construed as interference in the 23 Operation Delhi investigation, and both Mr 24 McGrail and Mr Richardson confirmed this in 25 their evidence. (Day 5, page 3 and day 7, page</p> <p style="text-align: center;">Page 208</p>

<p>1 164.) Furthermore, any suggestion that the 7 2 April meeting was convened by the AG to halt 3 or interfere with the investigation is also belied 4 by the evidence of 8 April video conference 5 between Mr Richardson, Mr Wyan and the 6 DPP. As recorded by Mr Richardson in his 7 note of this video conference, the AG was in 8 full agreement that the investigation should 9 proceed and that if Mr Levy had to be pulled in, 10 then so be it. As further explained by the DPP 11 in his oral evidence, "My view was, with which 12 the Attorney General agreed, that the public 13 interest in this matter was so serious it needed 14 to proceed at all costs, and the AG was in full 15 agreement with that. Knowing who was 16 involved, I might add. Names may come out at 17 a later stage, fine". The Attorney General also 18 is adamant of the view that he had an 19 understanding, is the words actually that he uses 20 in his witness statement, with the Attorney 21 General - I beg your pardon, with Mr McGrail, 22 flowing from this meeting on 7 April, that he 23 would take no further steps in the matter 24 without coming back to him. You will 25 consider, sir, whether it is plausible that if the</p> <p style="text-align: center;">Page 209</p>	<p>1 was limited to the exercises regarding the 2 rationalisation of the charges against the 3 individuals who were the principal subject of 4 our discussion. However, even if this was the 5 case, it was implicit that no action on the case 6 more broadly would take place without my 7 being informed. This is what Mr DeVincenzi 8 thought was something appropriate for the 9 Attorney General to say. The fact that the 10 Attorney General conceded that it was not an 11 explicit agreement, but rather an implication, 12 which is just another way of referring to an 13 implied agreement, is none to the point. An 14 implied agreement, that is to say, implied from 15 what is said, even though there is no formal 16 structuring of it as an agreement, is just as 17 possible that it should be clear beyond 18 peradventure than an explicit agreement. Of 19 course, an explicit agreement is easier that it 20 should be clear beyond peradventure because it 21 is explicit. But an implicit agreement is not 22 negated simply because it is implicit and not 23 clear beyond peradventure. So, moving very 24 swiftly to the 12 May meeting, sir, the Attorney 25 General says that he was largely a bystander in</p> <p style="text-align: center;">Page 211</p>
<p>1 Attorney General did not believe that, whether 2 he would, so instantaneously, have responded to 3 Mr McGrail's email -- just entirely as a matter 4 of courtesy that we are executing a search 5 warrant - within seconds the Attorney General 6 says: Ian, that is not what we agreed. Now, 7 how quickly can the Attorney General be 8 attributed with the intention of lying about that, 9 within seconds of something happened that he 10 thought was a breach of what he understood to 11 be the understanding. In the context of Mr 12 DeVincenzi's evidence, as it was referred to this 13 morning also my learned friend Mr Wagner, I 14 think it is worthy, sir, for you to consider, and 15 give such forensic value as you may decide that 16 -- you will remember, sir, the timelines that, 17 one version of which was sent, the one that 18 informed my assistance in the drafting of the 5 19 June letter. A draft had gone from the Attorney 20 General to Mr DeVincenzi, and in his 21 comments, there was a comment in the margin 22 from Mr DeVincenzi and the suggestion - the 23 suggested amendment by Mr DeVincenzi, is: I 24 appreciate that the Commissioner of Police may 25 have thought that the understanding reached</p> <p style="text-align: center;">Page 210</p>	<p>1 what was a very heated exchange between the 2 Chief Minister and the Commissioner of Police; 3 that his interventions had been limited to this 4 business of the breach of their understanding; 5 that he had not advised - I do not know why 6 they make such adverse against the Attorney 7 General, use of the fact that he denied that he 8 had advised. What do they expect? That the 9 Attorney General should have stood idly by, 10 silently, and hear Mr McGrail say "The 11 Attorney General advised me" without the 12 Attorney General even saying, "No, no: I did 13 not advise you - and that all that happened -- 14 this has somehow converted into some 15 suspicious event. Then there is the question 16 about his role of phoning the DPP. In his email 17 to self, at B76, Mr McGrail himself says, 18 speaking about this meeting, "I have discussed 19 the above with my command team senior 20 officers who are also concerned and worried 21 about the level of interference by the Chief 22 Minister, and demeanor of the Attorney 23 General." So, plainly, Mr McGrail himself is 24 drawing a distinction between what he 25 considers to have been the interference by the</p> <p style="text-align: center;">Page 212</p>

<p>1 Chief Minister, which he does not attribute in 2 that note to the Attorney General, and the 3 demeanor - whatever that means; not 4 interference, otherwise he would not have made 5 the distinction; he would just have referred to 6 the level of interference by both of them, which 7 he does not do - by who he alleges -- he does 8 not allege that there was any interference. So, it 9 is with respect, sir, unrealistic to expect the 10 Attorney General to interrupt and reign in the 11 Chief Minister in his own office when he is 12 engaged in a very intense, rapid, two-way 13 exchange with another very senior official, and 14 no obvious impropriety is being perpetrated of 15 the legal kind. It is not for an Attorney General 16 to impose upon a Chief Minister or the 17 Commissioner of Police, on matters of personal 18 style and demeanor in dealing with each other. 19 The Attorney General is entirely satisfied, 20 whatever may be the level of his discomfort at 21 having to experience this, the Attorney General 22 was entirely satisfied that the Chief Minister did 23 not cross any line of legal propriety, or think it 24 was an interference with the investigation, or 25 that they may have been relevant to the</p> <p style="text-align: center;">Page 213</p>	<p>1 they say, corrupt bidding. So it would seem that 2 Mr McGrail's case narrative -- for his case 3 narrative necessity is something of the mother 4 of all inventions. I say that because there is 5 now a novelty in his closing submissions. He 6 now alleges for the first time in his written 7 closing submissions that the DPP, Mr Rocca, 8 also intervened appropriately(sic) quote, "to 9 coax the RGP" into not treating Mr Levy as a 10 suspect and to prevent Mr Picardo being 11 investigated. This for the first time on the third 12 last day before the end of the inquiry. And of 13 course, why is necessity the mother of all 14 invention? Because the transcripts show that Mr 15 Rocca played a leading role in what he needs to 16 allege is unlawful and improper interference. So 17 it is not enough now to have just an improper 18 wing man Attorney General; we now need a 19 mouthpiece DPP, also part of the conspiracy to 20 work, because otherwise the case narrative does 21 not fly either at the 11th and a half hour, not 22 based on Mr Baglietto's witness statements 23 because the heading is to coax -- and of course 24 he has been obliged to do that. So we now have 25 a manipulatable Governor, a wing man</p> <p style="text-align: center;">Page 215</p>
<p>1 Attorney General's legal duties as guardian of 2 Gibraltar's laws. It is therefore unsurprising 3 that he did not call out the Chief Minister for 4 something that he did not think was a matter 5 upon which his legal advice to the Chief 6 Minister, for example: do not interfere with a 7 police investigation, was actually called for. 8 The criticism would only be justified if what he 9 was witnessing was indeed an interference with 10 the investigation. The meetings of 13th, 15th and 11 20th, Mr McGrail needs to protect, for the same 12 reason as my learned friend, Mr Gibbs, say that 13 those are missing -- was the word missing? 14 Prong -- yes, the missing prong. The missing 15 prong presumably is the fact that the Chief 16 Minister was not himself there. So sustain this 17 alleged improper conspiracy of motive, the 18 prong had to be replaced. If the prong was not 19 missing, somebody had to be converted into his 20 wing man to allow Mr McGrail's case narrative 21 to fly. And of course, the wing man is the 22 Attorney General. Therefore, so far we have a 23 corrupt Chief Minister, a manipulatable 24 Governor, and the wing man Attorney General 25 willing to do the Chief Minister's improper,</p> <p style="text-align: center;">Page 214</p>	<p>1 Attorney General and DPP -- all to make his 2 case narrative fly. Well, sir, I would urge you 3 just step back, and however unusual you think 4 the governance arrangements in Gibraltar might 5 be, is it really likely that all of these people will 6 have engaged in this unlawful activity for the 7 purposes of and in the manner that Mr McGrail 8 requires it to mean to justify his decision to opt 9 for early retirement, which he says he did (even 10 though it is clearly not the case on the evidence) 11 because of this interference by all these 12 important people? I say, sir, that if you take a 13 holistic view, it is not plausible that that should 14 be so. The Attorney General did not intervene 15 and of course, it is all very well for my learned 16 friend Mr Wagner -- I am not quite sure that Mr 17 Gibbs did it too -- my learned friend Mr 18 Wagner to somehow hold Mr DeVincenzi up as 19 some sort of constitutional guardrail -- the only 20 bit of the guardrail that is not broken I think 21 was the analogy -- but he cannot pick and 22 choose the extent to which Mr DeVincenzi is 23 the only viable, effective bit of the 24 constitutional guardrail. He actually 25 recommends that you recommend to him that</p> <p style="text-align: center;">Page 216</p>

1 he should be to the Government -- that he
 2 should be appointed the next ethical conflict of
 3 interest Commissioner, because he is such a
 4 great judge of propriety and impropriety.
 5 (15.45)
 6 I am glad he is nodding because he has to
 7 nod to what I am about to read too then.
 8 When Mr Devincenzi's assessment of the
 9 supposedly corrupt Attorney General, who
 10 was doing the corrupt Chief Minister's
 11 bidding to protect everybody else was this:
 12 "Question: Turning to the Attorney General
 13 now, can I just ask you some questions?
 14 Did you enjoy working with the Attorney
 15 General?
 16 "Answer: Yes, very much.
 17 "Question: Did you think that he was
 18 a good lawyer?
 19 "Answer: I did and do.
 20 "Question: Did you have a view of him as
 21 a person? Did you think that he was
 22 a decent and honest person?
 23 "Answer: Yes.
 24 "Question: Did you have any sense in your
 25 dealings or any of the dealings that you saw

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1 speculative innuendo to that effect.
 2 The transcripts of the three meetings, we
 3 know that Mr McGrail covertly recorded
 4 these three meetings without the knowledge
 5 of the participants, the DPP, the AG, the
 6 Solicitor General, even his own colleagues.
 7 And whilst the government's view is that
 8 that constituted an unethical and
 9 unprofessional and reprehensible conduct,
 10 the availability of those recordings and their
 11 transcripts will be helpful to this Inquiry. I
 12 am not going to make any reference to
 13 them, except one in a moment because, sir,
 14 you do not need my help to interpret them.
 15 You will listen to them, read them and form
 16 your own views about them.
 17 The meetings, we do submit, however, were
 18 all principally in relation to advice on the
 19 handling by the RGP of the legal dispute
 20 with Mr Levy and his lawyers about the
 21 execution of search warrants and the
 22 retention by the RGP of Mr Levy's devices.
 23 These meetings were entirely collaborative
 24 discussions between senior police officers
 25 and law officers jointly discussing and

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1 the Attorney General engage in, in relation
 2 to these matters that we are interested in
 3 and spoken about, did you get any sense
 4 that the Attorney General was trying to
 5 curtail the RGP's freedom of action in their
 6 investigation?
 7 "Answer: No.
 8 "Question: Did you get the impression that
 9 he was pressurising or cajoling or somehow
 10 abusing the status of his office?
 11 "Answer: No."
 12 Just as well today is the last day or perhaps
 13 you might have found, my learned friend
 14 might have found the need to dismantle the
 15 last piece of unbroken constitutional
 16 guardrail.
 17 So of course my learned friend makes no
 18 attempt to grapple with this evidence and
 19 how this (inaudible) view of Llamas can be
 20 made consistent with the view of
 21 Mr Llamas that he has tried to present to
 22 your Lordship in this Inquiry, which is
 23 totally false, speculative, bald and
 24 completely unsupported by evidence except
 25 his own ... not his own, his client's own

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1 seeking proper actions pursuant to
 2 a common objective to deal with the
 3 threatened legal challenge but in a manner,
 4 and this is important, in a manner that did
 5 not prevent the RGP from dealing with the
 6 investigation in relation to Mr Levy as the
 7 RGP may have considered thereafter to be
 8 appropriate. No attempt was made to
 9 discourage the RGP from interviewing
 10 Mr Levy. On the contrary, it was
 11 acknowledged that it was necessary and
 12 desirable to do so. No pressure of any kind
 13 was put on Mr McGrail or the RGP by
 14 Mr Llamas and there was no improper
 15 involvement by him in his engagement and
 16 discussion with Mr McGrail about this
 17 criminal investigation.
 18 The outcomes of the meeting were twofold.
 19 A seven-day standstill period to which was
 20 added thereafter seven days' notice of
 21 examination of Mr Levy's device for the
 22 agreed purpose of putting up or shutting up
 23 with the threat of legal challenge against the
 24 warrant and personally against, I think it
 25 was, Mr Richardson. And the second

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<p>1 output of these three meetings was that he 2 would be given an opportunity to make 3 a voluntary statement without prejudice to 4 the RGP's right thereafter to interview him 5 under caution if the RGP continued to think 6 it was appropriate and wished to do so, and 7 this was to enable the RGP to obtain further 8 evidence from Mr Levy in support of 9 a prosecution case against my learned 10 friend Mr Cooper's clients, the then 11 defendants in that case, which the Attorney 12 General thought there was then sufficient 13 evidence to proceed against but not 14 Mr Levy. 15 These outcomes were entirely consensual, 16 sir. The RGP were free at any moment to 17 agree or to disagree and to disagree and to 18 proceed immediately as they pleased if they 19 disagreed. At no time during these 20 meetings or later until the Gomez letter of 21 29 May, sorry, the Gomez and Co letter of 22 29 May, did Mr McGrail or any other RGP 23 officer allege improper pressuring or 24 interference by the Attorney General or the 25 DPP at any of these meetings. The proper</p> <p style="text-align: center;">Page 221</p>	<p>1 "Well, do you think that that has gone well? 2 It could have gone worse, no, Paul? 3 "Mr Richardson: Oh, I think it has been. I 4 think, I think all credit to Michael. When 5 you go into these things logically and 6 rationally -- 7 "Mr McGrail: Yes. 8 "Mr Richardson: "-- and he sees the 9 strength of the argument, he doesn't, he 10 doesn't bully into saying this is not right, he 11 sees the argument and tries to find ways 12 around it, but then he accepts it." 13 Well, if it is interference, cajoling and 14 pressurising it is of the most feather duster, 15 unfeeling and obviously unfelt by 16 Mr Richardson kind, but it was not even 17 that. Mr Richardson agreed that the above 18 is the most contemporaneous instinctive 19 and therefore the most likely to be true 20 assessment by Mr Richardson of the 21 Attorney General and that there is no 22 suggestion of pressuring, bullying, being 23 forced or interference or anything of the 24 kind (Day 5, page 39 to 40). In 25 re-examination by Mr Gibbs, his own</p> <p style="text-align: center;">Page 223</p>
<p>1 inference, sir, therefore, is that the 2 allegation was manufactured at the time to 3 suit Mr McGrail's new case narrative. 4 The 13 May meeting, in his oral evidence 5 Mr Richardson agreed that it was the DPP 6 who suggested that the way to deal with the 7 particular paragraph in Hassans's letter was 8 the seven-day standstill point. He 9 confirmed that the decision to give Mr Levy 10 a week to prepare his position before the 11 interview was not the result of any pressure 12 from the Attorney General (Day 5, page 35, 13 lines 2 to 13), agreed that his own statement 14 during the meeting that it does not mean to 15 say that we could not delay the examination 16 of that phone for enough time until 17 everything else is resolved was not made 18 under pressure from the Attorney General 19 (Day 5, page 35, line 14). 20 During Mr Richardson's and Mr McGrail's 21 car journey after the 13 May meeting, 22 which Mr Richardson did not know was 23 being recorded, and the transcript of which 24 Mr McGrail did not bother to produce to 25 this Inquiry, Mr McGrail said:</p> <p style="text-align: center;">Page 222</p>	<p>1 lawyer, Mr Richardson said: 2 "We were operationally independent and 3 we could have taken whatever action we 4 considered was appropriate." 5 Mr McGrail told the DPP: "Thanks for 6 today", after the 13 May meeting. That is 7 hardly consistent with Mr McGrail's 8 pretence now that he was pressured, cajoled 9 and improperly interfered with at that 10 meeting. That is not something that you 11 thank you anybody for. And after the 13 12 May meeting Mr McGrail himself wrote to 13 Hassans offering a seven-day put up or shut 14 up standstill in respect of those. 15 The 15 May meeting, tellingly, Mr McGrail 16 said the following. This is what 17 Mr McGrail said an hour into this meeting, 18 the 15 May meeting, the meeting at which 19 there is all this interference and bullying 20 and the doors must have been locked 21 because he did not feel free it walk out. 22 Speaking to the Attorney General: 23 "I welcome the fact that you are consulting 24 it with us because in other days, in other 25 years by, the Attorney General, before the</p> <p style="text-align: center;">Page 224</p>

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<p>1 DPP existed, would have said he would 2 have been the one who calls the shots on 3 whatever actions I suppose after the charge. 4 But I am really, really grateful that you are 5 consulting this and getting our views. We 6 want to come out of this good too." 7 The consensual outcome of the 15 May 8 meeting was the agreement to give Mr Levy 9 the opportunity to make a voluntary witness 10 statement, ahead of any witness under 11 caution, that the RGP may thereafter wish 12 to do. The idea for this had come from 13 Superintendent Richardson himself. 14 Yesterday Mr Gibbs sought to discredit that 15 statement that it had been Mr Richardson's 16 idea. With respect to him, his objection is 17 not credible. At B273 and B274, this is the 18 transcript, Mr Rocca: 19 "We would not get a conviction any time 20 based on what we have got now if Haim 21 gives us a no comment and I am assuming 22 maybe that is [this is the Commissioner of 23 Police] maybe that is, maybe tactically if he 24 says no comment and that is the evidence 25 we cannot, from his account, we cannot</p> <p style="text-align: center;">Page 225</p>	<p>1 suspect having a thought and having an idea 2 are much the same thing. 3 "I have had a thought. If that is the case, 4 get him to submit his version of the events, 5 do not come in for the interview under 6 caution, we are not going to ask for it, give 7 us your version of the events." 8 And this is the evidence which Mr Gibbs 9 considers entitles him to object and to try to 10 undermine the simple submission that it had 11 been suggested by ... and he does so on the 12 basis that there is a WhatsApp in which 13 Mr Llamas says that they had been able to 14 persuade. Well, they had all persuaded 15 each other of many things at these 16 meetings, but what it does not prove, the 17 "we were able to persuade" message, is that 18 it was not Mr Richardson's idea because 19 plainly it was. 20 And I am going to move on because I am 21 being told the 20 May meeting, Mr Wyan 22 says: "I would not describe it as any 23 pressure." He did then say, in fairness to 24 him, that he would have to check in the 25 transcript. I do not know whether he has,</p> <p style="text-align: center;">Page 227</p>
<p>1 progress him further and stick anything on 2 him. He walks frankly speaking. Yes? 3 "Mr Richardson: Say that again." 4 This is the Commissioner now persuading 5 Mr Richardson: 6 "If we ask him under caution and he does 7 not reply, which we expect -- 8 "Mr Richardson: Which is his right. 9 "The Commissioner: Right, and then on the 10 basis of what we already have now, 11 a charge would not stick. 12 "Mr Richardson: With the greatest of the 13 respect, I am not sure that I would support 14 that view because some of the other 15 evidence is so damning." 16 Mr McGrail then persuading 17 Mr Richardson: 18 "But I am saying, looking at it from our 19 activity, imagine that the dilemma of doing 20 it under caution does not come into place, 21 that we go as we are meaning to go and he 22 provides a no comment? 23 "Mr Richardson: Sorry, sir, sorry to 24 interrupt you. I have had a thought." 25 I suppose he does not say it is my idea, but I</p> <p style="text-align: center;">Page 226</p>	<p>1 but he said: "I would not describe it as any 2 pressure." And also at the meeting of the 3 20th the Attorney General had offered his 4 support. 5 So, leaving it there and moving on, the 6 communications with Mr Baglietto are 7 communications that the Attorney General 8 feels that he was entitled to have had. The 9 communications following the 15th and the 10 20th meetings were by consensus with the 11 other participants in the group. He was the 12 nominated spokesman to speak to Mr Levy. 13 The complaint about the 13th is that he did 14 not disclose to the RGP that he had 15 previously to the 13th meeting spoken to 16 Mr Baglietto, as if the Attorney General 17 needs the permission of the RGP to speak to 18 with whomever he pleases. The question is 19 not who he speaks to, even as the subject, 20 but what he says to him. And what he says 21 to him is not anything to do or any 22 information confidential or otherwise about 23 the investigation, whatever else you might 24 want to take. 25 And before I leave Delhi, sir, I just want to</p> <p style="text-align: center;">Page 228</p>

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<p>1 repeat, for the benefit not of you, sir, 2 because I know that you will look at these 3 things yourself. We repeat our submission, 4 you, sir, will be able to look at the transcript 5 yourself, I will not waste time doing it, 6 whether it was nolle or non-continuance of 7 prosecution or discontinuance of 8 prosecution, or whatever technical 9 distinction one wants to draw, it was said 10 first on each occasion by Mr McGrail or by 11 the DPP and it was said four times, on none 12 of the occasions was it suggested by the 13 Attorney General himself. And as to the 14 real nolle entered on 2 January 2020, just to 15 say, sir, that what I have submitted many 16 times, that the reasons for the nolle had 17 nothing to do with the subject matter of this 18 Inquiry. It has been shared with many 19 people in official positions and who would 20 have blown the whistle if they were not 21 satisfied that that were the case. 22 In respect of the incidents at sea, sir, just to 23 remind ... how long do I have? Effective 24 timekeeper. Just, sir, to point out the 25 seriousness of the incident, the gravity and</p> <p style="text-align: center;">Page 229</p>	<p>1 Mr McGrail which he was providing to 2 others. And, with respect, it misses the 3 point which is relevant to this Inquiry, 4 whether or not, and it is not, but whether or 5 not Mr Pyle was able to obtain the 6 information from anything else. The point 7 is that Mr McGrail was evasive because he 8 did not provide it to him, being under a duty 9 to do so, even though he was providing it to 10 others. 11 Sir, you will be familiar that my position 12 and the submissions that the government 13 parties make on the taking of responsibility. 14 My learned friend says in his written 15 submissions that the taking of responsibility 16 does not arise because the Solis report did 17 not find systemic findings, but the findings 18 that it did make were precisely systemic 19 findings, which Mr McGrail accepted he 20 was responsible, ensuring that officers 21 received proper training in the execution of 22 their duty, ensuring there is effective 23 oversight and supervision of officers, 24 overall command and superintendence, 25 overall responsibility for ensuring that</p> <p style="text-align: center;">Page 231</p>
<p>1 seriousness of the incident at sea on 8 May, 2 together with its international 3 consequences, cannot be overstated. 4 Everybody agrees with that, even 5 Mr McGrail. Mr Pyle describes it as 6 without doubt the most serious incident that 7 was: 8 "The tipping point from my growing 9 concerns changing to recognising that 10 things could not go on as they were and that 11 change was needed, arose in relation to this 12 incident, which set in motion a chain of 13 events that led to lose confidence in the 14 abilities of the Commissioner to effectively 15 lead his police force." 16 That dovetails with the evidence about the 17 matters all coming together in his head, etc, 18 etc. 19 As well as the seriousness of the incident 20 itself, Mr Pyle considers that Mr McGrail 21 intentionally misled him by evasiveness and 22 lack of candour in an important matter. 23 This was the intentional omission to 24 provide the Governor with the best 25 information or intelligence available to</p> <p style="text-align: center;">Page 230</p>	<p>1 systems exist and are being properly 2 applied to ensure policies and procedures 3 are adhered to in practice. Leadership 4 involves taking responsibility for systemic 5 failings in your force, and otherwise 6 referring to a falling on your sword from no 7 doubt ages gone by. He is statutorily 8 responsible for the good governance and 9 superintendence of the force. 10 Mr McGrail's position, however, is that he 11 did not take and would not take 12 responsibility because he was asleep in bed 13 when the incident happened at 4 o'clock in 14 the morning. 15 THE CHAIRMAN: Rather 16 uncharacteristically, Sir Peter, you are 17 dropping your voice. 18 SIR PETER CARUANA: I beg your 19 pardon, sir. I will pick it up again. 20 Mr McGrail's position is that he would not 21 take responsibility for the incident at sea 22 because the officers are to take 23 responsibility for their own actions and he 24 was asleep in bed at 4 o'clock in the 25 morning when the incident happened. And</p> <p style="text-align: center;">Page 232</p>

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<p>1 what amounts to a continuation to this day 2 of his failure to accept the principles of 3 leadership responsibility, Mr McGrail 4 submits in relation to this incident, 5 paragraph 85 of his written closing, that he 6 had no direct involvement in and it later 7 became clear was in large part directly 8 caused by misconduct of individuals rather 9 than systemic factors, the findings of the 10 Solis report were systemic factors, but the 11 deficiencies found in the Solis report were 12 that. 13 Contrast Commissioner Ullger's position 14 which could not have been more sharply in 15 focus. In answer to my question he 16 immediately said that he would take 17 responsibility for an incident like the 18 incident at sea resulting in two deaths (Day 19 13, page 186). Mr McGrail in contrast 20 appears not to have understood or to accept, 21 and still not to understand or accept, the 22 implications and consequences of taking 23 responsibility. And taking responsibility is 24 one of the things that motivated Mr Pyle. 25 This was important for Mr Pyle, who stated</p> <p style="text-align: center;">Page 233</p>	<p>1 being verified, and that he was under no 2 duty to provide all the unverified 3 information to the Governor and was never 4 asked to do so. This is his written closing 5 submissions. Due to the conflicting 6 evidence which was available to him, he 7 felt unable to confirm co-ordinates of the 8 collision until 12 March. 9 (16.05) 10 These self-exculpatory explanations are 11 neither credible nor avail the purpose to 12 which Mr McGrail seeks to put them, for 13 the following reasons. First, the very same 14 things would apply to the provision of the 15 information to the Chief Minister and the 16 Attorney General, and they were not 17 impediments to him doing so to them. 18 "Best available information" means 19 precisely the best information that is 20 available, regardless of whether it is 21 confirmed or requires confirmation, and any 22 other qualification to its complete certainty 23 and reliability. "Best available information 24 could and should have been provided to the 25 Governor at the same time and in the same</p> <p style="text-align: center;">Page 235</p>
<p>1 in oral evidence that the evasiveness and 2 the lack of full disclosure of best available 3 information to him is secondary to my point 4 of losing confidence in that I said yesterday 5 this discussion around accountability for the 6 loss of life at sea. 7 On the question of the failure to provide the 8 best available evidence, you know, sir, that 9 he was not provided, despite others being, 10 with the information that it was virtually, on 11 the 8th and 9th, with the information that it 12 was virtually certain or highly probable that 13 the collision had taken place in Spanish 14 waters, that the Guardia Civil has provided 15 co-ordinates from their radar tracking 16 system, that the collision was thought to 17 have occurred 6 nautical miles off Santa 18 Barbara Beach, nor was he shown the map 19 plotting the co-ordinates provided by the 20 Guardia Civil. In his written closing 21 Mr McGrail says that the information which 22 he received was inconclusive in the first 23 days of the incident and, given the 24 sensitivity, he was appropriately careful not 25 to provide conclusive information prior to it</p> <p style="text-align: center;">Page 234</p>	<p>1 manner in which it was provided to the 2 Chief Minister and other, albeit (if Mr 3 McGrail thought that to be appropriate) 4 with a cautionary note that it was subject to 5 confirmation or verification. But this does 6 not justify not providing it at all, let alone 7 providing it to the Chief Minister and the 8 Attorney General but not to the Governor. 9 Mr McGrail's submissions at paragraph 80 10 of his written closing that his systemic 11 failure to do so "was at worst an oversight" 12 is completely implausible, incompatible 13 with his excuse at paragraph 78 that he did 14 not do so because he "was under the 15 reasonable and accurate impression that Mr 16 Llamas would feed information upwards." 17 The problem for Mr McGrail with that last 18 argument are these. First, it admits that he 19 himself did not provide the information to 20 the Governor, thereby dismantling his own 21 elaborately constructed case (which in any 22 event is denied by Mr Pyle) that he did 23 provide it to him. Second, that if Mr 24 McGrail did not himself provide the 25 information to the Governor because he</p> <p style="text-align: center;">Page 236</p>

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<p>1 thought the Attorney General was doing so 2 as the Governor's legal advisor, why then 3 did he provide it directly to the Chief 4 Minister of whom the Attorney General was 5 also the legal advisor? So, Mr Grail says 6 that Mr Pyle "accepted that there was not, 7 on analysis, solid evidence of Mr McGrail 8 being evasive." This is incorrect: Mr Pyle 9 accepted no such thing, and I would refer 10 you, sir (I have run out of time to do it 11 myself), to his evidence at day 19, page 12 120, line 17, to that effect. So, we submit 13 that there is good and sufficient reason for 14 Mr Pyle to have lost confidence in Mr 15 McGrail by reason of both aspects of this 16 issue. Firstly, accountability for its 17 seriousness. And secondly, lack of candour 18 and evasiveness by Mr McGrail in failing to 19 provide him with the best available 20 information. Mr McGrail has levelled 21 criticism at Mr Pyle that he did nothing to 22 act on his concerns in relation to the 23 incident at sea for a period of around eight 24 weeks. This does not invalidated, I would 25 submit to you, sir, his decision to</p> <p style="text-align: center;">Page 237</p>	<p>1 about Operation Apache. I have not 2 thought of the "bull in a china shop" label 3 for it, but it strikes me as not being a bad 4 one. And much has been made of whether 5 there is a standard way in which everybody 6 is arrested, and therefore there was not a 7 Sweeney-like or a particularly aggressive 8 approach to this. But with respect, sir, I 9 think that the readout of Mr McGrail's 10 report on this to the GPA in the context of 11 the complaint does not bear that out. And 12 the only bit of evidence, the only point that 13 I would refer to you on this, is in the 14 context of this idea that there is only one 15 way in which a policeman can go about an 16 intervention, and everybody is treated by 17 the same way, and there are not different 18 ways to treat different people depending on 19 how important you are or how unimportant 20 you are. Contrast the way these three 21 senior people were treated. One was 22 arrested in the luggage area, carousel area, 23 of the airport. I do not know whether 24 perhaps the RPG might have thought he 25 might have run away to Spain. The other,</p> <p style="text-align: center;">Page 239</p>
<p>1 nevertheless have recourse to that reason in 2 a determination that Mr McGrail should be 3 replaced as Commissioner on the basis of 4 loss of confidence. It is an irony that 5 sometimes he acts too quickly and 6 sometimes he acts too slowly, and this is 7 not the appropriate basis on which to assess 8 the genuineness of Mr Pyle's assertion that 9 he had lost confidence in Mr McGrail for 10 those reasons. Never truer said, one is on 11 the clock. So, I am just going to move 12 forward, sir, if I might, just to make a 13 couple of points on the airport issue and the 14 HMIC report, very quickly, to finish on 15 time. And I am not going to go into any of 16 the detail, which I know you are very 17 familiar with. In the end, the issue here is 18 not so much what happened on the tarmac 19 (so to speak) or on the airport itself, but the 20 question of the manner in which Squadron 21 Leader Provost Marshall Chris Collins, 22 Chief of Staff Colonel Green and the RAF 23 Station Commander Hutchison (after the 24 CBF, the three most senior MOD officials 25 in Gibraltar), were arrested, the whole piece</p> <p style="text-align: center;">Page 238</p>	<p>1 in front of his team at the tower. And the 2 station commander in front of her team in 3 the RAF station at the airfield. Contrast 4 that with what Mr McGrail said on day six, 5 page 168, about the intervention of Mr 6 Levy and all the facilities that they gave 7 him -- discretion, and all the courtesies, and 8 all that. And (this is my learned friend Mr 9 Santos's questioning Mr McGrail) at 3457, 10 37 says "Given the political sensitivities", 11 this is speaking about Delhi, "Given the 12 political sensitivities of the persons 13 involved, the least disruptive and most 14 diplomatic means of police intervention 15 will be deployed." My learned friend was 16 putting to the Commissioner an extract 17 from the plan that had been devised for the 18 execution of a warrant. "What did you 19 understand the words 'police intervention' to 20 mean?" "That's the tactical activity, are 21 they going to go full blown with uniformed, 22 blue lights, sirens? Obviously not. Is it 23 going to be a discreet approach, low key? 24 At what time are you going to do the what 25 time is the --- approach going to be made?</p> <p style="text-align: center;">Page 240</p>

<p>1 Are you going to wait for him as he comes 2 out of his house or are you going to go to 3 his workplace? Those types of tactical 4 considerations." Which suggests that it was 5 not as unusual as is now made out that 6 (rightly, in my respectful opinion, although 7 it is none of my business) the police do 8 calibrate the manner in which they execute 9 their interventions, whether it is arrest or 10 search warrants, by reference to the degree 11 of risk to their objectives that a particular 12 intervention entails, and that is the point, 13 that is the reason why the way these three 14 particular individuals were treated was so 15 disproportionate. And I would not resile, I 16 would not disavow, the "bull in the china 17 shop" epithet for it. As for the Chief 18 Minister on this matter: yes, it is true that he 19 was fully supportive of the RPG (indeed, 20 encouraging of the RPG) when the issue 21 was defending Gibraltar's legal jurisdiction 22 in the face of a completely unjustified and 23 erroneous attempt to argue that it did not 24 exist on the MOD estate or when the 25 perpetrators of anything (on the goodies'</p> <p style="text-align: center;">Page 241</p>	<p>1 removal. The loss of confidence in him 2 would come nowhere close to justifying 3 that, but they did add it (for whatever it 4 might be worth) to this accumulated 5 historical body of behaviour which they 6 decided not justified his removal of itself, 7 but which collectively meant -- added to the 8 two reasons on which they did rely, took the 9 whole assessment across the threshold of 10 time for action, for change in the leadership 11 of the RGP. And that is the significance of 12 this report. There are aspects of it, sir, 13 which I think you need to consider in terms 14 of some (frankly) credibility issues. It 15 touches again on the accountability point. 16 So, rather reflecting the attitude to the 17 incident at sea, here not only did Mr 18 McGrail say he would not take 19 responsibility for the shortcomings but in 20 fact did not agree with the. So, he calls the 21 inspection, he does not agree... The idea 22 that you call and independent inspection 23 and do not agree with the recommendations 24 is adding a second level of denial to the 25 non-acceptance of responsibility -- a third</p> <p style="text-align: center;">Page 243</p>
<p>1 side or on the baddies' side) were MOD 2 personnel. That obviously incorrect view 3 deserved to be resisted, and the Chief 4 Minister (as was his duty) encouraged and 5 supported the RGP to take lines consistent 6 with the importance of that matter to 7 Gibraltar. But he also said that it had to be 8 done in a way which did "not exacerbate" 9 the situation. And it is that exacerbation of 10 the situation that dovetails with Mr Pyle's 11 approach in relation to the manner in which 12 the arrests were subsequently handled, 13 which in no way reflected anything that the 14 Chief Minister had encouraged the police to 15 do. Go "for the jugular", of course, is 16 something that ought not to have been 17 interpreted by the RGP in the defence of 18 their own operational independence to have 19 led them to decide how they would execute 20 those warrants against these three people, 21 nor was that phrase used in that context. 22 Finally, sir, the HMIC report. Both the 23 Chief Minister and Mr Pyle have said that 24 this was not by itself a reason which would 25 have caused them to seek Mr McGrail's</p> <p style="text-align: center;">Page 242</p>	<p>1 layer. And as to the blaming of his failure 2 to implement the 2016 report 3 recommendations on lack of resources: 4 well, let us not forget that he is not a 5 (inaudible) he never even set up a working 6 group that he had said in his job application 7 that he would set up. He then blames (for 8 the purposes of this Inquiry) lack of 9 resources, but perhaps had forgotten that he 10 had given an interview on television saying 11 that he could not fault the Gibraltar 12 Government for lack of resources, that they 13 were very generous with money and had 14 always provided the financial resources that 15 they needed. So, which is it? To whom 16 was he telling the truth: to this Inquiry or to 17 public opinion in Gibraltar on GBC 18 television? It cannot be both. And in terms 19 of only having been there 18 months: the 20 same 18 or 19 (or 20 months, probably, in 21 the case of Mr Ullger) that Mr Ullger was 22 there, and was able to deliver on all but two 23 or three. So, none of the explanations that 24 he has given bear the test of scrutiny. It 25 was not lack of money, it was not lack of</p> <p style="text-align: center;">Page 244</p>

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<p>1 time, he never even set up the mechanism 2 that he said that he would set up, and he 3 also refused to take responsibility for the 4 matters. My voice is failing again. My last 5 word, and I will sit down in 15 seconds, on 6 the question of the police morale and staff. 7 Let us not get bogged down on the use of 8 the adjectives "formal" or "informal": it is 9 clear that bullying as an issue in the RGP 10 existed, whether it was justified or not. 11 Consultancy reports have been conducted; 12 indeed, Mr Yeats's evidence (and I think 13 also now, not then, Commissioner Ullger's 14 evidence) is that all the senior management 15 team had recommended to Mr Ullger not to 16 call for this (speaking back to my last point 17 about the HMIC report) because they had 18 not done enough to meet it. But in relation 19 to this point, that Mr Ullger himself had 20 said: no, no, no, I do want to do it. Thank 21 you for your advice. I do want to do it, to 22 deal with the bullying issue. Well, the 23 bullying issue is either a real issue or it is 24 not, but I do not think that a Commissioner 25 of Police invites Her Majesty's Inspectorate</p> <p style="text-align: center;">Page 245</p>	<p>1 MR SANTOS: Everyone will be very 2 relieved to hear that I only have three short 3 points to make. 4 THE CHAIRMAN: Yes. 5 MR SANTOS: First of all, and this is 6 purely by way of clarification because a 7 matter has been commented upon by more 8 than one individual. There has been 9 comment on the disclosure of WhatsApp 10 messages between the Chief Minister and 11 Mr Levy, so I think it is worth us updating 12 the position from our perspective. On 4 13 May 2024, the Chief Minister disclosed for 14 the first time messages between him and Mr 15 Levy from 2018 to 2019. Peter Caruana & 16 Co stated that this was due to their error, 17 not the Chief Minister's. The last message 18 was dated 2 May 2019. After renewed 19 requests by the Inquiry, the Chief Minister 20 disclosed his full chat log with Mr Levy to 21 the Inquiry on Friday of last week, albeit 22 with redactions on relevance grounds. 23 From September 2019 onwards, including 24 the period May-June 2020, the only 25 messages disclosed by the Chief Minister</p> <p style="text-align: center;">Page 247</p>
<p>1 of Constabulary to Gibraltar to conduct a 2 full review (not just a review to investigate 3 the allegations of bullying, a full review of 4 a force), citing as his reason so against the 5 advice of his own senior management team 6 the issue of bullying, so that it can be 7 investigated, if the issue of bullying did not 8 exist. It is not a question of relying on 9 gossip in Panorama or other newspapers, as 10 I think one of my learned friends said 11 today; it was a live issue, and sir, you can 12 take it (?) into account to whatever extent. 13 If I have gone longer than I should, I 14 apologise. Thank you. 15 THE CHAIRMAN: No, no, you are well 16 within time. 17 SIR PETER CARUANA: Well within 18 time? I am not not as good a timekeeper as 19 I thought. 20 THE CHAIRMAN: Okay, thank you very 21 much indeed. Now, Mr Santos, you reserve 22 for yourself the right to make corrections if 23 you thought it appropriate. Do you want to 24 do that, or do you want some time to 25 consider your position?</p> <p style="text-align: center;">Page 246</p>	<p>1 and Mr Levy consist of broadcast-type 2 political messages sent by the Chief 3 Minister. Now, the Inquiry team intends to 4 seek an explanation from the Chief Minister 5 as to why there are no direct messages 6 between the Chief Minister and Mr Levy 7 other than those political broadcasts from 8 September 2019 onwards, but that is the 9 position as it currently stands. The second 10 point is a very small point, but there was a 11 suggestion that the Chief Minister was in 12 regular contact with Moshe Levy. We do 13 not believe that that is set out in the 14 evidence. Mr Levy has filed a witness 15 statement which addresses his contact with 16 the Chief Minister and explains that he had 17 one meeting with the Chief Minister, but his 18 witness statement is available on the 19 Inquiry website. And then the final point is 20 that there was a suggestion just now that Mr 21 McGrail had disagreed with the conclusions 22 of the HMIC report. I think it is fair to say 23 that his evidence was that he assumed the 24 recommendations and welcomed them, but 25 he did not agree with the conclusion as to</p> <p style="text-align: center;">Page 248</p>

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<p>1 corruption and the RGP's handling of the 2 risks of corruption. But I do not think -- 3 just to clarify, that he did not say that he 4 disagreed with all of the conclusions. 5 Those are the only three points that I wish 6 to make. 7 MR GIBBS: (inaudible) very recently that 8 I would just like a moment, if I may, to 9 raise with Mr Santos. 10 THE CHAIRMAN: Yes, do. 11 MR GIBBS: I have sent it to him 12 electronically, but... 13 THE CHAIRMAN: Ah. 14 MR SANTOS: It has just appeared on my 15 screen. I think the point that Mr Gibbs 16 makes, which is for me to make, which is 17 one that he makes in his written 18 submissions, is that the Government parties' 19 position is that the idea of seeking a 20 statement not under caution from Mr Levy 21 was one that was raised by Mr Richardson, 22 although I think what Mr Gibbs points out 23 in his submissions is that earlier on in that 24 meeting the DPP had proposed that a 25 voluntary statement be sought from Mr</p> <p style="text-align: center;">Page 249</p>	<p>1 I am sorry about... 2 MR SANTOS: No, I do not think so. I 3 think what we have is two different 4 participants emphasising different parts of 5 the transcript. And I think Mr Gibbs's 6 position is that Mr Richardson's idea was 7 prompted -- 8 THE CHAIRMAN: Yes. 9 MR SANTOS: -- by the earlier suggestion 10 by the DPP. I think that that is... I mean, I 11 am trying to put it neutrally and I am trying 12 to convey both sides' points. 13 THE CHAIRMAN: Yes, we spent hours on 14 this point, I really do not want to retread the 15 ground. 16 MR SANTOS: All I can do is: I can 17 assume them that the Inquiry has read and 18 will re-read the transcript of that meeting. 19 Yes, B271 to 273. 20 THE CHAIRMAN: Okay. 21 MR SANTOS: Thank you. 22 THE CHAIRMAN: Right. Well, this 23 brings the public hearings of the Inquiry to 24 a close. The public hearings of course are a 25 critical part of the Inquiry process, which</p> <p style="text-align: center;">Page 251</p>
<p>1 Levy as a witness, and -- 2 THE CHAIRMAN: Well, know that there 3 had been a meeting between the DPP and 4 the Attorney General -- 5 MR SANTOS: Attorney General. 6 THE CHAIRMAN: -- before the meeting, 7 in any event, where precisely this matter 8 was discussed. 9 MR SANTOS: Yes, exactly. So, the 10 suggestion comes from the DPP, I think, 11 two pages earlier in the transcript. But I 12 think it is also fair to point out that it is a 13 slightly different suggestion, because what 14 the DPP is suggesting is that a statement be 15 obtained as a witness; and then, what Mr 16 Richardson then suggests (and which is the 17 part that my learned friend Sir Peter raised) 18 is that a voluntary statement not under 19 caution be sought, but not as a witness. 20 SIR PETER CARUANA: (inaudible) Mr 21 Richardson. 22 THE CHAIRMAN: Yes. 23 SIR PETER CARUANA: That a statement 24 not under caution should be taken before a 25 possible statement under caution later. And</p> <p style="text-align: center;">Page 250</p>	<p>1 allows all the participants (and indeed the 2 public) to see for themselves that the 3 circumstances in which Mr McGrail came 4 to retire have been thoroughly examined. 5 This process has enjoyed strong public 6 engagement as a result of the live-streaming 7 and catch-up facility provided by the GBC 8 and the detailed daily reporting of the 9 Inquiry's proceedings in the Gibraltar 10 Chronicle. Having heard the evidence and 11 the argument for five weeks, I naturally 12 have already come to some provisional 13 conclusions. I have started to write the 14 report; I hope to have compiled a first draft 15 of the report by, say, early autumn. The 16 Inquiry team will then have to review that 17 draft for accuracy, for completeness, and to 18 check references and remove such errors as 19 there may be. Once that process has been 20 completed, we will have an approved draft 21 in place and will embark upon the process 22 known as Maxwellisation, the name being 23 taken from the Maxwell Inquiry in the UK 24 where it was developed. That requires us to 25 give notice to any person or body of any</p> <p style="text-align: center;">Page 252</p>

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<p>1 significant criticism which the Inquiry may 2 make of them in the report, and that notice 3 will give them an opportunity to make 4 further representations, which I will then 5 consider and make such amendments to the 6 first draft as I consider to be appropriate. 7 To undertake that process thoroughly and 8 fairly necessarily takes a good deal of time, 9 and it would be unwise to estimate when 10 that will be finished. Only when that 11 process is completed will we be able to 12 finalise the report and to send it to the 13 Government. The Inquiry team will 14 announce publicly when we send the report 15 to the Government. It will then be the 16 Government's duty under the new section 17 25 of the Inquiries Act 2024 to publish the 18 report. The Act requires the report to be 19 published in full, subject to the narrow 20 restrictions identified in sections 21 of the 21 Act which correspond with the 22 circumstances in which the Government or 23 Inquiry could impose restriction notices or 24 orders on the evidence. They cannot, 25 therefore, edit out bits of the report of</p> <p style="text-align: center;">Page 253</p>	<p>1 ever resourceful and hard-working junior, 2 Hope Williams. And if I may say so, not 3 least to the people of Gibraltar who have 4 been so welcoming to me on my now many 5 visits, of which this might possibly be the 6 last. So, thank you all very much indeed. 7 Okay. 8 (16.32) 9 (Hearing concluded)</p> <p style="text-align: center;">Page 255</p>
<p>1 which they disapprove or with which they 2 do not agree. It would be churlish and 3 ungrateful for me to end without giving 4 appropriate thanks. First of all to the 5 Garrison Library and to their staff, and in 6 particular to Jennifer Ballantine and to 7 Chris Tabares who have provided such a 8 splendid, dignified and suitably scholarly 9 setting for this hearing. To Epiq, who have 10 transcribed the proceedings with great 11 accuracy and put together the bundles. To 12 Mr MacLaren and his technicians, who 13 have provided the sound systems without I 14 think a single technical malfunction over 15 five weeks. To the GBC for live streaming, 16 which has brought about such widespread 17 public engagement. To Mr Maurice 18 Turnock, the Secretary to the Inquiry, who 19 has managed the efficient arrangements. To 20 the core participants and advocates for their 21 focused submissions. And especially to the 22 small and dedicated Inquiry team: to 23 Charles Simpson and Sebastian Triay from 24 the Inquiry Solicitors, and of course to Mr 25 Santos, Counsel to the Inquiry and to his</p> <p style="text-align: center;">Page 254</p>	

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