

<p>1 (Friday, 11 April 2025) 2 (10.02) 3 THE CHAIRMAN: Yes, it is all yours. 4 SIR PETER CARUANA: Thank you, sir. 5 Good morning to you and everybody. Sir, on 6 4 April 2022 the inquiry formally requested 7 Mr McGrail to disclose, amongst other 8 things, all WhatsApps and knowledge and 9 information relevant to this inquiry, and on 10 14 July of that same year, 2022, it made the 11 same request to Commissioner Ullger, 12 Assistant Commissioner Yeats and then 13 Superintendent Wyan and ex-Superintendent 14 Richardson. By the end of the oral hearings 15 of the inquiry on 9 May 2024, only Mr 16 Richardson had disclosed any WhatsApps. 17 The RGP did not disclose WhatsApps until 18 long after the hearing had ended. The 19 WhatsApps between Mr McGrail and Mr 20 Ullger were, in the government's view, 21 relevant, very relevant in parts. 22 The effect of this failure of disclosure has 23 been that it has protected Mr McGrail, Mr 24 Ullger and, for that matter, other RGP 25 officers, from being cross-examined at the</p> <p style="text-align: center;">Page 1</p>	<p>1 reconvening the hearings this week, for 2 which the government parties applied to you, 3 Chairman. The government parties are 4 grateful to you for your difficult decision, in 5 our view correct, however, to reconvene 6 these hearings for the reasons that you set out 7 in your considered ruling. As a result, it has 8 been possible to test this previously 9 undisclosed evidence and the relevant 10 witnesses in public about their content. 11 There is still, however, much potentially 12 relevant evidence that this inquiry has not 13 been able to see. This is because all the 14 WhatsApps on the RGP work phones relating 15 to the periods of time of most interest to this 16 inquiry have been wiped clean of all their 17 WhatsApps by the RGP itself. 18 As I have said, Mr McGrail has never 19 disclosed the important and highly relevant 20 WhatsApps between him and Mr Ullger, the 21 current Commissioner of Police, his 22 explanation and excuse that he did not think 23 that they would be relevant so he never 24 considered doing so. In the government 25 parties' respectful submission, this</p> <p style="text-align: center;">Page 3</p>
<p>1 hearings about the contents of those 2 WhatsApps. It has also deprived the inquiry 3 of the information in them at the hearings last 4 year and the WhatsApps, in our submission, 5 between Mr McGrail and Mr Ullger, 6 undermine in certain parts in significant 7 respects the case advanced by Mr McGrail in 8 this inquiry. 9 Furthermore, the inquiry's ignorance of the 10 existence of these WhatsApps and the 11 reasons advanced for their non-disclosure 12 prior to the hearings permitted Mr McGrail 13 and Mr Richardson and, to a much lesser 14 extent, the RGP itself through their counsel 15 to severely criticise and seek to bring public 16 opprobrium on the Chief Minister and other 17 witnesses, especially Mr Levy and Mr 18 Baglietto, for doing or allegedly doing things 19 that they themselves had done; namely, 20 deleting WhatsApps, losing WhatsApps on 21 transfer to new mobile phones and failure to 22 disclose relevant WhatsApps in time for the 23 hearing or in the case of Mr McGrail, at all. 24 Considerable additional public expense has 25 been required to remedy these failures by</p> <p style="text-align: center;">Page 2</p>	<p>1 explanation is not credible for the following 2 several reasons. 3 Firstly, Mr McGrail was Gibraltar's most 4 senior police officer. Immediately before 5 becoming Commissioner of Police, he had 6 been Gibraltar's most senior detective as 7 head of the RGP's crime division responsible 8 for all criminal investigation and 9 prosecutions. Thirdly, he is a highly 10 experienced police officer and trained and 11 highly experienced in detection, 12 identification, preservation and safe custody 13 of relevant evidence. Fourthly, he had been 14 specifically asked by the inquiry to disclose 15 the WhatsApp messages. Fifthly, he was 16 alert to and disclosed WhatsApps between 17 himself and many other people. Sixthly, but 18 he did not disclose the WhatsApps with 19 colleagues, with RGP officers, except a few 20 that were helpful to him in relation to the 21 airport incident which he says he accidentally 22 found at home on a pen drive in an old 23 glasses case whilst he was tidying up his 24 desk at home in 2022. Seventh, Mr McGrail 25 now accepts that they are clearly relevant</p> <p style="text-align: center;">Page 4</p>

<p>1 WhatsApps that he failed to disclose. 2 Sir, Mr McGrail says that this failure to 3 disclose these key WhatsApps was an 4 inadvertent omission on his part and not 5 intentional, obviously, if it was an 6 inadvertent omission. That is simply, in the 7 government parties' view, not a good enough 8 justification for such an obvious and serious 9 failure which has continued over more than 10 two years and it is simply too convenient, too 11 implausible and too self-serving an excuse. 12 He says that he simply did not consider 13 whether WhatsApps with colleagues could be 14 relevant. In the government parties' 15 submission, that too is implausible and not 16 credible. In a sworn witness statement 17 before the hearing last year, he said that all 18 his correspondence with colleagues regarding 19 his dealings with the Gibraltar Police 20 Federation had been disclosed by him. This 21 is not true because the WhatsApps with Mr 22 Ullger, which he did not disclose, included 23 messages about his dealings with the 24 Gibraltar Police Federation. 25 But be that as it may, the equally important</p> <p style="text-align: center;">Page 5</p>	<p>1 remind us, voluminous and detailed 2 information and documentation relevant 3 events, conversations and other people's 4 alleged acts and omissions. But in not one of 5 them did he make a single reference, even, to 6 the fact that he had these WhatsApps or that 7 he had had these WhatsApp conversations 8 with Mr Ullger, nor to anything that ever 9 happened between them of all the things that 10 we have now seen happen between them in 11 the WhatsApp chat group between them now 12 disclosed. 13 Nor did he give to the inquiry the explanation 14 that he had supposedly inadvertently omitted 15 to disclose these WhatsApp chats until 2 16 December 2024, seven months after the end 17 of the hearings. 18 The obligation to disclose is a continuing 19 one; that is to say it continues throughout the 20 inquiry and does not end with your initial 21 attempt at disclosure. So, having failed to 22 disclose them when asked to do so by the 23 inquiry in April 2022, he could and should 24 have distributed them later at any time before 25 the hearing, but he never did. He says that</p> <p style="text-align: center;">Page 7</p>
<p>1 part of that is that it shows that he was aware 2 and conscious of the need to disclose 3 correspondence and we say including 4 electronic messages with his RGP colleagues. 5 Also, long before the hearing, he sought and 6 obtained from you, sir, an order directing the 7 Royal Gibraltar Police to provide him with 8 access to WhatsApps between himself and 9 other RGP officers, the so-called SMP chat 10 group. He was, therefore, clearly aware and 11 conscious of the relevance of WhatsApps 12 between him and RGP colleagues. This 13 obvious awareness by Mr McGrail of the 14 relevance of WhatsApps chat with colleagues 15 did not, however, as one would reasonably 16 have expected, lead to Mr McGrail correcting 17 his alleged inadvertent omission, which was 18 his excuse for not having disclosed them in 19 the first place because he still did not 20 disclose those WhatsApps, even after he had 21 addressed his mind to WhatsApps with RGP 22 colleagues. 23 Mr McGrail provided seven witness 24 statements to the inquiry before the hearings 25 last year. In those, he provided, as he likes to</p> <p style="text-align: center;">Page 6</p>	<p>1 the reason for this was that when he was 2 detained in connection with another matter, 3 the RGP seized his phone, kept it for seven 4 months and when they gave it back to him he 5 found that he could no longer access his 6 WhatsApp messages on the phone. In other 7 words, according to Mr McGrail, in 8 examining and copying his phone, the RGP 9 had somehow corrupted it such that he could 10 no longer access his WhatsApps on it. 11 Government parties do not know if this is 12 true. The RGP has never itself confirmed 13 this, nor given the inquiry an explanation of 14 whether and if so how and why this could 15 have happened. 16 What we do know is this. First, Mr McGrail 17 never sought an explanation from the RGP 18 about this occurrence. He never asked the 19 RGP, "Why doesn't my phone work any 20 more to access WhatsApps?" He never 21 asked the RGP for technical help in accessing 22 his WhatsApps given that they had 23 apparently caused the problem in the first 24 place. He says he knew that the RGP would 25 have taken a copy. Yesterday he told us he</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 had taken solace from that, but he never 2 asked the RGP then to provide him with a 3 copy which he knew they had so that he 4 could disclose the messages that he knew 5 existed. He never told the inquiry that the 6 messages existed but that he could not access 7 them, but that the inquiry could approach the 8 RGP and ask them for it. He says that he 9 became aware of their relevance during the 10 hearings but still he did not disclose their 11 existence, even during the hearings. 12 Despite all this, sir, Mr McGrail sat content 13 and unmoved whilst his lawyers launched an 14 attack on the Chief Minister, Mr Levy and 15 Mr Baglietto, three senior individuals in this 16 community, for not disclosing relevant 17 WhatsApp chats between themselves. This, 18 even though Mr Picardo, Mr Levy and Mr 19 Baglietto were only suspected by him of 20 having WhatsApp chats that they were not 21 disclosing whereas he himself had certainly 22 failed to disclose relevant WhatsApp chats. 23 This is incomprehensible and the deployment 24 of double standards that the government 25 parties say goes to his own personal</p> <p style="text-align: center;">Page 9</p>	<p>1 possibly be relevant. It is not possible to 2 have a much narrower understanding of 3 relevance than that. 4 Mr McGrail's lawyers asked the Attorney 5 General, Mr Llamas, "Did you check your 6 emails and messages before drafting your 7 witness statement? You would go through 8 your texts and emails before giving your 9 evidence; is that right?", this, even though 10 that is precisely what Mr McGrail himself 11 had not done in respect of his messages with 12 RGP colleagues. 13 Sir, Mr McGrail has a long and well- 14 documented track record of being fastidious 15 in obtaining and keeping copies of 16 documents and information to prevent it from 17 loss in case he might need it in the future. 18 Motivated by these concerns, he has told us, 19 he covertly -- in the view of the government 20 parties unethically -- recorded meetings with 21 the Attorney General, the Director of Public 22 Prosecutions, the Chairman of the Gibraltar 23 Police Authority and indeed his own 24 colleagues, his fellow RGP officers. He took 25 confidential RGP documents with him when</p> <p style="text-align: center;">Page 11</p>
<p>1 credibility. 2 This criticism was persistently and publicly 3 levelled with the obvious intention of casting 4 suspicions and aspersions on and inviting the 5 opprobrium of the Chief Minister and others 6 in the minds of both yourself, sir, as 7 Chairman of this inquiry and, indeed, of 8 public opinion. In the latter, it may have 9 been successful. In the former it remains to 10 be seen. 11 As the Chairman noted in his recent ruling, 12 everyone following the proceedings will have 13 understood that counsel of Mr McGrail 14 repeatedly claimed that Mr Picardo and Mr 15 Levy also were reluctant to disclose some 16 messages and had failed to disclose others 17 and that they did so deliberately intending to 18 suppress the truth and to mislead the inquiry. 19 Amongst the things that Mr McGrail's 20 lawyers said were that Mr Picardo had, 21 "quite a narrow understanding of relevance 22 and scope when it comes to messages", this, 23 despite the fact that Mr McGrail himself 24 considered that no WhatsApp messages 25 between him and any police officer could</p> <p style="text-align: center;">Page 10</p>	<p>1 he retired. He got the RGP to copy and 2 provide other documents to him. He was 3 careful to extract and protect his WhatsApps 4 with all other relevant people to this inquiry 5 except with his colleagues in the RGP. Yet 6 this is the man, sir, that on the day he retired 7 tells us he left the RGP work phone on his 8 desk, walked out of the door for the last time 9 without bothering to take copies or backing 10 up his WhatsApps even though he knew that 11 the consequence of doing that would be that 12 the RGP would wipe them clean and 13 therefore all his WhatsApps on his work 14 phone would be lost. 15 He was apparently content and carefree to 16 lose all his WhatsApps on that phone. Nor 17 did this cautious man back up on the Cloud 18 his WhatsApps on his personal phone. So, 19 Mr McGrail was careful to save his emails, 20 which could not be lost because they were 21 stored in the RGP's central computer server, 22 but ignored saving his WhatsApps on his 23 RGP phone, which he knew would otherwise 24 be lost. The result of all of this is that those 25 messages are not available to the inquiry and</p> <p style="text-align: center;">Page 12</p>

<p>1 he says prevented him from being able to 2 disclose his WhatsApps with Mr Ullger 3 before last year's hearings. 4 It is respectfully submitted on behalf of the 5 government parties, sir, that Mr McGrail's 6 case theories, narratives and credibility 7 including with impunity the honesty of 8 others, should be seen in the light of the 9 contradictions in his position brought into 10 sharp focus by these WhatsApp chats 11 messages and, indeed, by his non-disclosure 12 of them, which, like a dog that did not bark, 13 is itself evidence that you are entitled to draw 14 inferences from which is exactly what his 15 lawyers invited you to draw as an inference 16 from the supposed non-disclosure of 17 WhatsApps by everybody else. He failed to 18 disclose these WhatsApps. He hoped that 19 they would not see the light of day and he 20 very nearly got away with it. 21 Turning to the Royal Gibraltar Police, on its 22 own case, the RGP in December 2020, that is 23 after the inquiry had been announced in 24 Parliament, deleted all WhatsApps between 25 RGP officers in respect of relevant periods to</p> <p style="text-align: center;">Page 13</p>	<p>1 undertaken these wipes and mobile phone 2 changes without first preserving the data on 3 them and thereby lost the WhatsApps and, 4 presumably, other potentially relevant data of 5 importance to the police perhaps, especially 6 at a time when one, the inquiry had long 7 since been announced in Parliament, and 8 two, the then ongoing Operation Delhi 9 criminal prosecution was proceeding towards 10 the disclosure stage making those 11 WhatsApps in relation to that investigation 12 potentially all the more sensitive and 13 important to retain safely. I express no view 14 as to whether on practice it is right or wrong 15 that WhatsApps are not routinely the subject 16 of disclosure by police in the discharge of 17 their general disclosure obligations including 18 unused material in respect of criminal 19 prosecutions. 20 So, for his part, Mr Ullger also failed to 21 disclose the McGrail/Ullger WhatsApps 22 before the hearing last year, despite him 23 being asked by the inquiry to do so in July 24 2022. 25 He has said that this was because he lost</p> <p style="text-align: center;">Page 15</p>
<p>1 this inquiry on all RGP mobile phones. For 2 one reason or another, sir, by the end of the 3 oral hearings in May 2024, no RGP officer 4 except a few by Mr Richardson from his 5 personal mobile phone, had disclosed any 6 WhatsApp messages whatsoever even though 7 it is now clear that many relevant messages 8 existed and were in the RGP's possession and 9 control. The RGP's explanation, now two 10 years after their disclosure obligation arose 11 for this, is that again for one reason or 12 another, access to all these WhatsApps had 13 been lost by all relevant senior RGP officers 14 in respect of all RGP mobile phones that 15 would have contained such WhatsApps 16 because either the RGP itself wiped them 17 clean, including Mr McGrail's and Mr 18 Richardson's work phones when they retired, 19 or the WhatsApps were lost by all of Mr 20 Ullger, Mr Richardson and Mr Yeats when 21 they all chose together to transfer from 22 recently acquired Samsungs to new iPhones 23 on the grounds that they preferred the 24 interface in November or December 2020. 25 It is remarkable that the RGP should have</p> <p style="text-align: center;">Page 14</p>	<p>1 them when he bought a new mobile phone 2 and switched to it. This is his personal phone 3 not his work phone. But, like Mr McGrail, 4 he also failed to disclose it later when he 5 might have done so ahead of last year's 6 hearings. He too made witness statements, 7 four of them before the hearing, but never 8 mentioned in them any of the matters or the 9 role that he played in relation to the relevant 10 issues that can now be seen from his 11 WhatsApp chats with Mr McGrail. This 12 includes his knowledge, for example, that Mr 13 McGrail had decided to retire by 29 May 14 2020. Of course, it is for you, sir, as 15 Chairman, to decide what that message 16 means, but the point is it is relevant and you 17 had been deprived of the opportunity of 18 making that assessment yourself. 19 Even if Mr Ullger had lost his copy of the 20 chats on transferring to a new personal 21 phone, he never asked Mr McGrail to 22 provide him with a copy so that he could 23 disclose them. At the time that Mr Ullger 24 was asked by the inquiry to disclose the 25 WhatsApp, Mr McGrail still had access to</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

1 them on his phone. His phone had still not
 2 been seized and corrupted by the RGP. If Mr
 3 Ullger had asked him on a more timely basis,
 4 we would have had them, presumably. Nor
 5 did he tell the inquiry that he no longer had
 6 access to them, that there were likely to be
 7 many potentially relevant messages between
 8 him and Mr McGrail and that the inquiry
 9 ought to request them from Mr McGrail
 10 given that he could not access them from his
 11 end.
 12 Even if Mr Ullger did lose them on his
 13 phone, he could have disclosed that the RGP
 14 had them because Mr McVea, whilst
 15 conducting an investigation by the RGP into
 16 Mr McGrail, had taken a copy of those chats
 17 from his phone. Mr McVea was an RGP
 18 officer, so they were in the RGP's and
 19 therefore in Mr Ullger's control. In other
 20 words, and put simply, Mr Ullger could have
 21 obtained them and disclosed them to the
 22 inquiry before last year's hearings in the
 23 same way as he later did long after the
 24 hearings had ended, but he did not do so.
 25 He could also have disclosed the existence of

Page 17

1 Notwithstanding the failure by Mr McGrail
 2 and the other RGP officers, except
 3 Mr Richardson, to disclose any WhatsApps,
 4 the RGP is of the view that it has made full,
 5 timely and comprehensive disclosure. I was
 6 unable, even by trying to limit it to this
 7 instance, persuade any RGP witness to
 8 concede that that might not be the case. The
 9 government parties respectfully disagree.
 10 RGP has tried to mask their failure to make
 11 full, comprehensive and timely disclosure of
 12 WhatsApps by pointing to a supposed
 13 agreement or guidance from the then solicitor
 14 to the Inquiry, Attias & Levy. But, sir,
 15 a reading of the correspondence on which
 16 they rely for that remarkable proposition
 17 makes clear that there was no agreement with
 18 or guidance from the solicitor to the Inquiry
 19 which would justify the RGP's nondisclosure
 20 of WhatsApps before the hearing. The
 21 Inquiry, in the government parties' respectful
 22 submission, should reject that submission by
 23 the RGP.
 24 As, in our respectful submission, the Inquiry
 25 should reject the submission that the RGP's

Page 19

1 the image of the messages between Mr
 2 McGrail and him of the existence of which
 3 he was aware: "I have them but I can't
 4 access them". The RGP obtained both from
 5 Mr McGrail and from the Operation Delhi
 6 defendants, WhatsApps and emails following
 7 arrests in different cases. Both were obtained
 8 under search warrants. There is therefore no
 9 legally relevant difference between them for
 10 these purposes.
 11 (10.30)
 12 The RGP readily disclosed the Operation
 13 Delhi defendants' WhatsApps and emails
 14 without first seeking their consent, and
 15 therefore the RGP could have done the same
 16 with Mr McGrail. The upshot was that the
 17 Inquiry did not get the WhatsApps between
 18 Mr McGrail and Mr Ullger, from either of
 19 them, because Mr Ullger has said that he lost
 20 them in the circumstances I have just
 21 described and Mr McGrail says that he did
 22 not initially because he did not think they
 23 might be relevant and later because when the
 24 RGP returned his phone access to them was
 25 lost.

Page 18

1 obligation to disclose WhatsApps arose in
 2 June 2024. Plainly it did not. It arose in
 3 July 2022. And in our respectful submission,
 4 raising manifestly incorrect arguments of that
 5 kind does nothing to enhance overall
 6 credibility.
 7 The RGP has also been less than careful in
 8 preserving information and records that
 9 would have been useful to this Inquiry and as
 10 a result of which the Inquiry has been
 11 deprived of information or certainly potential
 12 valuable information. On their own case, the
 13 RGP and/or one or other of its officers, have
 14 all deleted WhatsApps, well, they have not
 15 all deleted, have deleted WhatsApps ...
 16 and/or deleted WhatsApps for the period
 17 relevant to this Inquiry from all RGP mobile
 18 work phones, lost access to WhatsApps on
 19 changes to new phones, deleted all data from
 20 Mr McGrail's previous laptop, which had
 21 remained untraceable for a long time and
 22 when found contained nothing significant in
 23 it, lost his desktop computer from the top of
 24 his desk and all the data on it, according to
 25 Mr McGrail, caused WhatsApps on his

Page 20

<p>1 personal phone to be lost when they had 2 inspected it, and lost all his daybooks, which 3 Mr McGrail says he left in a rucksack on the 4 floor of his office when he left on the day of 5 his retirement. Despite all this litany, the 6 RGP asserts that it has lived up to the 7 standards to be expected of it in the careful 8 preservation of important evidence and 9 information in this instance. Again, the 10 government parties respectfully disagree. 11 The RGP has deleted WhatsApps from 12 Mr Richardson's RGP work phone, even 13 though the Inquiry had already been 14 announced and Operation Delhi was 15 ongoing. Regrettably and surprisingly this 16 did not prevent the RGP, through their 17 lawyers, from implicitly criticising 18 Mr Baglietto for doing the same thing. And 19 counsel on behalf of Mr Richardson was 20 highly critical of Mr Levy. As the chairman 21 noted in his recent ruling, his studied 22 scepticism gradually dissected Mr Levy, 23 thereby exposing him to public opprobrium. 24 It was submitted on Mr Richardson's behalf 25 in oral closing that the failure by Mr Levy to</p> <p style="text-align: center;">Page 21</p>	<p>1 cross-examining Mr Ullger yesterday, the 2 day before yesterday now, Mr Gibbs said that 3 I had made this point on behalf of Hassans. 4 He may have misspoken. He may have 5 misspoken. He knows that I hold the brief 6 only for the government parties, that there is 7 no harm in everyone being fair to all 8 witnesses where the facts permit it. If that is 9 what I did, I make absolutely no apology for 10 doing so. But be that as it may, any of my 11 observations in this regard were on behalf of 12 my client, Mr Picardo, not Hassans, because 13 Mr Picardo is alleged by his client and by 14 Mr McGrail to be a party to a conspiracy 15 with Mr Levy and Mr Picardo in this respect. 16 Worryingly, Mr Ullger, Mr Yeats and 17 Mr McGrail have coincided in the view that 18 WhatsApps are not important and that they 19 are important has been exaggerated in this 20 Inquiry. This is plainly a self-serving 21 assertion to mask their own failures to 22 disclose them on a timely basis. Their bald, 23 wrong and self-serving assertion that the 24 importance of WhatsApps is exaggerated 25 neither explains nor justifies their obvious</p> <p style="text-align: center;">Page 23</p>
<p>1 carefully retain and store relevant messages 2 with Mr Picardo lent support to the view that 3 he may have been tempted to suppress 4 information that could have embarrassed 5 them. Yet Mr Richardson himself had failed 6 to carefully retain and store messages when 7 he changed his work mobile phone in 8 December 2020 and thereby lost all 9 WhatsApps from that phone and also when 10 he retired he handed in his work phone 11 knowing that it would be wiped clean. 12 All of Mr Ullger, Mr Yeats, Mr Richardson 13 and Mr Levy have lost WhatsApps chats 14 because of changing to a new mobile phone. 15 Like Mr Levy, Mr Ullger has lost some but 16 not all chats. They have all been lost from 17 the Cloud as well. So losing WhatsApps 18 chats when changing to a new phone, even 19 from the Cloud, as happened to Mr Levy, 20 appears to be widespread and frequent in the 21 RGP as well. Candidly and to his credit, 22 Mr Ullger has said that in his view it could 23 not be read into this that any of these persons 24 had done so in order to conceal these 25 messages from the Inquiry. In</p> <p style="text-align: center;">Page 22</p>	<p>1 and systemic failure to have addressed and 2 complied with their obligations to disclose 3 them to this Inquiry. In short, they simply 4 ignored the Inquiry's 2022 requests for 5 disclosure of WhatsApps. So the hearings 6 proceeded without them and they then all 7 criticised others for doing the same thing as 8 they have now, later, been found to have 9 done themselves. 10 The inferences to be drawn from this, I will 11 respectfully submit on behalf of the 12 government parties, is that the coincidence of 13 inability to disclose relevant WhatsApps by 14 multiple, past and present witnesses, 15 including police officers and Mr McGrail, for 16 myriad reasons is and of itself implausible. 17 The Inquiry should draw the same inferences 18 from this fact as it has been invited by these 19 same people, in fairness to the RGP I do not 20 think they have invited you to draw 21 inferences, but certainly that you have been 22 invited to draw by Mr McGrail and probably 23 by Mr Richardson too, to draw from the 24 supposed and speculated nondisclosure of 25 WhatsApps by Mr Picardo, Mr Levy and</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 Mr Baglietto. 2 As the chairman noted in his recent ruling, it 3 has been imputed to them, by inference, that 4 this was done to suppress their truth and 5 intentionally. Most recently and in this 6 respect I have to say that Mr Wagner thinks 7 that this submission contains a mistake. He 8 has not told me what it is, but if he points it 9 out to me in his own address and he is right 10 of course I will return to it and review the 11 position. But most recently Mr McGrail's 12 submissions, dated 15 July 2024 in response 13 to Hassans's submissions, Mr McGrail 14 argued that it was relevant to the 15 Commissioner's consideration of the 16 Hassans's request to make written 17 submissions and characterised as lack of 18 openness the fact that they had not 19 volunteered information until much later in 20 the Inquiry process. There is no reason, sir, 21 why the Inquiry should not draw inferences 22 against Mr McGrail, as he has invited the 23 Inquiry to draw against others, arising from 24 his failure to disclose these WhatsApps chats 25 and it is not reasonably open to him to</p> <p style="text-align: center;">Page 25</p>	<p>1 thereafter worked to ensure that he would be 2 allowed to do so on the best possible 3 financial terms. Far from seeking to stay on 4 as Commissioner of Police, his concern was 5 that he may not be allowed to retire but 6 would instead be sacked, an understandable 7 concern but a different concern. Therefore 8 nothing that occurred after the date when 9 Mr McGrail decided to retire, for whatever 10 reason, such as the alleged abuse or exercise 11 of statutory powers by the Governor or 12 failure to await the arrival of the new 13 Governor, could possibly have been the 14 reason for him deciding to do what he had 15 already previously decided to do. 16 In a WhatsApps message on 29 May 2020 17 from Mr Ullger to Mr McGrail, which we 18 have seen at length, Mr Ullger reports back 19 to Mr McGrail on a conversation that he, 20 Mr Ullger, had just had with the then 21 Minister for Justice, Samantha Sacramento, 22 on behalf of Mr Ullger. He says: 23 "I told her about the fact that the best 24 scenario here was or what you were looking 25 at was you wanted, you know, retire now</p> <p style="text-align: center;">Page 27</p>
<p>1 contend that it should not do so. 2 Moving and more briefly to some 3 observations on substantive relevance, sir, 4 the WhatsApps between Mr McGrail and 5 Mr Ullger, as I have said, in important part 6 undermine and sustain the government 7 parties' case narrative. And in one particular 8 one, the reason and timing of his decision to 9 retire, we think, in an important way. So the 10 WhatsApps between Mr McGrail and 11 Mr Ullger show that Mr McGrail did not, as 12 he claimed in this Inquiry, choose to retire 13 because of any supposedly corrupt or 14 unlawful interference by anyone in the live 15 criminal Delhi investigation. They show, as 16 the government parties have themselves 17 contended from the start, that he chose to 18 retire because he knew and accepted that he 19 had lost the confidence of key persons and 20 authorities, namely the Governor, the Chief 21 Minister and the Gibraltar Police Authority. 22 The WhatsApps messages between 23 Mr McGrail and Mr Ullger show that 24 Mr McGrail had at least by 29 May and 25 probably earlier decided to retire and</p> <p style="text-align: center;">Page 26</p>	<p>1 because your position was untenable with the 2 individual, with all individuals for that 3 matter, and that you wanted to leave the 4 organisation with heads up, but maintaining 5 your pay and to retire, to have your 6 retirement package, in two years' time." 7 In his oral evidence this week Mr Ullger said 8 that this meant that Mr McGrail had lost the 9 confidence of the four individuals. He added 10 a fourth actually. He added Attorney 11 General, which I excluded before, in addition 12 to Chief Minister, GPA and Governor. 13 On 30 May, that is the following day after 14 they had had this chat, Mr McGrail tells 15 Mr Ullger: "All I want is a dignified exit and 16 not a forced one." Drawing the distinction, 17 rightly, between retirement and sacking. 18 Mr Ullger acknowledges in his reply that he 19 is fully conscious of it. So Mr Ullger knew 20 that that was Mr McGrail's position. And so 21 it is unambiguously clear, in our respectful 22 submission, that these messages, from these 23 messages, that by 29 May Mr McGrail had 24 already taken the decision, (i) to retire, (ii) 25 that his concern was in fact not being</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 allowed to retire, and (ii), to secure, again 2 understandably, the best possible financial 3 terms for doing so. Of course, sir, just to 4 avoid the sort of smokescreen, of course this 5 did not mean that he was happy about it or 6 that he would prefer not to have found 7 himself in that position. Clearly he did not. 8 But nor does that alter or disguise the fact, 9 which is the relevant one, that for whatever 10 reason he had made the decision by 29 May 11 that he wanted to opt for early retirement. 12 So what of 5 June? Despite and contrary to 13 the clarity of these statements that I have just 14 spoken about, Mr McGrail has previously 15 advanced in this Inquiry the case that he 16 made the decision to retire on 5 June. The 17 messages that we now have between them 18 show that this is not credible or true. 19 Yesterday in oral evidence, when confronted 20 with the 29 May and 30 May messages, 21 Mr McGrail said two things in this respect. 22 First, he said that he still hoped that the RGA 23 would withdraw their invitation for him to 24 retire. The insuperable problem for 25 Mr McGrail with that is that when he sent</p> <p style="text-align: center;">Page 29</p>	<p>1 intention to retire early." It is obviously, sir, 2 not possible for Mr McGrail to have decided 3 one thing and the very opposite one at the 4 same time and date, namely, that he now 5 prays that they do not refuse my intention to 6 retire and also, as he now claims, that the 7 matters would await the arrival, that he 8 hoped that the matters would await the 9 arrival of the new Governor, which precisely 10 meant not being allowed to retire, as he had 11 asked and as he feared he would not be 12 allowed to do. 13 Mr McGrail had decided by 29 May nothing 14 that happened after that date was therefore 15 the reason for his decision to do so, nor 16 caused his retirement. This includes the 17 narrative advanced by Mr McGrail in this 18 Inquiry about the alleged, though in fact it 19 did not happen, abuse by Mr Pyle of any of 20 the Governor's Police Act powers. 21 Mr Ullger and Mr McGrail may now say that 22 the importance of WhatsApps are 23 exaggerated. But the relevance and 24 importance of privately, confidentially and 25 therefore honestly expressed state of minds</p> <p style="text-align: center;">Page 31</p>
<p>1 Mr Ullger a message that same day, saying: 2 "Still not out of the woods. I now pray that 3 they do not refuse my intention to retire 4 early", the GPA had already withdrawn their 5 invitation to him to retire. His lawyers' 6 email confirmation that he wanted to retire 7 earlier that day was in response to the GPA's 8 email withdrawing its invitation. 9 Mr McGrail therefore confirmed his decision 10 to retire, even though the GPA had already 11 withdrawn that invitation to him to retire. 12 Second, he said that he still hoped that things 13 could await the arrival of the new Governor, 14 Sir David Steel, whose arrival was then very 15 imminent. I cannot now remember whether 16 it was just a handful of days away or the next 17 week. The insuperable problem for 18 Mr McGrail with that is that three hours after 19 the telling the GPA that he wanted to retire, 20 even though the GPA had already withdrawn 21 its invitation to him to do so, Mr McGrail 22 sent a WhatsApps message to Mr Ullger. In 23 that message Mr McGrail said to Mr Ullger: 24 "Still not out of the woods. [I have just read 25 it.] I now pray that they do not refuse my</p> <p style="text-align: center;">Page 30</p>	<p>1 and knowledge of people cannot be 2 exaggerated in terms of their forensic value. 3 The voice clip on 29 May contains no 4 wastage of words. They can only mean that 5 by 29 May he had decided that he wanted to 6 retire because of the loss of confidence in 7 him. Mr Ullger knew this and set about 8 helping Mr McGrail to obtain the best 9 possible retirement package. And any other 10 ex post facto interpretation by Mr McGrail is 11 self-serving obfuscation of the obvious and 12 natural and only meanings of the words that 13 they used in private when they never thought 14 that they would have to defend them in 15 public. 16 Mr McGrail said in his email to the GPA on 17 5 June that he had decided to retire because 18 of the unlawful interference in the live 19 Operation Delhi criminal investigation. It is 20 in the government parties' respectful 21 submission that was not true for the 22 following reasons. We have heard that on 29 23 May Mr Ullger and Mr McGrail were 24 acknowledging that he was retiring because 25 he accepted that his position had become</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 untenable with the Chief Minister, Governor, 2 Attorney General and Police Authority. 3 Mr Ullger says that untenable meant loss of 4 confidence. Now, this has been the 5 government's case from the outset. It is 6 telling, it is telling, in our respectful 7 submission, very telling, sir, that Mr McGrail 8 links the retirement to the alleged improper 9 interference for the very first time on 5 June. 10 That is after having already told Minister 11 Sacramento on 29 May that it was for some 12 other reason. It is also telling in this respect, 13 that Mr Ullger has said this week in his 14 evidence that Mr McGrail told him to 15 discontinue his engagement with Minister 16 Sacramento following a meeting by 17 Mr McGrail with his lawyers. 18 It is the government parties' submission that 19 there has been no improper interference by 20 anyone in a live criminal investigation, but 21 that in any event that is not the reason for the 22 decision to retire. Rather, as is clear from the 23 above chronology of events, this reason was 24 an afterthought, probably put in 25 Mr McGrail's mind by his lawyers at the</p> <p style="text-align: center;">Page 33</p>	<p>1 He was a senior investigating officer. He did 2 not feel the need to retire and indeed the 3 investigation continued properly without 4 interference by anyone by the RGP 5 thereafter. 6 As I have already said, the government 7 parties deny that there has been any improper 8 interference in that investigation. 9 Mr Picardo's berating of Mr McGrail on 12 10 May in no way interfered with the 11 investigation. The police were already 12 executing the warrant and proceeded in that 13 respect entirely as they pleased and chose. 14 The chairman will have listened to the tapes 15 of the 13th, 15th, and 20th meeting and he 16 has formed, from what he has said, his views 17 about whether they constitute or not 18 improper interference by the Attorney 19 General and the DPP. The government 20 parties assert that they do not. But in any 21 case, sir, the relevant issue so far as concerns 22 Mr McGrail's retirement and the reasons and 23 his state of mind and the linkage to 24 interference, is not whether there was in fact 25 unlawful improper interference, but whether</p> <p style="text-align: center;">Page 35</p>
<p>1 meeting of which Mr Ullger informed us 2 yesterday, following which he asked 3 Mr Ullger to disengage with Minister 4 Sacramento. He is entitled to change his 5 mind, but what he cannot do is change the 6 facts to try and show that he had not by 29 7 May decided to retire. 8 That this was not the real reason for his 9 retirement is sustained by other things too. 10 By the fact that it is neither necessary nor 11 professional nor proper for the Commissioner 12 of Police to choose to retire because there has 13 been interference in a live investigation. If 14 that had happened, his professional duty was 15 to stay in post and to uphold the operational 16 independence of the police, which is a key 17 feature of our system of the rule of law. Not 18 to retire and negotiate the best package that 19 he can for himself and leave the threat to 20 police independence to his successor. Also, 21 Mr McGrail was not the investigating officer. 22 He has gone to great lengths to explain, 23 usually in questioning by my learned friend 24 Mr Cooper, that he did not play a significant 25 role in that investigation. Mr Richardson did.</p> <p style="text-align: center;">Page 34</p>	<p>1 there was a perception by Mr McGrail that 2 the investigation was being improperly 3 interfered with at the three meetings. 4 Because if Mr McGrail had no perception, it 5 could not have operated as a factor in his 6 mind, even if objectively somebody else may 7 think that there was. 8 In this respect the Inquiry will wish to take 9 account of the following matters. The 10 transcript of the meetings which show, in our 11 respectful submission, no such perception on 12 his part. The back of the car conversation 13 after the 13 May meeting, which shows no 14 such perception by either of them, including 15 Mr Richardson. This is the transcript that 16 Mr McGrail did not think it appropriate to 17 bring to anybody's attention or transcribe. 18 The all goodish description by Mr McGrail 19 of the 15 May meeting. The fact that 20 everyone has agreed that there was no 21 alleged interference in the third of the 22 meetings on 20 May. The fact that important 23 and serious as such interference would be, 24 there is not a single WhatsApps between any 25 RGP officers commenting to this effect,</p> <p style="text-align: center;">Page 36</p>

<p>1 despite the extensive exchanges on other 2 issues in this Inquiry. This is implausible. 3 This is a case of the dog that did not bark in 4 the night. 5 The fact that important and serious as such 6 political interference in a live criminal 7 investigation would be if it happened, or if 8 they perceived that it had happened, there is 9 not a single meeting minute or a single 10 daybook entry by anyone recording any such 11 concern or perception. The dog continues 12 not to bark in the night. 13 The 16 May WhatsApp from Mr McGrail to 14 Mr Ullger: "I am hoping that James Levy 15 does not force the issue where we have to 16 end up arresting him." This after two of the 17 meetings and no one has alleged interference 18 in the third. This plainly means, sir, that the 19 RGP felt free to arrest Mr Levy if they 20 thought it necessary to do so and hoped that 21 it would be necessary. This thoroughly 22 undermines the notion, advanced by 23 Mr McGrail, that the police were or even felt 24 restrained by the interference of the Chief 25 Minister, the Attorney General or, depending</p> <p style="text-align: center;">Page 37</p>	<p>1 Mr McGrail had never worked on the 2 implementation. Focus, sir, on the very first 3 line: 4 "This is what we can say why we never 5 worked [not why we did not finish, but we 6 never worked] on the 2016 implementation 7 recommendations." 8 That Mr McGrail did not make sufficient 9 progress in the implementation of HMIC 10 report recommendation and he was conscious 11 and concerned about this. And it shows 12 further, sir, that as his retirement loomed he 13 sought Mr Ullger's assistance to rush some 14 implementation measures to disarm the case 15 against him. The same low-hanging, quick 16 implementation gains that he did not bother 17 to implement whilst he was Commissioner of 18 Police. The WhatsApp messages between 19 Mr McGrail and Mr Ullger as to the incident 20 at sea show that he was clear in his mind 21 very early on, within hours of the incident 22 happening, where this collision had occurred. 23 He told Mr Ullger so in a WhatsApp message 24 that we have seen. There was none of the 25 obfuscation that he deployed in this Inquiry</p> <p style="text-align: center;">Page 39</p>
<p>1 on who you speak to, Mr Rocca as well, in 2 order to protect Mr Levy. The expression of 3 hope in the statement I have just read plainly 4 conveys the meaning that Mr McGrail and 5 the RGP did not want to arrest Mr Levy. 6 "Let us hope that it does not become 7 necessary." The reference to "where we 8 have to end up arresting him" plainly means 9 that the RGP perceived, and therefore had no 10 perception to the contrary, that they were free 11 to do so if they decided that it was necessary. 12 Very briefly, sir, on HMIC report. The 13 WhatsApps messages between Mr McGrail 14 and Mr Ullger show the extent to which 15 Mr McGrail was in fact concerned by the 16 criticism levelled at the RGP in the HMIC 17 report and its possible effects on him. This 18 contrasts with the narrative that he has 19 advanced in this Inquiry and this distinction 20 that now arises between concern and 21 disappointment. That Mr McGrail and 22 Mr Ullger contrived an artificial list of issues 23 (Mr McGrail contrived, Mr Ullger went 24 along with it), a contrived and artificial list of 25 issues that they could say to explain why</p> <p style="text-align: center;">Page 38</p>	<p>1 about the incident and the distinction 2 between the chase and the collision and that 3 that distinction was somehow relevant to 4 why he prevaricated about telling the 5 Governor. Nothing prevented Mr McGrail 6 from telling the Governor exactly what he 7 had told Mr Ullger and he could, if he had 8 wanted to, have added a health warning to 9 the Governor, even though he did not bother 10 to add a health warning, a caution warning, 11 to Mr Ullger. This vindicates and confirms, 12 in our respectful submission, Mr Pyle's 13 evidence that felt 14 (11.00) 15 that Mr McGrail was being evasive with him 16 about this. Mr Pyle's narrative is thus fully 17 sustained and Mr McGrail's completely 18 undermined in this respect. Just 20 seconds 19 longer, sir. 20 In respect of the fractious relationship of the 21 Gibraltar Police Federation, the WhatsApps 22 show that, contrary to Mr McGrail's 23 narrative in this Inquiry, the hostile and 24 fractious relationship between the command 25 and the Gibraltar Police Federation</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 leadership was mutual. It was not due solely 2 to the alleged behaviour and attitude of the 3 Gibraltar Police Federation. They show the 4 very hostile, antagonistic and dismissive 5 attitude by Mr McGrail and Mr Ullger to the 6 GPF leadership and the nature and extent of 7 the insulting and disrespectful language in 8 which this was expressed by them. The 9 inquiry will have noticed the frequent 10 references by the leadership to a series of 11 adjectives to describe people who were their 12 work colleagues. Mr McGrail and Mr Ullger 13 themselves engaged in what -- the word 14 "bullying" is one of the most abused in the 15 English language, in my view, but there are 16 many people that would ask themselves 17 whether some of the things that we have read 18 of Mr Ullger and Mr McGrail's scheming 19 and planning in those WhatsApp exchanges 20 may not themselves constitute a bullying and 21 manipulative set of actions and attitudes. 22 The WhatsApp exchanges, therefore, sustain 23 Mr Pyle's evidence that he was receiving 24 constant reports about the hostile and 25 fractious relationship between the RGP</p> <p style="text-align: center;">Page 41</p>	<p>1 may be less familiar with: the importance of 2 disclosure in ensuring the right to a fair trial. 3 This importance cannot be overstated in the 4 context of the evidence this inquiry has 5 heard. Clear recognition of the need for 6 proper disclosure is contained helpfully in 7 the Attorney General's guidelines on 8 disclosure, which the Office of Criminal 9 Prosecution Litigation, the OCPL in 10 Gibraltar, has itself expressly adopted and 11 confirmed so publicly. It begins with this 12 stark warning to the police, and I quote, 13 "Proper disclosure of unused material 14 remains a crucial part of a fair trial and is 15 essential to avoiding miscarriages of justice." 16 It goes on to emphasise that "...disclosure 17 remains one of the most important issues in 18 the criminal justice system and that the need 19 for the disclosure regime to operate 20 effectively, fairly and justly is at the heart of 21 any criminal process." Therefore, confidence 22 in the police, which is essential for any 23 society and its rule of law, is undermined 24 when the RGP fail to live up to its core 25 duties. As anyone who has spent any</p> <p style="text-align: center;">Page 43</p>
<p>1 Senior Command Team and the Gibraltar 2 Police Federation. It is hardly surprising that 3 he was. Plainly there was, and Mr Pyle's 4 concerns would appear to have been entirely 5 justified. Thank you, sir. I am grateful for 6 your undivided attention. 7 THE CHAIRMAN: Yes, well, thank you. 8 Yes. Mr Cooper. 9 MR COOPER: Thank you, sir. I wonder if I 10 could borrow Sir Peter's lectern -- 11 THE CHAIRMAN: Yes, do. 12 MR COOPER: -- for these purposes, unless 13 there is another one. Thank you. I speak for 14 three men of impeccable character, with 15 distinguished careers. Honourable family 16 men who had their homes and phones 17 searched and felt the full force of an RGP 18 that, itself, failed in its fundamental 19 obligations to investigate fairly by the basic 20 preservation of evidence relevant to their 21 cases, and by pursuing lines of inquiry that 22 pointed towards a commercial big beast 23 crushing his fledgling competition. It is in 24 this context that I want to remind you, sir, of 25 something you will know well, but the public</p> <p style="text-align: center;">Page 42</p>	<p>1 significant time working in the criminal law 2 will know, it is disclosure failures that give 3 rise to more miscarriages of justice than 4 anything else -- and there are many examples 5 of convictions being overturned for just that 6 reason. So, the RGP has a special duty to 7 understand and comply with their own 8 policies, their own police orders and, yes, 9 well known statutory obligations. RGP 10 officers will rightly look to leadership from 11 the Commissioner of Police on all matters. 12 His integrity and how he operates in practice 13 day to day will set those standards. His 14 officers, when going about their everyday 15 jobs of preserving and retaining evidence, 16 can expect their commissioner to lead by 17 example. So, I intend briefly to address, 18 firstly, what we have learned about the 19 disclosure failings from the evidence at this 20 resumed hearing, the methodology and the 21 processes, or lack thereof, at the RGP; and 22 secondly, what this malpractice 23 demonstrates, and the impact on the integrity 24 of the prosecution process and in particular 25 on the live criminal investigation of</p> <p style="text-align: center;">Page 44</p>

<p>1 Operation Delhi and the implications of this 2 for the credibility of the RGP officers. Given 3 my time constraints, for the hard facts, I refer 4 you, sir, to my written submissions for the 5 hearing. The annex, titled "The Schedule of 6 RGP deleted, destroyed and missing 7 materials and devices." This is available to 8 the public on the inquiry website. There is 9 also the chronology of events in relation to 10 Mr McGrail's retention and destruction of 11 RGP data, both documentary and electronic 12 materials, which addresses in detail 13 objectively, the mystery surrounding the 14 location of his daybooks and various devices. 15 In June 2024, nearly a year ago, we 16 highlighted the extensive police failures to 17 retain this basic evidence, both for the live 18 criminal prosecution and this inquiry. This 19 process here has dragged on now because of 20 the importance of those failings to the justice 21 of this process. We asked in this document 22 as long ago as June and in the months leading 23 up to that of last year, a set of simple 24 questions of the DPP of the RGP as to what 25 was going on with the criminal investigation</p> <p style="text-align: center;">Page 45</p>	<p>1 data that remains unaccounted for; RGP 2 documentary materials, which he later 3 destroyed; his own daybooks relevant to the 4 live investigation, which were not made 5 available to the Supreme Court, responsible 6 for the liberty of the defendants, nor to this 7 Inquiry. The excuse there is not impressive. 8 It is claimed they were placed in a rucksack 9 at the RGP from where they simply vanished. 10 It is not only Mr McGrail's responsibility - 11 this is an issue here - it is a collective RGP 12 responsibility. It does not help simply to 13 pretend that someone else at the same HQ 14 may have been responsible for its 15 disappearance. Sir, you will recall the 16 evidence over the last two days from both Mr 17 McGrail and Paul Richardson as to the 18 importance of daybooks as a form of police 19 evidence. This is the reason they now offer 20 as a chorus for not wanting to preserve their 21 own, often daily, operational 22 communications by WhatsApp messaging, 23 because everything important is in the 24 daybook, including any relevant messages or 25 perhaps emails. We know also that the</p> <p style="text-align: center;">Page 47</p>
<p>1 into data breaches and related offences. Of 2 course, we know that it is a matter of public 3 record that Mr McGrail was arrested in 4 March 2023, 25 months ago. So, we also 5 know that is still ongoing today. We do not 6 know what progress has been made, who is 7 in charge of it, whether the Commissioner of 8 Police Ullger is fit to investigate Mr 9 McGrail, given their closeness, but it is 10 obvious today how convenient it is to rely 11 upon this shield, the lack of progress of the 12 criminal investigation, when questions could 13 otherwise be put in relation to that 14 fundamental failing. All too convenient. So 15 far as Mr McGrail is concerned, after the 16 inquiry has now been recalled, the facts 17 remain clear as to his wrongdoing, but after 18 affording the RGP another year to explain its 19 egregious breaches, the explanations remain 20 as incoherent and incomplete as before. So, 21 we know categorically that upon Mr 22 McGrail's retirement in June 2020, he took 23 with him, without authorisation, police 24 property relevant to a live Operation Delhi 25 investigation. A hard drive packed with RGP</p> <p style="text-align: center;">Page 46</p>	<p>1 desktop computer went missing. Then there 2 is a laptop whose contents were effectively 3 useless for the purposes of any investigation 4 because Mr McGrail, in breach of the most 5 basic principle of IT security, gave his 6 password to a colleague; that the data was 7 not copied, not preserved, before being 8 wiped and repurposed in relation to the 9 computers. The daybooks, in hiding, 10 contained sensitive information, but were 11 simply not preserved, notwithstanding their 12 obvious importance to the live investigation. 13 So, do the facts here disclose that it is Mr 14 McGrail's self-interests that guided his 15 approach to what he wanted the Criminal 16 Court and the inquiry to see? We know now 17 that Mr McGrail was equally cavalier with 18 other contemporaneous records of the police 19 investigation. His own telephone messaging 20 evidence has been lost as well. We can add 21 that to the long list. Once again, digital 22 evidence was not copied and preserved 23 before being wiped, and yes, the Attorney 24 General's guidelines on disclosure have been 25 updated for the digital age to expressly</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 address them. His personal phone that was 2 primarily used for regular exchanges in 3 relation to the live investigation, well, that 4 has been lost, too. The pattern of illegality 5 gives rise to an overwhelming inference that 6 this is not accidental. The excuses were 7 weak and part of a theme. We heard a lot of 8 officers, officers with years of experience 9 and responsibility for digital data 10 specifically, suddenly professing to be, oh so 11 technologically challenged. The officers of a 12 digital age are charged with harnessing 13 digital evidence, as we all know. They know 14 well the importance of such evidence and 15 their extensive professional expertise and 16 experience of deploying it before the courts. 17 The naivety they suddenly fall back on 18 simply rings hollow. Mr McGrail's evidence 19 was that he "did not destroy any documents 20 other than under the direction and request of 21 the RGP". The deflection excuse (McGrail's 22 witness statement 8, paragraph 12). The 23 email exchanges between Mr McGrail and 24 Inspector Riley relate to the hard drive, not 25 the separately retained hard copy documents.</p> <p style="text-align: center;">Page 49</p>	<p>1 not add up. Secondly, the RGP practice of 2 failing to retain potentially relevant material 3 so that it may be made available for 4 disclosure review, is apparently common to 5 the senior RGP ranks at large. Mr McGrail is 6 not the only officer unable to assist the 7 prosecutor's office with vast swathes of 8 police communications in connection with 9 the investigation. The clear lesson emerging: 10 that the senior ranks of the RGP have a 11 culture of a cavalier approach to the 12 fundamentals of policing. That is preserving, 13 retaining potentially relevant material - the 14 bread and butter of any decent police officer. 15 There appears to be no system to detect 16 against or prevent the Commissioner of 17 Police himself from choosing to destroy 18 evidence during a live criminal investigation 19 that he initiated and then chose to remain so 20 close to. We see that processes to copy data 21 before wiping devices are simply not in 22 place; daybooks are not made available or 23 inquiries asked as to their whereabouts 24 during the statutory disclosure exercise. The 25 mobile phone policy that they introduced to</p> <p style="text-align: center;">Page 51</p>
<p>1 The explanations simply fall away. Some 2 things are just impossible to explain, such as 3 DC Garcia's digital forensic report that on 23 4 May 2020 audio files of Mr McGrail's 5 meeting with the Attorney General in May 6 2020 were deleted from his police property 7 laptop. Yes, after his retirement, he 8 continued to have access. So, what have we 9 learned from the last two days of the 10 evidence? First, there remains no good 11 explanation for the decisions Mr McGrail 12 made to take and disappear police property 13 containing such sensitive data. His actions 14 also somewhat undermine the suggestion that 15 the Operation Delhi data he removed was his 16 urgent response to national security risks that 17 he was taking on so gallantly. That was what 18 he was happy to allege against three men of 19 good character when it suited his own 20 agenda. We recall also the delay between the 21 original complaints in the private space of Mr 22 Gaggero and then the long period of time that 23 elapsed before he even told anyone of that 24 meeting that was so urgent in relation to 25 alleged national security risk. It simply does</p> <p style="text-align: center;">Page 50</p>	<p>1 their own force, which became a police order, 2 was not complied with by admission by the 3 previous Commissioner of Police and the 4 present Commissioner -- and we saw the 5 signature and endorsement of each. Then we 6 have the fact that when this inquiry made a 7 perfectly clear disclosure request of the 8 police in July 22, which specified WhatsApp 9 messages, the extent of the police failure to 10 disclose such messages was not itself 11 disclosed until after the Inquiry had finished. 12 It is the Inquiry's proper demands that forced 13 the police to respond. It was entirely 14 responsive, not a voluntary correction, no 15 duty of candour. Even after the Inquiry was 16 finished, they were happy for that to be the 17 final word on their failings. Instead, it was 18 these failings that required the entire Inquiry 19 to start again almost a year later, 20 demonstrating the extent to which the RGP 21 fails to put the public interest ahead of its 22 self-interest. It is both unseemly and frankly 23 absurd for the same senior officers to have 24 deployed this forum to accuse civilians of 25 their own failings and then to dramatically</p> <p style="text-align: center;">Page 52</p>

<p>1 attempt to ridicule them for not retaining 2 their private messaging communications. 3 These were people not subject to the strict 4 statutory responsibilities that governed the 5 police retention of evidence - the material 6 generated in the course of criminal 7 investigation. It was the most grotesque 8 display of the worst hypocrisy. This is why 9 we provided a schedule of the lost evidence 10 which has been uploaded to the Inquiry 11 website for anyone who chooses to see a 12 more prosaic set of facts with references to 13 the Inquiry's evidence itself. Sometimes 14 incontrovertible facts speak best for 15 themselves. They are harder to explain away. 16 The priority of self-interest was further 17 evidenced by Mr McGrail yesterday. He 18 clearly had difficulty distinguishing between 19 providing to the Inquiry evidence relevant to 20 the Inquiry's terms of reference, as opposed 21 to what he chose to rely upon to bolster his 22 own personal cause. There are a number of 23 references, one being page 7 to 8 of 24 yesterday's transcript. The question put to 25 Mr McGrail, "When you were first giving</p> <p style="text-align: center;">Page 53</p>	<p>1 for disclosure. It is clearly wrong to consider 2 that WhatsApps as a class are in some way 3 inevitably non disclosable. It will depend 4 obviously on the content, the timing, the 5 circumstances. The problem here lies with 6 the authors of these contemporaneous 7 accounts of a live criminal investigation 8 deciding for themselves to place this material 9 outside of the scope of the disclosure 10 process. I quote here from the Independent 11 Office for Police Conduct Reports - 12 THE CHAIRMAN: You are running out of 13 time, Mr Cooper. 14 MR COOPER: I am grateful for that 15 indication. I will be as quick as I can. 16 THE CHAIRMAN: Yes. The Independent 17 Office for Police Conduct report, the 18 Independent Review into the use of 19 WhatsApp within the police service, June 21 20 heading "Disclosure", and it is instructive 21 for these purposes because it identified that 22 as outlined earlier in the review: police have 23 obligations under the CPIA (the English 24 equivalent of the CPEA in Gibraltar) in 25 relation to disclosure, in order that</p> <p style="text-align: center;">Page 55</p>
<p>1 [evidence] in 2022, did you review your 2 messages with Mr Richardson and decide 3 they were irrelevant, or did you not look at 4 the messages at all?" He answered as 5 follows. "As I said, I did not rely on them 6 because they did not feature as my evidence 7 went along. I wish I had, I wish --" "Q. 8 Sorry, my question is not whether you relied 9 on them but did you look at them at all? A. 10 No, no, because if I had looked at them, I 11 would have then realised that I needed to 12 export them, and that's the relevance of them 13 not being exported ... That was a major 14 learning curve for me and believe me, that 15 had I relied on them, they would have been 16 exported and that would have made the 17 situation far worse for me if I had exported 18 them and still not disclosed them." So here 19 we have, by clear admission, that Mr 20 McGrail disclosed or selected only those 21 materials which he deemed helpful for his 22 purposes, for the purposes of his agenda, the 23 agenda that he chose to advance. So, another 24 key theme that we have learned from this 25 hearing: WhatsApps not normally looked at</p> <p style="text-align: center;">Page 54</p>	<p>1 investigators and disclosure officers can 2 fulfill these duties, they need to know the 3 information exists. That is the problem here 4 and it must be appropriately recorded and 5 managed. Police forces require systems and 6 guidance in place to ensure this can be and is 7 done. Where this is not done, reliance is 8 solely placed on the WhatsApp users to bring 9 the chat to the disclosure officer's attention. 10 There are many reasons why this may not be 11 done. For example, the officer goes on leave 12 or he may cease employment. So, it 13 envisages that precisely the scenarios that 14 arise here. So, I commend that analysis from 15 the independent office to the Inquiry for 16 identifying precisely the problem that we 17 have identified as causing rise - giving rise to 18 so many fundamental issues of fairness in 19 terms of fair trial rights and the integrity of a 20 public inquiry. A key failure in Operation 21 Delhi was that the disclosure officers were 22 not being made aware of the operational 23 police messages because personal phones 24 were being used for policing but not being 25 offered up for review. So, the unimpressive</p> <p style="text-align: center;">Page 56</p>

<p>1 excuses we received, the tenor of the 2 evidence of both Assistant Commissioner of 3 Police Yeats and Commissioner of Police 4 Ullger was that the failure to retain 5 WhatsApps is no cause for concern because, 6 first, the use of WhatsApps for police 7 business was insignificant. Second, anything 8 significant would obviously be in the 9 daybook or in an email or on the Cyclops 10 system and inevitably end up being reviewed 11 for disclosure. Well, that simply did not 12 happen. Neither aspect of this claim stands 13 up to the evidence. We can now see 14 WhatsApp being used for communication 15 with potential prosecution witnesses in the 16 Operation Delhi investigation. So, we have 17 WhatsApp between Ian McGrail and Darren 18 Grech, the chief secretary, Ian McGrail and 19 Albert Mena, the Financial Secretary, these 20 first come to mind -- 21 THE CHAIRMAN: -- seriously overrun 22 your time, you really, you really must come 23 to an end. 24 MR COOPER: Can I just - 25 THE CHAIRMAN: You were given every</p> <p style="text-align: center;">Page 57</p>	<p>1 McGrail's daybooks, which save for three 2 pages, there is no record available, there is no 3 way to verify whether or not the other pages 4 contained anything disclosable in respect of 5 Operation Delhi or any other criminal 6 investigation in which Mr McGrail became 7 involved. Obviously, his, McGrail's, 8 daybooks are not listed on the Operation 9 Delhi disclosure schedules as they should 10 have been. 11 THE CHAIRMAN: Well, you have made 12 that point several times already. I have it 13 firmly in mind. You can supplement your 14 oral observations in writing, but I think really 15 you have run out of time. 16 MR COOPER: Thank you. Well, I am 17 content to adopt that approach. I am grateful 18 for the additional time that you have 19 generously afforded me this morning and I 20 apologise. 21 THE CHAIRMAN: Okay. Well, thank you. 22 Yes. 23 MS POWER: Sir, just a short point on behalf 24 of the GPA. 25 THE CHAIRMAN: Yes.</p> <p style="text-align: center;">Page 59</p>
<p>1 opportunity - 2 MR COOPER: Yes. 3 THE CHAIRMAN: -- to trim your 4 observations for time available and I really 5 must call upon you to... You have got pages 6 left. 7 MR COOPER: Well, if I can just wrap up 8 this point perhaps. 9 THE CHAIRMAN: Well, you have got... In 10 a minute. 11 MR COOPER: That is very kind, thank you. 12 But the point I make is that some of the 13 communications between police and 14 witnesses will pass a test for disclosure and 15 so, it is fundamentally important that any 16 such communications are recorded and made 17 available for review by the disclosure officer 18 and the reviewing lawyer. When those 19 communications are by WhatsApp and they 20 are not preserved, this becomes impossible. 21 The integrity of the process is ultimately 22 compromised. So, it is also wrong to say the 23 material recorded in daybooks and emails 24 will inevitably be reviewed. We know here 25 that, well, the most obvious example is Mr</p> <p style="text-align: center;">Page 58</p>	<p>1 MS POWER: I will not trouble you for too 2 long. The RGP Mobile Devices Policy was 3 run past the GPA and approved by it on 30 4 October 2019. The GPA does not monitor, 5 on an ongoing basis, the manner in which 6 approved policies are implemented at 7 operational level. It has become apparent 8 from evidence and submissions before the 9 inquiry, sir, that there are lacunae and 10 inconsistencies within the policy which 11 require to be addressed. This has in fact been 12 acknowledged by the Commissioner of 13 Police in his fifth witness statement and 14 indeed by the Assistant Commissioner of 15 Police in his sixth witness statement. The 16 Commissioner and Assistant Commissioner 17 have also stated in their written and oral 18 evidence to the Inquiry that the policy is 19 already under review. The GPA will consider 20 the outcome of such review and provide such 21 input as it may consider necessary or 22 appropriate. Thank you, sir. 23 THE CHAIRMAN: Well, I will make 24 recommendations accordingly. 25 MS POWER: Yes.</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 THE CHAIRMAN: I am very grateful to 2 you for your observation and thank you for 3 being so short because we have now... 4 MS POWER: Thank you. 5 THE CHAIRMAN: We are now back on 6 track. We have a short break. Okay. Thank 7 you. 8 (11.24) 9 (A short break) 10 (11.36) 11 THE CHAIRMAN: (Recording not switched 12 on) ... but you can be assured that I will be. 13 MR GIBBS: Thank you. I have been 14 allowed half an hour. I will not do that, I am 15 sure. 16 THE CHAIRMAN: Okay. 17 MR GIBBS: May I begin with disclosure? 18 THE CHAIRMAN: Yes. 19 MR GIBBS: When this reconvening was 20 first requested by the government parties, 21 Mr Richardson was added as something of an 22 after-thought to the witnesses who it was 23 requested to be recalled, and there was then 24 some talk about there having been a delay in 25 him disclosing his messages. There was talk</p> <p style="text-align: center;">Page 61</p>	<p>1 half of 2019 and it continued through until 2 the date when Mr McGrail left the RGP -- the 3 inquiry being into the question why had he 4 left the RGP and that is why you chose 9 5 June 2020. There was a delay in those 6 messages from him being distributed to other 7 core participants. But that delay was not his, 8 as is apparent from the Inquiry team, who 9 have been fulsome in acknowledging that 10 that was an oversight on their part. It was not 11 that Mr Richardson had not provided the 12 material; it was that they had not, until Mr 13 Richardson had finished giving evidence, 14 remembered to pass it on. As for his work 15 phone, as you know, he could not do 16 anything about that because, firstly, he no 17 longer worked for the RGP and had been 18 required to hand it back when he left. He 19 retired in November 2021, but because of all 20 of the holiday that he had not taken over the 21 years, not least because he was working so 22 hard on Delhi, his last day was due to be in 23 May, but he was asked to stay on and 24 actually, it was in June of 2021. And so he 25 could not be granted access to that work</p> <p style="text-align: center;">Page 63</p>
<p>1 about him perhaps having failed to disclose 2 some messages. There was talk about 3 possibly there being deletions within his 4 messages. What in my submission has now 5 become plain in the evidence is that he was 6 asked in a letter from the original solicitor to 7 the Inquiry in July 2022 to make a statement 8 answering particular questions and to 9 disclose documents, including messages 10 within his possession or control which were 11 relevant to the scope of the terms then set of 12 the Inquiry, and he did, I submit - you will 13 decide - comprehensively exactly that on 15 14 June 2023 at the same time as providing a 15 statement which answered all of those 16 questions. His disclosure included 17 WhatsApps from all of the relevant persons 18 who were named in the 2022 request letter, 19 identified by the Inquiry solicitors, including 20 Mr McGrail. I put the front page of the index 21 on the screen yesterday and drew your 22 attention to items 6, 23, 24 and 25 -- of 23 which were provided in 2023. The date range 24 he chose, I submit, was a broad one and it 25 was a well-reasoned one. It began in the first</p> <p style="text-align: center;">Page 62</p>	<p>1 phone, even retrospectively, because it had 2 been wiped. That was not his decision. It 3 had been repurposed for another officer, no 4 doubt because the handset was a valuable 5 resource. The one message which has been 6 of particular interest, because he volunteered 7 it in his witness statement in 2023, of interest 8 to the Inquiry, is the one that he sent to Mr 9 McGrail on the doorstep of the Sands on 12 10 May, saying that he was just about to go in 11 and knowing now how Mr Picardo reacted 12 when he was told, because the purpose of 13 passing the message at the last minute to Mr 14 McGrail was so that Mr McGrail could pass 15 the information at the last minute to Mr 16 Picardo -- the reason why that may have been 17 done so shortly before the action is perhaps 18 to some extent illustrated by the way that Mr 19 Picardo behaved once he was told. Mr 20 Richardson's description of that was that it 21 had been done to preserve the integrity of the 22 investigation. You will remember from last 23 year that Mr Rocca, the DPP, had been privy 24 to the plan, but Mr Richardson had asked him 25 not to discuss the contents of the MDM</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 document with anyone beforehand -- Mr 2 Zammitt being the exception, because Mr 3 Rocca had asked him as Crown Counsel, for 4 a second opinion about the evidence. And so 5 that message... Mr Rocca had honoured, it is 6 plain now, that request so that apart from him 7 and the Inquiry team, no one knew what was 8 about to happen. And as for what that 9 message would have said, as you observed 10 yesterday, one can work out the purpose. 11 Once one knows the purpose of the message 12 and the timing of it, one can work out what it 13 would have needed to have said and the 14 precise wording perhaps does not matter. 15 And then, when in 2024 - so after our 16 hearings last year - the date range which Mr 17 Richardson had chosen, ending on 9 June, 18 was expanded at the request of the Inquiry a 19 further three weeks to 30 June, he went back 20 to his telephone because he had still got all 21 the messages, of course, as one would 22 expect, and promptly provided what was 23 asked for. And I think initially those are to 24 be found in the indexed bundle 3, first page 25 at items 7 and 8. I may have said 10 and 11</p> <p style="text-align: center;">Page 65</p>	<p>1 extraction which Mr Richardson had not 2 already disclosed in 2023. And finally, as for 3 what was at one stage referred to as so-called 4 deletions, when Mr Garcia was asked to 5 explain what the references to deleted chats 6 on some of the extraction reports meant, 7 again, no surprise to find that it did not mean 8 that Mr Richardson or those with whom he 9 had been exchanging messages on his 10 personal telephone had deleted any of those 11 messages. In fact, Mr Garcia's evidence, I 12 think, in his first statement confirms that in 13 Mr Richardson's conversations there had 14 been no deletions. And that is why my 15 simple submission on the question of 16 disclosure and Paul Richardson is that all 17 relevant material in his possession or control 18 was timely disclosed and dutifully disclosed. 19 So that is disclosure. I could stop there, but I 20 ought to respond to some of the submissions 21 that have been made and I will take that 22 opportunity, if I may. Firstly, the Delhi three. 23 My learned friend Mr Cooper has made 24 submissions on behalf of the Delhi three, all 25 of whom, as he rightly says, are men</p> <p style="text-align: center;">Page 67</p>
<p>1 yesterday. And after that -- well, firstly, in 2 fact, but arising straight out of that, when 3 those extra three weeks of messages were 4 provided, and you have seen them, you may 5 have determined that none of them is in fact 6 of any significance to the Inquiry, which may 7 retrospectively rather confirm the accuracy of 8 Mr Richardson's judgement in 2023 that the 9 date of 9 June for his messages at least was a 10 sound one. And then in terms of testing his 11 judgement, when Mr Wyan's personal mobile 12 telephone was submitted for forensic 13 examination and the messages to and from 14 Mr Richardson were extracted from it, and 15 you have those as well, it is no surprise to 16 find, no surprise at all, to find that there were 17 no messages on that forensic examination 18 which Mr Richardson had not already 19 disclosed in 2023. And similarly, when Mr 20 McGrail's mobile telephone, his personal 21 mobile telephone, the McVea image of it, 22 was examined and the messages to and from 23 Mr Richardson were extracted from that, 24 again, no surprise to find that there were no 25 messages there from that instruction --</p> <p style="text-align: center;">Page 66</p>	<p>1 presumed never convicted, of good character, 2 whose prosecution was continued by the 3 intervention of the Attorney General - but as 4 you know, men still engaged in litigation 5 because they have an ongoing financial claim 6 - there is nothing wrong with that - seeking to 7 recoup from someone the money that they 8 spent on lawyers. And you will judge - of 9 course, this is their opportunity and Mr 10 Cooper has taken it - whether it would be 11 understandable, given this chance to speak 12 and to receive and contribute towards 13 questioning in this Inquiry, if this reconvened 14 hearing had not been seen as something of an 15 opportunity dealing with disclosure relevant 16 to their financial claim, to undermine, if you 17 found the evidence, did so, the reputation of 18 the RGP for prompt, accurate, complete 19 disclosure. And so, quite rightly, they are 20 able to make those submissions and to 21 suggest to my learned friend Mr Santos 22 questions for inclusion if he wants to. And 23 so it perhaps is straightforward to understand 24 where those submissions come from and 25 what inspires them. As to the disclosure</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 itself and the points made, the evidence on 2 the subject that you have heard and that you 3 heard last year is that during Operation 4 Delhi, and this is a long way of course from 5 the central questions of your Inquiry, 6 disclosure was considered as it went along. 7 Mr Richardson reminded us of it again 8 yesterday - a dedicated co-opted lawyer, four 9 officers on the topic, six months spent 10 thinking about nothing but disclosure and a 11 thoughtful, you may decide, proactive 12 approach to preservation of any significant 13 decision or action captured on WhatsApp, if 14 it were in a WhatsApp, converted into a 15 record in the daybook or to an email or to a 16 document that was then obviously going to 17 be preserved with a view to consideration 18 later. And all of that is what happened. And 19 on screen yesterday you saw both in 20 manuscript, and you have it in typed form, 21 the content of his daybooks. So that is the 22 Delhi three representation. And we all know 23 who Mr Cooper speaks for. For whom the 24 government lawyers speak is perhaps a little 25 more complicated. Sir Peter Caruana this</p> <p style="text-align: center;">Page 69</p>	<p>1 Picardo did or what Mr Levy did. And the 2 first false analogy I submit is the false 3 analogy between investigators' telephones, 4 police officers' telephones, investigating 5 crime, trying to catch criminals, and the 6 telephone of a suspect, a suspect whom they 7 were investigating, against whom they had a 8 warrant designed to obtain, perhaps 9 uppermost amongst other things, a mobile 10 telephone. And the government asked you to 11 reconvene the hearing, and you agreed, to 12 consider the police telephones and the police 13 messages and the way in which they had 14 been dealt with, recognising, of course, that 15 there was plenty of interest in that other 16 telephone in the Inquiry - the telephone that 17 was at the centre of the search warrant, the 18 contents of which would have been at the 19 centre of the interview under caution which it 20 was hoped would take place with Mr Levy. 21 It was messages to Mr Levy, you remember, 22 from last year, that had led the police to 23 regard him as a suspect at the time. And it 24 was the police's explanation of their 25 suspicions arising from those messages that</p> <p style="text-align: center;">Page 71</p>
<p>1 morning reminds us of course that he 2 represents the government of Gibraltar, as do 3 the other lawyers in his team. But it is open 4 to you and anybody else listening to his 5 questions and to many of his submissions to 6 decide for yourself whether the inspiration 7 for the submissions and the questions springs 8 at least partly from people who are not 9 members of the government, but who are 10 members of Hassans. Just as Mr Picardo 11 may have intervened to protect Mr Levy, if 12 that is your conclusion from the police 13 investigation back in 2020, so it, it might be 14 thought - but I will be corrected if I am 15 wrong - that the government legal team over 16 the last two and a bit days now has spent a 17 certain amount of its energy to deflecting or 18 explaining attention to the Inquiry's 19 investigation of the events which centred on 20 Mr Levy and his telephone -- the search 21 warrant which is at the heart of all of this. 22 And it has done so by means I am going to 23 submit to you of two false analogies. The 24 argument being, well, this is no different 25 what the RGP have done from what Mr</p> <p style="text-align: center;">Page 70</p>	<p>1 had led the Director of Public Prosecutions to 2 agree that the telephone needed to be 3 recovered and that Mr Levy needed to be 4 asked questions under caution. And as for 5 the contents of that telephone, for the reasons 6 explored last year, we all know that none of 7 us will ever know what was on it - I mean, 8 unless it were suddenly now offered up for 9 forensic examination and that forensic 10 examination did prove the contents, because 11 the intervention of Mr Picardo, you may 12 think, and some of the other partners of 13 Sands, closing ranks around it with the help, 14 if that is what you find, of their Attorney 15 General, threw a cloak of invisibility over 16 that telephone. That was not the telephone of 17 a police officer, an officer engaged in 18 tracking down suspects in an ongoing serious 19 Inquiry, sending emails and messages to his 20 colleagues discussing how and when they 21 might gather the evidence that would prove 22 either the guilt or the innocence of those 23 whom they suspected. That is a completely 24 different sort of telephone entirely in my 25 submission, and that is really why the</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 analogy is so false, I submit. It is the 2 telephone of a suspect. It is a device which 3 might confirm the case against those who had 4 already been arrested, or contradict the case 5 against those who had already been arrested. 6 It was a device which might confirm the 7 case, the suspicions against its owner, or 8 which might prove the innocence of that 9 person. It was the device almost 10 immediately at the heart of a potential 11 judicial review challenge. It is what the 12 warrant was or became all about. It was the 13 device which might, heaven forbid, unlock 14 the evidence trail even higher, or might prove 15 that everybody was innocent, because, as Sir 16 Peter Caruana reminded us yesterday, people 17 are most candid when they think they are 18 speaking in confidence. And no doubt, the 19 messages which it has not been possible for 20 Mr Picardo and Mr Levy to give you would 21 have been the messages which would have 22 revealed them speaking at their most candid. 23 And so, if I am right about the falsity of this 24 analogy, then getting at the content of those 25 messages is a goal of a wholly different order</p> <p style="text-align: center;">Page 73</p>	<p>1 of them would be, and all of them that we 2 have got, are interesting to a greater or lesser 3 extent, but the messages between suspects... 4 The bottom line of all of this, I submit, is that 5 those still appear not to have been provided. 6 So that is my submission about the first false 7 analogy. About the second false analogy, I 8 say this. The analogy is between... It is 9 about friendship, about the friendship 10 between - not between Mr Richardson and 11 anyone, but between Mr Ullger and Mr 12 McGrail, who plainly were friends at the 13 time and the analogy between that friendship 14 and the friendship between Mr Picardo and 15 Mr Levy. And you may wonder whether the 16 government really still does not understand 17 the difference between Mr Ullger studiously 18 avoiding any interference in the arrest and 19 interview and, in due course, exoneration of 20 Mr McGrail when complaints were raised 21 against him of sexual impropriety or data 22 breach on the one hand; and on the other 23 hand, Mr Picardo saying, of course, when Mr 24 Levy was first suspected of involvement of 25 this serious crime against Gibraltar's national</p> <p style="text-align: center;">Page 75</p>
<p>1 from seeing whether it was at one minute 2 past midday or two minutes past midday that 3 Mr Richardson told Mr McGrail: "We are 4 going in now, sir" or "We are going in in two 5 minutes time", or whatever it was that he 6 said. It is a completely different sort of 7 message that we are looking for. And the 8 recovery of that sort of message and the 9 preservation of that sort of message carries 10 with it a completely different weight of 11 importance and of responsibility, I submit, 12 which is why it is so disappointing that they 13 have disappeared. This three-day hearing 14 was not convened, obviously, to remind us all 15 of where all Mr McGrail's unhappiness 16 sprang from, but that may have been its 17 effect. The more evidence that you have 18 heard, yesterday and the day before, the more 19 that questions have been asked about the 20 preservation of messages between police 21 officers, the more obvious it may have been, 22 I do not know, to you that the missing 23 conversations that really matter are the ones 24 that really mattered last year - not the 25 messages between investigators, although all</p> <p style="text-align: center;">Page 74</p>	<p>1 security, "Given my close friendship, he said 2 with JL I will not comment further." But 3 then within minutes throwing himself into 4 the Hassans' team who were representing the 5 suspect. And I will not repeat all the points 6 that I know were made by myself and others 7 last year about the status of the two people 8 and their close connections and not least 9 through 36 North. But Mr Ullger knew that 10 it would have been completely obviously 11 unethical to interfere with a police 12 investigation to assist in any way his then 13 friend, Mr McGrail. He did not need that 14 conflict of interest to be pointed out to him 15 by anybody else. And you might say, well, it 16 would be obvious to anyone with their 17 compass -- whose moral compass was set to 18 true north. Mr Picardo met the suspect, he 19 messaged the suspect and the suspect's 20 lawyers, and he passed directly to those 21 lawyers information that had been given to 22 him in confidence by the law officers, 23 including what they had told him about the 24 actions and intentions of the police team who 25 were actively investigating the suspect and</p> <p style="text-align: center;">Page 76</p>

<p>1 intending imminently to interview the 2 suspect under caution, and wanting to 3 examine the suspect's mobile telephone, and 4 suggested to the suspect lines of attack which 5 the suspect could use in resisting the 6 warrants, the live warrants that the police had 7 sought and the court had granted. And in 8 fact, even - I was not here but I read the 9 evidence - drew to the suspect's lawyer's 10 attention a provision under which the senior 11 investigating officer in Delhi could have his 12 pension attacked. And he was the Chief 13 Minister. Mr Richardson was asked to come 14 back and answer Sir Peter Caruana's 15 questions. He had three topics and this was 16 one of them. "If there was political 17 interference and you suspected it at the time, 18 why did you not make a note of it in your day 19 book?" - which was, on the face of it, a 20 serious question. But the answer is so 21 obvious, is it not, that Mr Richardson hardly 22 needed to give it for himself; that all of what 23 I have just described was happening behind 24 closed doors. Mr Richardson and the other 25 police officers did not know what was</p> <p style="text-align: center;">Page 77</p>	<p>1 question you and your team might have of 2 him. And I am going to venture this on his 3 behalf: it took a certain sort of officer and a 4 certain sort of courage to follow the evidence 5 in the Delhi case into the corridors of power 6 to the office and to the mobile telephone of 7 the most powerful lawyer in Gibraltar, and to 8 insist that the same laws applied to the 9 powerful as applied to the common citizen. 10 And that, I submit, was again the man you 11 saw yesterday. And now, after nearly four 12 years, - four years on, from his last day at 13 RGP, his retirement can perhaps at last begin. 14 That is certainly what he hopes. Those are 15 my submissions. 16 THE CHAIRMAN. Yes. Thank you very 17 much. Yes, Mr Wagner. 18 MR WAGNER. Thank you, sir. A person 19 should not be judged for the circumstances 20 they find themselves in, but they can be 21 judged for the choices they make when faced 22 with those circumstances. In my closing 23 submissions to this Inquiry in June of last 24 year, I fixed on 12 May 2020, the day the 25 RGP tried to execute the warrant against</p> <p style="text-align: center;">Page 79</p>
<p>1 happening in secret. None of it was minuted, 2 although every one of those persons involved 3 was, it seems to have been, a senior lawyer. 4 The police in effect did not know the half of 5 it. What they knew was what was being - 6 was the part of the iceberg that was above the 7 water in the meetings of the 13th, 15th and 8 20th. I mean, they could all smell, they said 9 in their different ways, that something was 10 not right. Mr DeVincenzi's was the most 11 striking evidence, perhaps the voice of 12 conscience to Mr Llamas, though he might as 13 well have been speaking to the wind. But the 14 police were deliberately kept in the dark, 15 being outplayed. And if they had known 16 what was actually going on, they might have 17 despaired about to whom they could turn, but 18 they would certainly have known to keep a 19 note. Finally, Mr Richardson, just as a 20 witness, which is all he is, this year, as last, 21 he has no case to make. He has no electorate 22 to convince; he is no position to defend. He 23 has delayed the peaceful enjoyment of his 24 well-deserved retirement by another year in 25 order to answer straightforwardly whatever</p> <p style="text-align: center;">Page 78</p>	<p>1 James Levy at Hassans, and the day that the 2 Chief Minister angrily berated Mr McGrail, 3 despite knowing James Levy by that time 4 was a suspect in a serious criminal 5 investigation. And he said there would be 6 consequences. And there were. As Sir Peter 7 Caruana pointed out in his questioning earlier 8 this week, the Chief Minister unconditionally 9 supported Mr Levy. And that was despite 10 knowing he was a suspect in an extremely 11 serious criminal investigation. I have said 12 before that 12 May was the pivotal moment 13 in the circumstances which led Ian McGrail 14 to be forced out of office, and it was on that 15 day that all hell broke loose. And it was from 16 that day that despite having no business 17 under the Constitution, meddling with the 18 police, Mr Picardo admitted all things RGP 19 became his business - we might say, to 20 protect someone else's business. He 21 admitted that he had intervened to protect the 22 jurisdiction, whatever that means, and very 23 high net worth clients whose details were on 24 James Levy's phone. He skied through the 25 constitutional red lines as if he was cutting</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 the tape at a new boutique on Main Street. I 2 said 12 May was pivotal, but I want to fix on 3 a different date this afternoon: 7 April 2020, 4 exactly five years ago this week. That was 5 another pivotal moment because it involved a 6 choice. The Attorney General, Michael 7 Llamas KC met with Ian McGrail and two 8 others and they discussed Operation Delhi. 9 And I am quoting from the Attorney 10 General's own evidence to this Inquiry. He 11 gave Mr McGrail a warning. "Ian, be 12 careful. Take tremendous care with this 13 investigation." He said: "I don't think I was 14 even speaking to him as Attorney General 15 and Commissioner of Police. I wasn't giving 16 him legal advice. It was friendly advice. It 17 was private advice to be careful." As will be 18 well known to those who watch the hearings, 19 the meaning of that meeting is hotly 20 disputed. The Attorney General says it was 21 clear beyond peradventure that Ian McGrail 22 agreed not to proceed with the investigation 23 without first consulting him. The other three 24 people in the meeting, Ian McGrail, the 25 solicitor general, Lloyd DeVincenzi and Paul</p> <p style="text-align: center;">Page 81</p>	<p>1 other person in Gibraltar, was subject to the 2 criminal law. For Michael Llamas and 3 indeed Fabian Picardo, powerful men needed 4 to be protected. For the police, powerful 5 men needed to be treated like everyone else. 6 That day, exactly five years ago, was just as 7 pivotal as 12 May, because on that day, Ian 8 McGrail and Paul Richardson were offered a 9 choice by the Attorney General: Back off or 10 there would be consequences. That meeting 11 is so important because it represented a fork 12 in the road. The police officers could have 13 taken a hint. They could have backed down, 14 as maybe others would have, as maybe 15 happened in the past in Gibraltar and no 16 doubt many other places. That Ian McGrail 17 and Paul Richardson did not see it as a 18 choice, even though they understood the 19 personal risks they were taking, shows what 20 kind of men, what kind of police officers, 21 they were. They decided that even if it was a 22 choice, they decided to proceed and to follow 23 the evidence to pursue an investigation which 24 was incredibly serious, which involved a 25 threat to the security of Gibraltar - as Ian</p> <p style="text-align: center;">Page 83</p>
<p>1 Richardson, remember no such agreement. 2 One mystery which remains is if the Attorney 3 General is telling the truth about his memory, 4 how did he come away with such a different 5 impression of what was discussed than the 6 others? Having reflected on this for a year, I 7 had like to offer a possible answer which is 8 relevant to the resumed hearing. It is because 9 Ian McGrail, Paul Richardson and Lloyd 10 DeVincenzi might as well have been 11 speaking a different language to the Attorney 12 General. Michael Llamas thought that his 13 private advice to be careful was in fact a 14 stark warning and would be understood as 15 such; that Ian McGrail and the RGP were 16 approaching a red line beyond which there 17 was no coming back - the red line which 18 separates James Levy and Hassans and the 19 Chief Minister from practically everyone else 20 in Gibraltar, a line which everyone in 21 Gibraltar should know can never be crossed, 22 beyond which even the police should not fear 23 to tread. By contrast, for Ian McGrail, Paul 24 Richardson and Lloyd DeVincenzi, James 25 Levy was an important man, but like every</p> <p style="text-align: center;">Page 82</p>	<p>1 McGrail put it yesterday, the security of 2 every man, woman and child and even the 3 military base. That choice ultimately led to 4 all hell breaking loose on 12 May, and 5 ultimately to June, just 28 days later, when 6 Ian McGrail submitted his request for early 7 retirement. For Ian McGrail, he stuck his 8 neck out and had his head chopped off, 9 which leads me to today, five years later. 10 This Inquiry is thankfully, hopefully, coming 11 to a conclusion. And now here in this room, 12 we all stand at a fork in the road for the 13 Inquiry, but also for Gibraltar and for the rule 14 of law. The government parties, Fabian 15 Picardo, Michael Llamas, Nick Pyle, have 16 taken one path towards Gibraltar PC - a state 17 run like a private enterprise, where the 18 central principle is making its rulers wealthy, 19 where politicians and lawyers can 20 accumulate vast wealth. As the Chief 21 Minister admitted in evidence, he has 22 become "Wealthier than I ever wanted to be 23 as a result of honestly discharging my 24 profession as a lawyer and the distinction of 25 being Chief Minister, where some men are</p> <p style="text-align: center;">Page 84</p>

<p>1 more equal than others." That is one path. 2 The other is the Gibraltar of Ian McGrail, of 3 Paul Richardson, of Richard Ullger and of 4 Cathal Yeats, who the Inquiry has heard from 5 this week. Imperfect, like we all are, but 6 honest men, and hard working police 7 officers. Nobody watching could have 8 missed where the lines have been drawn and 9 who stands on either side. The government 10 parties have made their choice. They could 11 have chosen to do the right thing, to make 12 concessions, to show insight, to apologise - 13 as any responsible public authority would 14 have done, given the obvious abuse of power 15 which lies at the heart of this Inquiry - if not 16 before the main hearing, then certainly by the 17 end of it - by which time the Attorney 18 General agreed that the meeting of 12 May, 19 when Mr Picardo angrily berated Mr 20 McGrail as he watched on, discomfited, 21 without intervening, should never have 22 happened; where the Attorney General 23 accepted that he failed in his duty to assist 24 Mr Picardo in drawing the red lines in 25 relation to the OP Delhi investigation; when</p> <p style="text-align: center;">Page 85</p>	<p>1 answered all of the issues raised which led to 2 this hearing. One request that I will make 3 during my submissions, particularly to the 4 public watching, and we know that Gibraltar 5 has paid much attention to this hearing -- and 6 thank you again to GBC, as I look at the 7 complex setup of cameras and screens, for 8 providing that opportunity. But I do request 9 the public to try and put themselves for a 10 moment in Mr McGrail's shoes and think 11 how they would have responded to the 12 extraordinary situation he found himself in, 13 and how they might have responded in the 14 past five years, given everything that 15 happened to him since. Nobody's perfect. 16 And though it is easy for us lawyers to stand 17 here and put on an accusatory tone about 18 oversights and implausibilities (that is, of 19 course, our job); it is also sometimes quite 20 artificial. Because the truth, as we all know 21 it, is that no person put under the kind of 22 scrutiny a public Inquiry of this kind leads to 23 will come out of it without having made 24 some mistakes. But as I said at the 25 beginning, we need to focus on what is really</p> <p style="text-align: center;">Page 87</p>
<p>1 the former Solicitor General, Lloyd 2 DeVincenzi, said the Chief Minister should 3 not have been within 100 miles of the issues 4 with Mr McGrail; when the former 5 governor, Mr Pyle, agreed the process which 6 led to Ian McGrail leaving office was a 7 breach of natural justice. In the end, as I said 8 in my closing submissions last, the only 9 witness left defending Fabian Picardo was 10 Fabian Picardo. And yet none of that made it 11 into the Government's closing submissions. 12 You might think none of it ever happened. 13 No concessions; no insight. They chose the 14 other path and they have chosen now to 15 double down. So, you decided this hearing 16 was necessary, which of course is in your 17 discretion and we do not dispute that 18 decision. If this is what is needed to reach 19 the end of this five year nightmare for Mr 20 McGrail, so be it. He has, and he has always 21 been, at the Inquiry's disposal. The 22 disclosure issues: I have never stood here 23 and claimed Ian McGrail is perfect. But I 24 hope that you, sir, and the Gibraltar public 25 will see that Mr McGrail has, in his evidence,</p> <p style="text-align: center;">Page 86</p>	<p>1 important here - the choices people made, not 2 the circumstances they found themselves in. 3 On the disclosure issues, I want to be 4 absolutely clear, on behalf of Mr McGrail, to 5 you, sir, and the Gibraltar public, any 6 allegation, whether direct or made by 7 implication, that Mr McGrail has deliberately 8 withheld evidence from this Inquiry is utterly 9 baseless. Utterly baseless. There is simply 10 nothing to it. It does not fit at all with the 11 evidence before this Inquiry, either from the 12 time of the relevant events or since. The 13 public watching may wonder why it is then 14 that the government parties have so 15 vigorously pursued an attempt to suggest, 16 by implication, and this morning explicitly, 17 that there is some kind of deliberate attempt 18 by Mr McGrail to withhold evidence, and 19 even implying a conspiracy between him and 20 the RGP to withhold evidence. These good 21 men, who have each given most of his life to 22 public service and have worked tirelessly, if 23 not faultlessly, to assist this Inquiry, why 24 have they been subjected to such hostile 25 questioning and to such serious accusations?</p> <p style="text-align: center;">Page 88</p>

<p>1 I would like to offer an explanation. Their 2 accusers are desperate. I do not make this 3 submission lightly. But how else to explain 4 what has happened? It all fits with a grim 5 pattern characterised by vindictiveness and 6 impropriety. And I will highlight two things. 7 First, despite being a public authority, despite 8 representing the Chief Law Officer, the 9 sitting Chief Law Officer, the former 10 Governor and the sitting Chief Minister, 11 despite the overwhelming evidence from 12 their own witnesses that there was improper 13 behaviour and processes that breached 14 natural justice, the Government parties 15 continue to say they have done nothing 16 wrong. They have not admitted a single 17 thing. They have not apologised. Second, 18 that the Chief Minister so enthusiastically 19 attempted to rally hostile police witnesses 20 against Mr McGrail in a scheme which he 21 coordinated through his right-hand man, Mr 22 Crome, and indeed directly personally 23 fielding allegations, as can be seen from 24 emails discussed at the main hearing, and 25 now support supported by the messaging</p> <p style="text-align: center;">Page 89</p>	<p>1 Minister? Aside from the plain and we say 2 improper attempt to skew the entire Inquiry's 3 view of Mr McGrail, there is an evidential 4 significance in understanding Mr Picardo's 5 own motives. These are not the actions of a 6 man who felt he was lied to and took a 7 principled stand against a sitting 8 Commissioner of Police. They are the 9 actions of a man who is desperate not just to 10 avoid accountability, but to bring down his 11 accuser. Mr McGrail spoke about sticking 12 his neck out and I have talked about the fact 13 that it was chopped off. But that was not 14 enough for the Chief Minister. It was also 15 necessary for Mr McGrail's head to be put on 16 a stick for everyone to see. This is what 17 happens when you cross the line. 18 Thankfully, it has not worked, though it cost 19 Mr McGrail and the Gibraltar taxpayer 20 dearly. The shameful secret scheme 21 ultimately failed to bring Ian McGrail down 22 or to influence the Inquiry, which rightly 23 rejected the tainted evidence as irrelevant and 24 not probative. But it did result in a delay of 25 many months as the police investigated the</p> <p style="text-align: center;">Page 91</p>
<p>1 group that the Chief Minister set up with 2 Commissioner Ullger and the Governor in 3 2023, long after the Inquiry had begun its 4 work -- and the RGP and Chief Minister were 5 both - when the RGP and Chief Minister 6 were both core participants - and which, with 7 no apparent sense of irony, the Chief 8 Minister used to insist that Commissioner 9 Ullger and the RGP had no contact with Mr 10 McGrail whilst he himself was stoking the 11 RGP and the Governor against him. Through 12 this scheme, at least 19 officers and former 13 officers from the RGP were offered jobs and 14 in some cases large financial settlements. 15 What was the common link between all of 16 those officers and former officers? The link 17 was they all submitted hostile evidence 18 against Mr McGrail to this Inquiry and to the 19 police. And meanwhile, a newspaper which 20 Mr Picardo owns in an ownership structure 21 which includes Mr Levy and Mr Baglietto 22 and the partners of Hassans, "The New 23 People" has been disseminating the same 24 scurrilous allegations. What does this secret 25 and shameful scheme tell us about the Chief</p> <p style="text-align: center;">Page 90</p>	<p>1 scheme. This attack has been joined with 2 enthusiasm by the Op Delhi three. It is 3 entirely understandable that they have played 4 a part in this Inquiry through their lawyers to 5 defend their reputations, and they have, of 6 course, never been convicted of any crime. 7 But they were prosecuted for serious crimes, 8 which, as Mr McGrail said yesterday, put the 9 whole of Gibraltar, every woman, child and 10 man at risk, including the military base, and 11 which Mr Richardson yesterday described as 12 the hacking of the National Security System 13 of Gibraltar - the prosecution being 14 discontinued not because of lack of evidence 15 or deficiencies in the evidence, as was made 16 clear by the DPP, but because of some other 17 mysterious reason. The three men now have 18 a large costs application against the 19 government, and as Mr Gibbs pointed out 20 earlier, it would not be a surprise if they put 21 submissions which attempts to assist them 22 there and to beat the drum of the conspiracy 23 theories against Mr McGrail. Unfortunately, 24 Mr Cooper's submissions this morning 25 contained a number of unfortunate blunders.</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 For example, alleging that Mr McGrail 2 retained access to his RGP computer after he 3 left, of which there is no evidence. Or that 4 Mr McGrail's personal phone has been lost; 5 it has not, and the RGP has a full copy of it. 6 So what we have now in this hearing is the 7 last attempt, hopefully the last attempt, to 8 discredit Mr McGrail. The original plan was 9 to set fire under Mr McGrail and the Inquiry 10 using the induced witnesses, but the fire 11 never got going. The public who have 12 watched the questioning of the RGP officers 13 and former officers on behalf of the 14 government parties over the last few days 15 may wonder what possible basis the 16 government parties have to imply RGP 17 officers have conveniently failed in their 18 disclosure obligations. What is the 19 conspiracy? What exactly is being alleged? 20 Why would Mr McGrail pour his heart and 21 soul into this Inquiry, which he called for, 22 which he has staked everything on, and make 23 such extensive disclosure, but keep back 24 messages between him and Richard Ullger? 25 Why would he and others withhold messages</p> <p style="text-align: center;">Page 93</p>	<p>1 on the Inquiry mandate. Rather, they appear 2 to be nothing more than a naked attempt to 3 see if they could cause public reputational 4 damage to the RGP and specifically its senior 5 management and more specifically 6 Commissioner of Police Ullger, by putting 7 the RGP, who have not failed in their 8 disclosure obligations, in the same category 9 as the government party witnesses." That is 10 quite a thing for the police to say about the 11 government - not only the government, the 12 Attorney General who is ultimately 13 responsible for criminal prosecutions in 14 Gibraltar. I hope it is not lost to the public 15 that in the past three years the RGP has 16 responded to this Inquiry diligently and has 17 been extremely careful not to sling 18 accusations at the government parties who, 19 after all, the police need to work closely with 20 to protect the people of Gibraltar. No doubt 21 it has been a tightrope for them and their 22 lawyers. But I also hope it is not lost on the 23 public of Gibraltar that the government 24 parties are now very plainly accusing the 25 RGP, including its current and former</p> <p style="text-align: center;">Page 95</p>
<p>1 which you yourself, sir, has said are unlikely 2 to change your core findings? Either they are 3 so important they have to risk perjury for 4 withholding them, or they are not particularly 5 important and they were held back 6 accidentally. It cannot be both. It does not 7 make any sense until you realise that what 8 you are seeing is the smoke without fire - a 9 sliver of the moon without the moon itself; 10 the dying embers of a strategy by the 11 government parties which must have been to 12 admit nothing and throw back whatever 13 accusations could be mustered. For a public 14 authority to take this approach is nothing 15 short of a disgrace. It disgraces them and it 16 disgraces Gibraltar. And to make it worse, 17 that attempt has now extended to the other 18 senior RGP officers. This has so concerned 19 the RGP that they made this extraordinary 20 submission in advance of the hearing. They 21 said "The RGP has concerns that the 22 government parties are not really motivated 23 by concerns about open justice or that they 24 really believe that they said disclosure can in 25 any way impact the Chairman's conclusions</p> <p style="text-align: center;">Page 94</p>	<p>1 officers and its Commissioner, of 2 misconduct, without the evidence to do so. 3 Again, it shows desperation. The only point I 4 would add to what the RGP said in their 5 submissions is that the concerns about his 6 witnesses' disclosure obligations have hardly 7 been mentioned by Sir Peter in his 8 questioning. I pointed out on behalf of Mr 9 McGrail in my submissions prior to this 10 hearing that the application to reconvene by 11 the government parties seemed to be a 12 stalking horse for Hassans, given how many 13 times it mentioned the allegations made 14 against people other than the government 15 parties; of course, that is Mr Levy and Mr 16 Baglietto. At the hearing, Sir Peter has very 17 explicitly appeared to have been defending 18 the honour and reputations of Mr Levy and 19 Mr Baglietto. The public will reach its own 20 judgement of the submissions this morning 21 when he painted the real victims here as 22 Picardo, Levy and Baglietto. This is 23 important because it shows how thin the 24 membrane is between the Government of 25 Gibraltar and Hassans. It might be said, to</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 paraphrase the ending of George Orwell's 2 Animal Farm, that at this hearing, and indeed 3 during this Inquiry, we have looked from 4 Hassans to government and from government 5 to Hassans, but it was impossible to say 6 which was which. I will now touch briefly 7 on the explanations which Mr McGrail has 8 given for not previously having given perfect 9 disclosure. Mr McGrail and his legal team 10 have responded extensively and proactively 11 to disclosure requests from the Inquiry 12 throughout its work. Mr McGrail has done 13 so even when he is been under very 14 significant pressure as a result of events 15 outside of his control, but in the control of 16 others. He has faced the most extraordinary 17 pressure under which most ordinary people 18 would have buckled five times over. This is 19 also in the context of the Inquiry facing its 20 own serious challenges, such as the data 21 breach and the replacement of the original 22 solicitors to the Inquiry. This has not been an 23 ordinary public Inquiry, though it seems to 24 have emerged from its own troubles ready, 25 we hope, to publish a strong report and make</p> <p style="text-align: center;">Page 97</p>	<p>1 this week that in July 2019 there was a data 2 breach incident in the RGP. A social media 3 message from a group which the police 4 thought was private ended up in the public 5 domain. Not as famous as the recent incident 6 involving classified information shared 7 between members of the US Government on 8 a social media platform, but nonetheless 9 serious enough to require a change in policy. 10 That change was communicated in a Force 11 order which said that personal phones should 12 not be used for police business except for 13 administrative purposes. And that was 14 followed by a policy not, as Mr Collins 15 submitted this morning, a policy followed by 16 an order; it was the other way round. That 17 was at the end of October 2019, which said 18 work phones should only be used for police 19 business, but were silent on whether personal 20 phones should be used for police business. 21 Evidently, senior officers continue to use 22 their personal devices for police business and 23 they have given a variety of reasons for this. 24 Commissioner Ullger, Assistant 25 Commissioner Yeats and Mr McGrail all said</p> <p style="text-align: center;">Page 99</p>
<p>1 strong recommendations. Mr McGrail has 2 apologised for not disclosing messages 3 between him and Mr Ullger and between him 4 and Mr Richardson prior to his mobile 5 devices being seized by the RGP on 23rd 6 March 2023, over a year before the main 7 Inquiry hearing, and has made clear that this 8 was inadvertent. He has provided a full 9 explanation to the various questions which 10 the inquiries posed in relation to other 11 disclosure issues. He has now supplemented 12 his written evidence with clear and consistent 13 oral evidence. And as Mr Gibbs said, at least 14 this hearing has given the witnesses an 15 opportunity to express themselves relating to 16 some of the important issues. The other 17 questions over disclosure raised by you, sir, 18 in your ruling: there was some doubt as to 19 why Mr McGrail did not use his work phone 20 as much as his personal phone, though, in 21 fact, the unexpected benefit of that has been 22 that we have ended up having many of the 23 messages that we would not have had if they 24 had been on the work phone - certainly 25 unplanned benefits. The Inquiry has heard</p> <p style="text-align: center;">Page 98</p>	<p>1 that the new police issued Samsung phones 2 were difficult to use compared to the 3 iPhones. It was that user interface which led 4 in November 2020, a few months after Mr 5 McGrail left the RGP, to the other senior 6 officers, replacing the Samsung phones with 7 iPhones. And all of this supports Mr 8 McGrail's explanation, rather prosaic 9 explanation, as to why, despite being given a 10 Samsung work phone at some point in the 11 latter part of 2019, he continued to use his 12 iPhone for most work WhatsApp messages. 13 To put it simply, as a person who describes 14 himself as not technical, he could not get 15 used to the Samsung, and that reflected the 16 experience of the other officers. In your 17 ruling, sir, you said you were reluctant to 18 accept those explanations at face value and 19 others. But having heard those explanations, 20 I submit there should not be any serious 21 doubt that they are true. Another issue is Mr 22 McGrail's explanation as to why he did not 23 provide the messages between him and Mr 24 Ullger and between him and Mr Richardson 25 prior to them being disclosed by the RGP in</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

1 September 2024. And of course that period
 2 is punctuated by him having his phone taken
 3 off him on 23 March and then losing access
 4 to his WhatsApps. He has given a
 5 straightforward explanation which is that it
 6 was an oversight. He simply did not think to
 7 check those messages at the time he was
 8 compiling his evidence. And it has been said
 9 this morning by Mr Cooper that he admitted
 10 that he only provided evidence which he was
 11 relying on, and all I say to that is it is wrong
 12 and it is clearly wrong from all of the
 13 disclosure which has been provided by Mr
 14 McGrail, a huge amount of which he does
 15 not rely on. His practice was when he was
 16 triggered to think about an individual in his
 17 evidence, he exported the WhatsApp chat
 18 and provided it to the Inquiry in, as far as I
 19 recall, an uncensored way, and that involved
 20 many people who his evidence triggered, but
 21 the WhatsApp messages were not the ones he
 22 was relying on; they were all of the
 23 messages so that the Inquiry could make its
 24 own mind up as to relevance or whether they
 25 are good or bad for Mr McGrail, as is proper.

Page 101

1 The reason he did not provide the evidence
 2 between him and Mr Ullger is simply
 3 because he did not think to look at the
 4 messages.
 5 (12.30)
 6 And the fact that he did not think about it can
 7 be seen from the fact he did not mention Mr
 8 Ullger in his four witness statements. It was
 9 put to him a number of times that that was
 10 somehow implausible. He simply did not
 11 consider the messages. And the fact that he
 12 did not export them is important, that can
 13 easily be found on the image that the RGP
 14 has. He did not export them because he did
 15 not think to look at them, and if he had
 16 exported them he would have provided them.
 17 He cannot have deliberately concealed
 18 messages because of how damaging they are
 19 and at the same time not looked them. In
 20 mitigation on this point, Mr McGrail has
 21 provided thousands of pages of evidence to
 22 this Inquiry, including hundreds of pages of
 23 statement and many hundreds, if not
 24 thousands, of WhatsApp messages. He
 25 provided a huge body of WhatsApp messages

Page 102

1 well before any other witness in this Inquiry
 2 did. And it was only through the constant
 3 pressing from his team that those messages
 4 were eventually obtained, or at least it was
 5 coincidental to that. And it was he himself
 6 that suggested the Inquiry obtain evidence
 7 from Commissioner Ullger and Paul
 8 Richardson back in the summer of 2022, and
 9 in the same letter, his lawyers outlined the
 10 importance of WhatsApps. Looking back at
 11 that letter, it is somewhat mortifying to Mr
 12 McGrail, and indeed to his whole team, that
 13 he did not at the same time check his own
 14 messages with Mr Ullger and Mr Richardson.
 15 But it is wrong to suggest he would try to
 16 hide them from the Inquiry at the same time
 17 as he was trying to persuade the Inquiry to
 18 obtain evidence and disclosure from Mr
 19 Aldrin and Mr Richardson. It would have
 20 been the worst attempt at concealment in
 21 history. In that same June 2022 letter, Mr
 22 McGrail's lawyers requested the Inquiry
 23 require that the RGP disclose a copy of all
 24 Mr McGrail's relevant electronic and hard-
 25 copy communications and data during his

Page 103

1 time at the Royal Gibraltar Police. So again,
 2 he was pushing for the RGP to provide the
 3 evidence that it had retained relating to him,
 4 including electronic communications. And
 5 later on, in the spring of 2023, Mr McGrail
 6 requested (and you ordered, sir) that the RGP
 7 provide messages from RGP devices, namely
 8 the SMT WhatsApp group. So again, it was
 9 Mr McGrail who raised the issue of the RGP
 10 devices and the WhatsApps contained on
 11 them with the Inquiry. He was not trying to
 12 hide anything, he was trying to obtain it.
 13 And he, of course, did not know at that time
 14 that the phone was wiped. Another error in
 15 Mr Cooper's submissions this morning was
 16 the suggestion that Mr McGrail knew that his
 17 work phone would be wiped, he simply did
 18 not. And this is all essential context. The
 19 impact, well, the impact that this has had is
 20 that the messages between him and Mr
 21 Ullger were not available for the main
 22 Inquiry hearing, although the bulk of the
 23 messages between him and Mr Richardson
 24 were available at some point during the
 25 hearing, so it is really the Ullger messages

Page 104

<p>1 which is the impact. And that, of course, is a 2 great shame, because if Mr McGrail or 3 anyone had thought to check on those 4 messages or at least try and obtain them, it 5 would have probably avoided the need for 6 this additional hearing, which, as Mr 7 McGrail frankly said in evidence, has been 8 painful to him. The accusation put to him by 9 the government parties that it was somehow 10 disingenuous for Mr McGrail, through his 11 counsel, to criticise other CPs at the main 12 Inquiry hearing for failing to disclose certain 13 messages is misplaced: it was Mr McGrail's 14 view at the time of the hearing that he had 15 faithfully fulfilled his duty in disclosing what 16 was required of him. The oversight was the 17 consequence of participating in a highly 18 complex Inquiry, in which certain documents 19 have seemed more relevant as matters 20 progressed, and the fact that Mr McGrail lost 21 access to those messages over a year before 22 the main Inquiry hearing. And he gave very 23 frank evidence when asked: well, why did 24 you not approach the RGP, that he had just 25 been prosecuted for a sexual offence and</p> <p style="text-align: center;">Page 105</p>	<p>1 Governor, to eventually saying that he did 2 not need to include the chief reason he had 3 apparently lost confidence in Mr McGrail in 4 the letter that he edited that went from the 5 GPA because it was public knowledge 6 already. It was only after Ian McGrail had 7 resigned that the Chief Minister's supposed 8 real reason made it to Mr McGrail in written 9 form. To put it simply, Mr Picardo has form 10 for being economical with the truth. And the 11 fact that there was also no written record of 12 any interactions between Mr Levy and the 13 Chief Minister either in text messages, call 14 records or meeting notes at the relevant time 15 is, to say the least, surprising. And it is not 16 comparable to inadvertent errors in 17 disclosure by current and former police 18 officers for messages between themselves. 19 In any event, Mr McGrail's messages that he 20 had in his possession are now before the 21 Inquiry. We have extensive written records 22 of police interactions. We have the 23 messages, emails, investigation records, day 24 books, records of conversations. We have no 25 written record of any of Mr Picardo or Mr</p> <p style="text-align: center;">Page 107</p>
<p>1 acquitted, and the idea of approaching the 2 RGP, if he had thought about it, to get the 3 image of his phone was not top of his mind. 4 Mr McGrail was certainly entitled to raise the 5 real issues that there were with government 6 parties and Hassans' disclosure, and this 7 relates to Mr Gibbs KC's well-made point 8 about false analogies. It is worth briefly 9 setting out why those allegations are not the 10 same thing. Because in the case of the 11 government parties, there is both smoke and 12 fire. After 12 May 2020, for almost four 13 weeks the Chief Minister very carefully 14 avoided -- in a range of written 15 communications, text messages, letters, 16 reports, minutes -- referring to OP Delhi or 17 James Levy, or the real reason he says now 18 he decided Mr McGrail must leave his post. 19 At the main Inquiry hearing he gave absurd 20 and implausible explanations for why this 21 was so, ranging from typing long text 22 messages with his thumbs was one 23 explanation, to not having time to include a 24 reference to the actual reason in a 2000-word 25 note that he drafted of his meeting with the</p> <p style="text-align: center;">Page 106</p>	<p>1 Levy's interactions. Meanwhile, the Hassans 2 website proudly boasts that Mr Levy has a 3 photographic memory and yet, by our count, 4 during his oral evidence to this Inquiry, he 5 answered "I cannot recall" or "I cannot 6 remember" 35 times. It was right that the 7 gaps in their evidence, which have not been 8 filled, be raised at the hearing. And it is no 9 answer to attempt to deflect attention to 10 others. Third, there has been some mention 11 of the wider context of Mr McGrail's day 12 books, an email him sent to himself on 12 13 May, and the retention and destruction of 14 hard-copy documents by Mr McGrail. 15 Again, all of this is smoke without fire. Mr 16 McGrail left his day books with the RGP 17 when he retired. Three pages are with the 18 Inquiry because they were copied before he 19 left, but he left them in a bag and it is a 20 mystery what happened to them, but it is 21 nothing to do with Mr McGrail. He did 22 retain some paper copies of correspondence 23 and other Op Delhi documents which he had 24 printed out. All of the documents were 25 printed from his emails. All of those same</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 documents, in electronic form, were 2 disclosed to the Inquiry. He then destroyed 3 the hard copies because that is what the 4 police told him to do. All of the documents 5 are before this Inquiry, there is nothing 6 missing at all. There is no conspiracy, there 7 is no fire. Since doubt is being cast on this 8 again, particularly by the Op Delhi 9 defendants, I want to ask those observing to 10 try and put themselves again in Ian McGrail's 11 shoes. He said in evidence yesterday that 12 there was no playbook or training to tell him 13 how to respond to the events that were 14 unfolding around him. Unlike the other 15 senior police officers, he had some insight 16 directly into what the Chief Minister was up 17 to, because he was in the meeting on 12 May, 18 and he saw the police investigation into an 19 important man being manipulated by people 20 in high positions and he saw that he was 21 being muscled out. I ask, simply, to those 22 watching and to those trying to put 23 themselves in the shoes of Ian McGrail at 24 that time: would you have recorded key 25 conversations? Would you have secured key</p> <p style="text-align: center;">Page 109</p>	<p>1 not doing, which is that he thought there was 2 interference in a criminal investigation, and 3 like a good police officer, as soon as he got 4 back from that meeting on 12 May with the 5 Chief Minister he wrote a note, and he sent it 6 to himself by email so that he could prove 7 later that it was a contemporaneous note. 8 The government parties have gone to 9 extraordinary lengths to try and cast doubt on 10 the provenance of that note, because it is the 11 only record of the 12 May meeting. There 12 certainly was not a record taken by the Chief 13 Minister and Attorney General. And it was 14 sent well before the supposed loss of 15 confidence in Mr McGrail, and therefore 16 before Mr Picardo could grow his fig leaf. 17 First, at the main Inquiry hearing Sir Peter 18 proposed that the date was changed because 19 this is somehow technically possible, even 20 for a self-admitted non-technical person like 21 Mr McGrail. This led to a wild goose chase 22 involving a detailed technical report from the 23 RGP, demonstrating that the email was sent 24 exactly when Mr McGrail said it was. But 25 that was not enough. The government parties</p> <p style="text-align: center;">Page 111</p>
<p>1 documents when you left? I would suggest 2 to you that when looking at it from this 3 perspective the choices he made, the things 4 he did, he did absolutely nothing wrong in 5 keeping the records and taking those steps. 6 And thank goodness he did, because the 7 Inquiry now has a more complete record than 8 it would otherwise have had. On the 12 May 9 email -- in fact, I think there were two emails 10 -- the email which Mr McGrail sent to 11 himself, a sign of his quick thinking on 12 12 May to ensure there was a record of what 13 happened. Why does this email keep coming 14 up? Why do the government parties obsess 15 over it so much? It is because it drives a 16 horse and cart through their position and their 17 case. Their case is that there was no 18 interference, there were no records of any 19 interference because there were not text 20 messages saying: my goodness, the 21 government is interfering with our criminal 22 investigation, let us all meet up. They say: 23 well, that means it did not happen. The 24 problem for them is that Mr McGrail did 25 exactly what they accuse the other officers of</p> <p style="text-align: center;">Page 110</p>	<p>1 then sent a lawyer to the RGP to examine the 2 metadata himself, but again to no avail: the 3 metadata matched. More smoke and no fire. 4 And it is still, even now, even despite the 5 technical report, even despite the personal 6 intervention of a lawyer on the team in the 7 RGP offices, Sir Peter's submissions still 8 raised doubts, or attempt to raise doubts, 9 about that email. So, the most that can be 10 said about the disclosure points is that there 11 have been oversights, regrettable oversights, 12 and Mr McGrail has been very clear in 13 apologising for that. But he is also glad to 14 have had the opportunity to have apologised 15 and to have dispelled, we hope, any lingering 16 doubts in your mind, sir. The contents of the 17 messages, nothing in the messages 18 themselves should alter the position as it was 19 at the end of the main hearing. I will deal 20 with the reasons for Mr McGrail leaving the 21 RGP first, as that seems to be the issue which 22 has received the most airtime at this hearing. 23 I cannot do better than referring you, sir, and 24 the public to Mr McGrail's evidence 25 yesterday, which was crystal clear. All of the</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 relevant messages between him and Mr 2 Ullger, him and his deputy and good friend, 3 took place over a few days when he was 4 under the most extreme pressure. He 5 summed up his state of mind as "hoping for 6 the best, but preparing for the worst". It did 7 not take him long to realise that his position 8 was at serious risk after the berating of 12 9 May. On the 13th, he was already talking to 10 the Attorney General about him possibly 11 having to go. The conversation was 12 recorded, and no doubt -- it has not been said 13 to have been created by AI or manipulated in 14 any way -- this is what he said to the 15 Attorney General the day after the berating. 16 He said, "This is now trying to muscle me 17 out of it. I may not even last in my post, but 18 Ian McGrail has integrity. My integrity, my 19 ethics are at this level, and nobody will bring 20 them down, nobody. If I have to go, I will 21 go, but I will leave with my head held up 22 high. Ian McGrail or the team that has been 23 dealing with is not corrupt. I have to tell you 24 because I have to vent my frustration, it's -- 25 it's -- this is an affront. This is an affront to</p> <p style="text-align: center;">Page 113</p>	<p>1 his own fate and even attempting to 2 manipulate the situation to get a better 3 financial settlement, is for the birds. The 4 idea that he was not actually bothered about 5 interference, but rather about losing 6 confidence, is simply unsupported by the 7 evidence. On 22 May, at the very moment he 8 found out about the alleged loss of 9 confidence, Mr McGrail was required to 10 retire by the GPA; it was a legal requirement. 11 And on 29 May, when his lawyers sent the 12 letter to the GPA, that was the position too. 13 At that point he had very few options. And 14 he was told on 22 May by Joey Britto, in a 15 conversation that was not at all denied and 16 was recorded, that if he did not comply with 17 the GPA requirement the Governor would 18 remove him. So, what were his options? He 19 sent the 29 May letter because there was still 20 a chink of hope that the GPA would reverse 21 course. He was hoping for the best, but 22 preparing for the worst. And that hope 23 became slightly more than a chink of light 24 once the GPA withdrew the requirement for 25 him to retire, but not the overall issue. And,</p> <p style="text-align: center;">Page 115</p>
<p>1 the legal process." All of this was nine days 2 before there was even a sniff of loss of 3 confidence, nine days before the GPA letter. 4 And that is an absolutely crucial evidential 5 point. Why would Ian McGrail have been 6 talking about leaving before he had heard 7 anything about the loss of confidence? For 8 the government to say that the police were 9 not actually bothered by interference is 10 beyond absurd. This was about Op Delhi. It 11 was all about Op Delhi and it was always all 12 about OP Delhi. It was about the 13 investigation getting too close to James Levy, 14 to the Chief Minister and to Hassans. And 15 that is what the police thought as well, well 16 before the loss of confidence, which none of 17 them seem to have believed. As Mr 18 Richardson said, despite the government 19 parties' attempt to suggest the officers were 20 unconcerned about what was happening, they 21 were very concerned. And he thought at the 22 time that the real reason for Mr McGrail 23 being removed from post, even after 22 May 24 later, was Op Delhi. Meanwhile, the idea 25 that Mr McGrail was somehow in control of</p> <p style="text-align: center;">Page 114</p>	<p>1 there was still the threat from the Governor 2 to contend with. And that threat was 3 confirmed directly by the Governor on 5 4 June, who said to him: if you do not retire, I 5 am going to force you out or I am going to 6 invoke my Section 13 powers. And that also 7 would have been a legal requirement to 8 resign. So, to say Mr McGrail retained 9 control of the situation in that period and was 10 somehow playing some sort of game or 11 manipulating matters or -- as Sir Peter 12 claimed, and for the first time this morning -- 13 it was actually Mr McGrail's lawyers who 14 caused him to allege interference, even 15 though his lawyers were not instructed at that 16 first recorded moment he made the allegation 17 on 13 May. It is nothing short of rewriting 18 history, and it is victim blaming. Of course 19 he wanted the nightmare to end, and of 20 course he was terrified that his pension was 21 at risk, because he had not become rich by 22 honestly discharging his responsibility as a 23 senior police officer, so he could not afford -- 24 literally could not afford -- to lose his 25 pension, any more than Paul Richardson</p> <p style="text-align: center;">Page 116</p>

29 (Pages 113 to 116)

1 could afford to lose his pension. And of
 2 course he was expecting to be pushed out, as
 3 he had been since 12 May. He did not want
 4 that, but he saw it coming. The other issues:
 5 the incident at sea. The only text of
 6 relevance was to (?) Richard Ullger by Mr
 7 McGrail on 7 April, and it takes things no
 8 further in my submission. It should also be
 9 recalled that Mr Pyle admitted at the end of
 10 his oral evidence that the so-called
 11 miscommunication by Mr McGrail may have
 12 been nothing more than a misunderstanding,
 13 anyway. No motive has ever been revealed
 14 or proposed for why Mr McGrail would so
 15 egregiously mislead anyone about the
 16 incident at sea. The GPF. It cannot be of any
 17 surprise to anyone in Gibraltar that there was
 18 no love lost between the senior RGP officers
 19 and the leadership of the Gibraltar Police
 20 Federation. And it is clutching at the
 21 smallest of straws for the government parties
 22 to suggest, as they did through questioning
 23 and have done this morning, that the
 24 messages (which Mr Pyle never saw)
 25 somehow justify him using rumours of

Page 117

1 his duties and he dared to stand up for the
 2 rule of law. And here he is, five years later,
 3 almost to the day, having been put through
 4 the most appalling treatment: inducements,
 5 arrests, prosecutions, public defamation.
 6 And he has to answer questions again to fight
 7 for his reputation, knowing that he faces a
 8 constant risk of retribution, which in my
 9 submission he has dealt with calmly and
 10 admirably. Finally, the friendship between
 11 Mr Ullger and Mr McGrail. Sir Peter
 12 attempted to draw an analogy between that
 13 friendship and I, in fact, was going to make
 14 exactly the same point as Mr Gibbs did,
 15 which is: if that analogy is being made by the
 16 government parties, it must show that they do
 17 not understand, still do not understand, why
 18 somebody's friendship, the friendship
 19 between the Chief Minister and a criminal
 20 suspect, must be dealt with carefully. And
 21 that brings me back to where I started: the
 22 fork in the road, circumstances and choices.
 23 I am not sure whether when you took this on,
 24 sir, you knew what you were letting yourself
 25 in for. I am sure you did not expect the

Page 119

1 bullying to justify dismissing the
 2 Commissioner of Police without even
 3 checking on them. The HMIC report. Ian
 4 McGrail was worried about the report and
 5 wanted to fix the issues identified as soon as
 6 he could, as he was being asked to by Dr
 7 Britto. That is also evidence before the
 8 Inquiry. And the so called quick fixes, this
 9 was all dealt with at the Inquiry hearing: the
 10 quick fixes had a huge cost, and
 11 Commissioner Ullger found that when he did
 12 some of those fixes he had to take police off
 13 the front line in order to do so. It was not
 14 straightforward and it was certainly not
 15 something that Mr McGrail wanted to do. It
 16 was a choice, and it was a difficult choice,
 17 and certainly not one which was irrational or
 18 wrong. It was a prioritisation. The meetings
 19 of 13, 15 and 20 May. No phrase, perhaps,
 20 sums up the desperation of the government
 21 parties more than: all goodish means nothing
 22 baddish. It would be amusing if it was not so
 23 serious. Here is Ian McGrail, who gave 36
 24 years of his life to the police. He was
 25 muscled out of his job because he performed

Page 118

1 Inquiry data to be hacked, STI dismissed, to
 2 be delayed because of the witness-
 3 inducement allegations. I am not sure
 4 whether anybody knew how complex the
 5 underlying facts were, except the chief
 6 witnesses. This is not just a case about the
 7 dismissal of a police commissioner in an
 8 unfair manner. That would itself be serious,
 9 as it was in the case of Dame Cressida Dick,
 10 where an Inquiry found she had been subject
 11 to a grossly unfair process. But this is not
 12 that. It is more complex and, if I may say so,
 13 more serious, because it raises issues that are
 14 not just about the unfair curtailment of one
 15 man's career, or even just about the improper
 16 actions of senior public servants and
 17 politicians. It is about something more
 18 fundamental. It is about the two alternative
 19 paths for Gibraltar. One which leads to
 20 Gibraltar plc, where -- again to misquote
 21 George Orwell -- some men are more equal
 22 than others, and power triumphs over
 23 principle. And the other, which leads
 24 towards the rule of law. It is a grand-
 25 sounding concept, but all it really means is

Page 120

<p>1 that everybody is subject to the same laws 2 and powerful men can be brought to account 3 just like any others. And of course, this is 4 not unique to Gibraltar: it is a choice which is 5 being faced in many other parts of the world. 6 Whether or not this is what you envisaged, 7 sir, your findings and recommendations will 8 have a profound impact on which path the 9 people of this jurisdiction choose to take. 10 The reality is that in the five years since Ian 11 McGrail was ousted nothing seems to have 12 changed, and if anything it has got worse. 13 The pattern has continued: the witness 14 inducement, prosecutions which go too close 15 to powerful figures being dropped without 16 explanation, and I am not just referring to Op 17 Delhi. And it is quite extraordinary chutzpah 18 for Sir Peter to submit this morning that Op 19 Delhi proceeded without incident or 20 interference after Mr McGrail left, when, as 21 everybody knows, the prosecution was 22 discontinued by his own client, the Attorney 23 General. With that in mind, I conclude with 24 two requests. First, that the Inquiry conclude 25 its work as soon as possible. I am sure we</p> <p style="text-align: center;">Page 121</p>	<p>1 there is no evidence: namely, that there is 2 evidence that Mr Picardo has not disclosed 3 WhatsApps. Actually, the evidence is to the 4 contrary: Mr Picardo, at the request of the 5 Inquiry, has specifically filed witness 6 statements to say that he has not withheld 7 any relevant witness statements. And on that 8 basis alone, unless my learned friend meant 9 to say that the Chief Minister was lying on 10 oath in that respect, then his submission to 11 the contrary effect is unfortunately 12 unsupported by the evidence. 13 THE CHAIRMAN: Well, you can reflect on 14 that over the luncheon adjournment. That is 15 plainly a convenient time to break: we will 16 start again at two o'clock, when the floor is 17 yours. 18 (12.56) 19 (The luncheon adjournment) 20 (14.00) 21 THE CHAIRMAN: Yes, Mr Cruz? 22 MR CRUZ: Good afternoon, Mr Chairman. 23 It has, as always, been good to see everyone 24 again, particularly you, sir, despite the 25 circumstances. Now, last time I opened the</p> <p style="text-align: center;">Page 123</p>
<p>1 are all on the same page on that. We see no 2 reason why the warning-letter process should 3 not start shortly after this hearing. My 4 second final request is that your report, both 5 in factual conclusions and recommendations, 6 rises to the size of the challenge this Inquiry 7 and Gibraltar now faces. Ian McGrail called 8 for this Inquiry. He has put his faith in the 9 process. He has poured his heart and soul 10 into it. He hopes and trusts that in doing so 11 he has made the right choice. 12 THE CHAIRMAN: Yes, thank you very 13 much indeed. 14 SIR PETER CARUANA: I was very 15 reluctant to interrupt my learned friend Mr 16 Gibbs, I wonder if your Lordship would 17 leave (?) 20 seconds to make a point of 18 clarification about one of the things that he 19 said? 20 THE CHAIRMAN : Well, yes. Your last 20 21 seconds was rather longer than that, but -- 22 SIR PETER CARUANA: Alright. Well, I 23 will try to keep to 20 seconds here. I think 24 Mr Gibbs' submissions about the Chief 25 Minister were premised on that for which</p> <p style="text-align: center;">Page 122</p>	<p>1 batting. Hopefully I am not going to be the 2 nightwatchman and I might finish the game 3 today, but the fact that the RGP go last 4 signifies possibly a little harder work for me; 5 I hope not. 6 Mr Chairman, these closing remarks will, I 7 hope, be the last contribution of the RGP on 8 its feet at least, although there may be further 9 submissions, some action points that have 10 arisen, and we inevitably look forward to 11 receiving the Maxwellisation letters so that 12 this report comes to its end soon, which we 13 certainly hope will be published without any 14 delay. 15 It is evident that this hearing, we say, despite 16 our position of neutrality, was necessary, 17 primarily to deprive any party of any 18 suggestion that when the report is published 19 it could be questioned, deprived of any 20 suggestion that some parties have not had 21 their day in court, that they have not had a 22 chance to test the evidence presented to this 23 inquiry, whether relevant or irrelevant, 24 whether sent timely or not, spontaneous or 25 not spontaneous. Of course, it does not allow</p> <p style="text-align: center;">Page 124</p>

31 (Pages 121 to 124)

<p>1 the parties to comment or test that evidence 2 that is missing, whether inadvertently or 3 otherwise, from other parties, but it is 4 interesting to note that even in the second 5 round we do not have sight of that evidence. 6 However, there can be no doubt, the RGP 7 say, that you have had, from the RGP, we say 8 comprehensive disclosure, both before the 9 main inquiry or in September and December 10 2024 specifically in relation to this later 11 disclosure we say mostly irrelevant, 12 disclosure, importantly, not previously in the 13 RGP's possession and control. 14 Now, Mr Chairman, that is not in any way to 15 diminish the recognition by all RGP 16 witnesses -- Mr Yeats and Mr Ullgas said it 17 on the stand -- that relevant documents were 18 requested in 2022 including electronic data 19 and that included any relevant WhatsApps. 20 My learned friend Sir Peter mischaracterised 21 our position on that. It was about focus; it 22 was not about a suggestion that we did not 23 recognise we had a duty to disclose. The 24 RGP's references in my questions or 25 submissions that drew their minds to a date</p> <p style="text-align: center;">Page 125</p>	<p>1 core findings. The RGP clearly could not 2 have disclosed that that they simply did not 3 possess or control. That is fact. 4 Mr Chairman, the RGP knows, and has every 5 confidence that you understand that 6 disclosure does not happen in a vacuum. 7 Context is important, as explained by the 8 RGP statements. Nor is it static. It evolves 9 and has evolved. At least at every turn, the 10 RGP has complied and gone to great lengths, 11 we suggest, so much more than many others, 12 to deliver for you, for this inquiry and for the 13 public, in the face of what we describe are 14 self-serving and somewhat distracting 15 suggestions from others. But yet, Mr 16 Chairman, the RGP have, and we accept, 17 sometimes in relation to the specific request, 18 left no stone unturned, at every stage to 19 furnish your team and through it all core 20 participants and the public with proper, 21 comprehensive disclosure notwithstanding 22 the many challenges that it has faced. It is 23 worth mentioning a few. Because it came 24 into the game -- not the game, but it came 25 into this inquiry -- as a late entry in terms of</p> <p style="text-align: center;">Page 127</p>
<p>1 range and in particular a set of documents in 2 June 2024 should not be perceived as a 3 suggestion that they had relevant WhatsApps 4 in July 2022 and that somehow they were 5 prevented, or preventing them being 6 disclosed. In respect of its later disclosure, 7 the RGP accepts totally that it was a response 8 to the email on 27 June by STI which in turn 9 was a response to the email from the 10 government parties of 24 June. 11 The RGP, as highlighted by their 18 March 12 submissions, and in their voluminous 13 evidence filed in September and December 14 2024 and recorded in the very, very, very 15 many witness statements of the RGP of 16 Spring 2024, in other words even during the 17 inquiry, the third and I believe the fourth -- 18 certainly the third of Mr Yeats, right up until 19 March 2025, have given everything they 20 have got when they have obtained it, much 21 analysed uniquely forensically, a lot if not 22 more, if not the most, which could possibly 23 have been done by the RGP and we suggest 24 probably a lot in recent disclosure that is not 25 in essence a significant influence on your</p> <p style="text-align: center;">Page 126</p>	<p>1 core participant, it lacked the knowledge or 2 understanding of the case theories, or the 3 reasons for the issues being listed in the 4 preliminary list of issues and the effect on the 5 test of relevance. It had challenging 6 resources with the government IT department 7 that caused inevitable delays. It had a data 8 breach from the former STI and a change in 9 the STI on 31 January 2023, and that resulted 10 in delay both in its capacity to seek 11 clarification and/or file its disclosure. 12 It faced unfounded accusations by junior 13 police officers at the time and in the context 14 of the 19 whistleblower statements that the 15 RGP's own disclosure process could have 16 been compromised. These needed 17 independent investigation by SIO McVea, 18 who found no wrongdoing but this caused 19 delay, ongoing additional challenge on RGP 20 resources in the carrying out of its policing 21 obligations, including investigations of those 22 19 whistleblower statements and criminal 23 investigations that followed in relation to all 24 parties. 25 Following the change of STI in January 2023</p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)

<p>1 there was a change of policy. A procedure 2 that was adopted that was more 3 interventionist, warmly welcomed by the 4 RGP. There was a substantial reduction in 5 RGP human resources at the material time. 6 All of this -- it is not excuses; it is a reality -- 7 has made the RGP's life complicated. 8 Mr Chairman, your ruling on 10 February -- 9 you reconvened this inquiry and you said it 10 was to allow Mr McGrail, Mr Ullger, Mr 11 Richardson and Mr Yeats the opportunity to 12 give explanations for the alleged delays, 13 failures and deletions in public and for the 14 explanation to be challenged by counsel to 15 the inquiry and probably other core 16 participants, and that is what has happened. 17 Equally, Mr Chairman, you found at 18 paragraph 67 of your ruling that these were 19 just allegations. You stressed that you had 20 not made findings. Mr Chairman, you 21 received several RGP statements on 11 22 March and since we are talking about ... this 23 is Commissioner Yeats's sixth witness 24 statement -- I think his fifth, his sixth -- 25 Ullger's fifth witness statement, the sixth</p> <p style="text-align: center;">Page 129</p>	<p>1 The government parties have moved 2 worryingly from informed and still incorrect 3 and certainly in their conclusions. Let us not 4 mix our words. The Government of 5 Gibraltar's March submissions, filed and 6 shared with the core participants on 8 March, 7 and let us not forget the Government of 8 Gibraltar's 25 November submissions, which 9 were actually shared by STI on 24 March -- 10 the ones I will refer to as the government's 11 secret submissions -- are unnecessarily 12 provocative. The government parties are 13 doubling down, this time openly questioning 14 their own police force and the integrity of its 15 current leadership who have given disclosure 16 and sworn statements. 17 Let us start by focusing on the government's 18 submissions -- both submissions -- the least 19 contentious ones, firstly, among those least 20 contentious that it has not given 21 comprehensive and timely disclosure. 22 Secondly, the RGP may have improperly 23 deleted or lost WhatsApp as opposed to 24 properly following the RGP's 2019 mobile 25 device policy approved by the GPA, as my</p> <p style="text-align: center;">Page 131</p>
<p>1 witness statement, SI Wyan's fourth witness 2 statement, DC Garcia, the gentleman from 3 the digital forensic unit's first and second 4 witness statements. These and previous 5 witness statements explain -- I will risk it -- 6 in granular detail the reasons why each of 7 these possible suggestions by the government 8 parties about alleged delay or alleged non- 9 disclosure do not, on balance, support the 10 harsh assessment that they invite you to 11 make, not if considered in the proper context. 12 The RGP simply has not failed. Perspective 13 is required, Mr Chairman. The accusations 14 the RGP fear are better described as largely 15 diversionary tactics from the core issues and 16 perhaps nothing more, but of course that is 17 for you, Mr Chairman. 18 I had for the RGP previously described the 19 government parties' submissions as 20 uninformed and incorrect. Perhaps we, the 21 RGP, rather optimistically hoped that they 22 could be forgiven. Ignorance was bliss. But 23 after the RGP's statement in March, there is 24 little room to give them the benefit of the 25 doubt.</p> <p style="text-align: center;">Page 130</p>	<p>1 learned friend mentioned earlier on. Thirdly, 2 that the RGP have double standards. I will 3 then address what we consider to be quite 4 extraordinary suggestions made by the 5 government parties in both their March 6 submissions and the secret submissions and 7 repeated today, which in effect are ones of 8 collusion. The words of the government 9 parties at paragraph 6.1 of their secret 10 submissions are: "the implausible 11 coincidence that neither the RGP nor Mr 12 McGrail chose to disclose them." The 13 suggestion if it is not plausible is that there 14 must be something more. At paragraph 34 of 15 their March submissions, under the heading, 16 "Coincidence of non-disclosure and reasons", 17 a clear suggestion once again of 18 implausibility. Today we have a similar 19 slightly softer remark on implausibility of 20 coincidence. These, Mr Chairman, are 21 tantamount to a very strong suggestion from 22 government parties that there exists some 23 form of collusion or conspiracy between the 24 current RGP leadership and the former RGP 25 officers to suppress information. The</p> <p style="text-align: center;">Page 132</p>

<p>1 suggestions at paragraphs 6, 8, 12, 36 and 37 2 of the March submissions expressly or by 3 inference suggest that senior officers have 4 knowingly not disclosed relevant information 5 and that negative inferences should be drawn 6 about their integrity. It is deeply disturbing 7 and demonstrates that the government 8 parties' only method of explanation or 9 questioning is to attack the RGP. 10 Then there is the intentional and continuous 11 use of language in their submissions, such as 12 paragraph 8: "Its most senior officers 13 succeeded in deleting or losing access". That 14 is an implication that its intention was to 15 delete or lose. At paragraph 8.2(b) or 8.2(c), 16 "According to", again, a suggestion that is 17 not accurate, and at 12: "The RGP claimed 18 to have lost". Again, a suggestion of possible 19 deceit. 20 Mr Chairman, these allegations, either 21 individually or collectively, are basically 22 suggestions by the most senior parts of the 23 establishment that their Commissioner of 24 Police, their Assistant Commissioner of 25 Police and their superintendent officers may</p> <p style="text-align: center;">Page 133</p>	<p>1 these suggestions are not sustainable in the 2 face of the evidence. They are unsustainable 3 and possibly just red herrings made by those 4 who are quite arguably simply trying to 5 distract your attention but perhaps more 6 importantly the public's attention from the 7 truth. The RGP believe that the truth will be 8 evident in your forthcoming report. Now, 9 that is not to say, and I make this point, that 10 the RGP could not have done things better on 11 disclosure. They will accept criticism, but 12 that is a far cry from what is being implied 13 here. 14 Mr Chairman, to give these submissions 15 some structure, I will firstly deal with the 16 general accusation, that the RGP did not give 17 comprehensive disclosure, then the question 18 of disclosure of work phones and personal 19 phones, and in that the SMP chat; thirdly the 20 suggestion of improper deletions to the 21 extent that is necessary any more; fourthly 22 double standards and finally the suggestion 23 either expressly or implied that there has 24 been some form of conspiracy or implicit in 25 that some incorrect evidence being given.</p> <p style="text-align: center;">Page 135</p>
<p>1 have suppressed evidence and given to this 2 inquiry on oath incorrect information. 3 They border, let us be frank, at suggestions of 4 unlawful behaviour, of suggestions that the 5 RGP or certain officers may have breached 6 section 27 of the inquiry's Act, which makes 7 suppression of evidence or preventing 8 evidence reaching the inquiry an offence. Mr 9 Chairman, I am instructed to make it clear 10 that if that is really the complaint from the 11 government parties, and that was what your 12 conclusion was, then the RGP and its senior 13 officers would understand and indeed 14 welcome that they and all core participants 15 should put all of their information and 16 devices to forensic analysis. Moreover, any 17 party that you deem to have failed should, 18 without good reason, or to use the words of 19 the statute, in essence, reasonable excuse, 20 face the full force of the law. After all, it has 21 been the RGP's position that no one should 22 be above the law. The rule of law must 23 survive this sorry episode in Gibraltar's 24 history. 25 The RGP and its officers are confident that</p> <p style="text-align: center;">Page 134</p>	<p>1 But just before I do, let me make some 2 general observations. Firstly, as you heard in 3 evidence, powerfully, we suggest, and 4 clearly, from both Assistant Commissioner 5 Yeats and Ullger, the RGP does not conduct 6 its business on WhatsApp. Under the Police 7 Act, that is not what it does. Investigations 8 are not conducted by WhatsApp. Indeed, it is 9 not just a question of the RGP. By analogy, 10 how many commercial businesses or banks 11 or accountancy firms or law firms or public 12 institutions do that? Does the Gibraltar 13 Health Authority, the GHA? Does the 14 Financial Service Commission? Does the 15 Gibraltar Regulatory Authority? Does the 16 Borders and Coastline Agency? Indeed, does 17 this inquiry? It is an unsustainable 18 proposition, at least implied by the 19 government parties when they say, as an 20 example, "(inaudible) and their WhatsApps 21 in relation to, say, Operation Delhi", are 22 implausible -- their obsession with the canine 23 and the dog that barked and did not bark. 24 The RGP conducts its policing obligations by 25 emails, by memos, by formal advice, formal</p> <p style="text-align: center;">Page 136</p>

<p>1 charging reports, NDMs, meetings face to 2 face between officers who live next to each 3 other on the corridor. The Operation Delhi 4 was no exception. 5 Like most public bodies, and as I have said, 6 law firms, banks, all the rest, WhatsApps 7 provide a useful tool for arranging meetings 8 or coordination of actions or simplistic 9 commentary and mainly, as we heard from 10 Mr Yeats and I think Mr Ullger repeated a 11 similar one, about 90 per cent of the 12 exchanges were after working hours. 13 Secondly, the government parties cannot 14 surely equate, as they tried to in paragraphs 15 8, 9 and 10 of their March submissions 16 WhatsApp exchanges or the phones that 17 contained them between former Delhi 18 defendants and Mr Levy. That was evident 19 in a serious criminal investigation with 20 WhatsApp exchanges between long-term 21 work colleagues, that largely reflect empathy 22 for the plight of one of their fellow officers, 23 particularly the unexplained, uninvestigated 24 dispatch of their Commissioner of Police by 25 the Chief Minister and the stand-in Governor</p> <p style="text-align: center;">Page 137</p>	<p>1 was not the case of one person simply 2 looking through his phone or his laptop. 3 Thirdly, and as repeated very often, the RGP 4 had and has very important ongoing policing 5 obligations which became much more 6 complicated by the numerous investigations 7 that were in essence solicited or created by 8 the whistleblower statements and the job 9 offer statements. These are not excuses but 10 they are realities. 11 So, after that preliminary hearing, the second 12 one, I met with Commissioner Ullger and 13 Yeats with the former solicitors to the inquiry 14 and the main purpose of that meeting was to 15 understand and to get some guidance on the 16 disclosure. We had not seen or we did not 17 understand specifically the issues. Following 18 that meeting they wrote and told us that 19 documents would be relevant if they touched 20 on Mr McGrail's personal conduct in relation 21 to the discharge of his duties as RGP 22 Commissioner either directly or from a 23 supervisory perspective, and more so in 24 relation to the issues set out in the 25 provisional list of issues.</p> <p style="text-align: center;">Page 139</p>
<p>1 with the assistance of an ineffective GPA. 2 Importantly, and this has been the main point 3 of the RGP, without any process or 4 justification. With all due respect, it is like 5 comparing apples and oranges or apples with 6 London buses. It is incomparable. It is 7 weird, but there you are. 8 So, firstly, the issue of comprehensive 9 disclosure. For the reasons explained by 10 Commissioner Ullger, and Assistant 11 Commissioner Yeats on the stand, and in the 12 RGP statements, the RGP does not accept 13 that on any proper and balanced analysis it 14 has failed in its disclosure obligations, nor 15 the timeliness of that disclosure. Thirdly, it is 16 worth noting, as I have said before -- I am 17 going through slightly more detail -- that it 18 was not a core participant until 20 October 19 when your ruling came through after the 20 September second preliminary hearing. 21 Secondly, the RGP as a core participant had 22 the most significant and onerous obligations: 23 over a million documents before the main 24 inquiry. There was a team of four. As made 25 clear by Assistant Commissioner Yeats, this</p> <p style="text-align: center;">Page 138</p>	<p>1 Mr Chairman, you will recall that we made 2 an application to remove some issues 3 because we did not understand the relevance 4 at all of those, and actually ironically they 5 turned out to be relevant but for entirely 6 different reasons which we made 7 submissions on before towards the 8 disposition of an individual to certain 9 evidence or information from some people. 10 But we have had no clarity as to what 11 people's position was. We asked, as a result 12 of an invitation to ask for further assistance, 13 we asked for further assistance on 11 14 November. We made the point that from an 15 RGP's perspective it was very difficult to be 16 the adjudicator of what another may 17 consider, and, to quote the words from the 18 protocol, "would, if aware of their existence, 19 wish to be provided with". The RGP's 20 evidence and those of its senior officers has 21 always been and remains that they did not 22 properly understand why Mr McGrail 23 departed as he did or what the reasons were. 24 You will recall Mr Ullger's evidence on the 25 stand just two days ago that he supported Mr</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 McGrail as others did totally because he had 2 no idea of why he was being pushed out. He 3 had only Mr McGrail's explanation. There 4 were no explanations given at the time, none, 5 not even two weeks later when he met with 6 the Chief Minister. Ergo, it was difficult for 7 him and all RGP individuals, who we know 8 felt lonely and vulnerable, if not impossible 9 for them to assess the relevance of many 10 matters that predated certainly the tenure of 11 Mr McGrail but in any event. 12 Now, at that time we explained our 13 methodology. We made it clear to the 14 solicitors that we would carry out a 15 reasonable search which we thought was 16 comprehensive and thorough. We did not 17 make a distinction, and as explained by Mr 18 Yeats on the stand, it involved a disclosure 19 process which was subject to a two-tier 20 review. The first tier was RGP tier so they 21 reviewed documents and then it was a 22 combined, by senior RGP personal and the 23 legal team led by me and the methodology 24 continued until Spring of 2023 when counsel 25 to the inquiry and solicitors to the inquiry</p> <p style="text-align: center;">Page 141</p>	<p>1 core participant. 2 (14.20) 3 4 Now, the June 2024 (what I have called) the 5 government parties' disclosure request, 6 channelled through the SDI, is an example of 7 the evolution of an event that brought about 8 that request. After that start of the Inquiry 9 hearing, as matters of evidence arose, we 10 were on several occasions invited to give 11 explanations or to produce more information, 12 and that is reflected in Mr Yeats's third and 13 fourth witness statements, issues about the 14 laptop and various other matters. 15 So the RGP has given full and 16 comprehensive disclosure of what is 17 understood to be relevant at all material times 18 when it had it. But clearly the RGP's 19 disclosure, as I explained further, is 20 a reaction to events as they unfold. 21 We went further in September and 22 December. Because there were questions of 23 disclosure we went beyond those things that 24 we considered relevant to anything connected 25 with, and I made it clear in letters to STI in</p> <p style="text-align: center;">Page 143</p>
<p>1 decided on an alternative more 2 interventionist approach, which we 3 immediately agreed to and engaged with. Mr 4 Yeats explained and it is evident from the 5 statements that at all material times, 6 proactively and in close and careful contact 7 with former STI and CTI we went about our 8 disclosure process as well as we could, given 9 the information that we had at our disposal at 10 that time. That is not to criticise in any way, 11 shape or form the former STI, the later STI, 12 or make excuses. It is just the process, Mr 13 Chairman -- I think it is important that you 14 understand -- that we engage in. 15 Mr Yeats made clear, and I have alluded to 16 already that disclosure is not static. The RGP 17 have recognised, and they have recognised 18 on the stand, that there is a continuing 19 obligation to disclose and react to events and 20 evidence on the stand during the inquiry 21 hearing. Indeed, evidence and the way it 22 rolled out gave rise to awareness by counsel 23 to the inquiry, solicitor to the inquiry and 24 other core participants of what further 25 disclosure may be deemed relevant by any</p> <p style="text-align: center;">Page 142</p>	<p>1 September that we were now disclosing 2 anything to do with anything that was raised. 3 Our view was wholesale disposal of 4 information so that anybody who could find 5 some relevance in it could use it. In other 6 words, the giving of RGP of any further 7 disclosure is not an acknowledgement, in 8 context, that there was a failing. But on 9 advice and in an abundance of caution, the 10 RGP has now given every document 11 connected with the preliminary inquiries, 12 irrespective of whether it is relevant. And 13 has continued to clarify matters, importantly 14 forensically, following the examination of 15 devices. So when we received that request in 16 June 2024, we started to look at whether or 17 not any WhatsApps could be obtained which 18 may or may not have been deleted or were 19 available. We know that Commissioner 20 Ullger, Yeats, SI Wyan and former officers, 21 Mr McGrail, Mr Richardson, had both 22 personal and work phones. 23 So let us deal with the work phones and the 24 WhatsApp SMT chats. Mr Yeats has given 25 evidence on the stand and he has explained in</p> <p style="text-align: center;">Page 144</p>

<p>1 his statements that work phones were 2 introduced in September 2019 in response to 3 an incident involving the use by an RGP 4 constable in July 2019 of a personal device. 5 They were Samsung phones set up by an 6 RGP officer following a request through the 7 ITLD department for assistance, which, for 8 whatever reason, they were unable to assist 9 with. In November 2020 these phones were 10 changed for iPhones simply because they 11 were just easier to use. There are those who 12 praise Samsung. I am an iPhone user. I 13 would not even start to understand how to 14 use the others. It is quite a natural 15 understanding that people might prefer 16 a particular phone. As Mr Yeats explained, 17 neither the RGP, nor Commissioner Ullger, 18 nor the Assistant Commissioner, nor 19 Superintendent Wyan, nor former 20 Superintendent Richardson had access to 21 WhatsApps held on devices since 22 November 2020. And this is because when 23 the RGP changed their phones in 24 November 2020 different email accounts had 25 to be opened. And these did not allow for</p> <p style="text-align: center;">Page 145</p>	<p>1 however they cannot recreate the facts. As 2 explained as well by Mr Yeats, steps had 3 been taken to address the possible failings, 4 not failings of what they did but in the 5 systems, and that was done in advance of the 6 ruling when SI Field retired. That was nine 7 months in advance of your ruling. These 8 steps included upon retirement, that is in 9 May, before the June emails. Having all data 10 extracted and retained by the digital forensic 11 unit, a challenging exercise for the RGP with 12 its resources because it applied not just to 13 requiring people but people who move posts. 14 Let us look at the RGP mobile device. 15 Mr Chairman, it is important to note that the 16 RGP have a mobile device policy. I wonder 17 but to its knowledge no one else in Gibraltar 18 has a mobile device policy. When I say that, 19 public sector. That is the evidence that is 20 given and no one has contradicted that. 21 Mr Yeats and Mr Ullger explained that the 22 policy had been adopted from using a UK 23 policing practice template. In other words, 24 we do this a lot in Gibraltar, we do it with 25 our laws, we have backstop provision. In</p> <p style="text-align: center;">Page 147</p>
<p>1 WhatsApps to be restored. 2 Now, it is true to say that this explanation 3 was only identified in February 2025 when 4 Mr Yeats was racking his brains to see how 5 on earth he could assist, knowing, knowing 6 because he had looked into it in 2022, that he 7 did not have information. It was only then 8 that he realised the reason for it and that was 9 explained in his witness statements. But he 10 was unable to restore the backup statements 11 and DC Garcia explained that in his witness 12 statement too. This means, and this is 13 important, that at the time of the letters in 14 July 2022 the RGP and all its senior officers 15 with Apple devices had access to the SMT 16 chat or other WhatsApp messages on the 17 RGP work phones. And certainly obviously 18 not for the relevant period, which was in 19 essence, broadly speaking we all agree, was 20 January 2020 to 30 June 2020, as extended. 21 So the conclusion in this issue is that the 22 RGP cannot give information it simply does 23 not possess or control. It is not sinister, it is 24 not implausible, it is just what happened. 25 The RGP wished it had been different,</p> <p style="text-align: center;">Page 146</p>	<p>1 essence we are a small jurisdiction, so when 2 you need help you go to a larger one. So that 3 was done on the basis of seeking templates 4 from the UK in 2019. Now, in response to 5 your request to Mr Yeats, the RGP are trying 6 to find the specific 2019 template that they 7 modelled the policy on. And unfortunately 8 the person who dealt with it has left the RGP 9 but they are going through his emails and 10 seeing if they can find the actual policy they 11 modelled it on. But even if they cannot, and 12 in any event, we are going to supply you with 13 the UK current policies, which a bit like the 14 RGP's now have evolved, but you will 15 hopefully see it on all fours with the RGP's 16 position. 17 Now, the contentious clause, if I can call it 18 one, is clause 3.3 of the policy, that states: 19 "Mobile devices are issued to the post holder 20 and are associated with the posts. Thus when 21 an officer or support staff moves from his 22 relevant post, the officer or support staff will 23 then, with the assistance of RGP IT 24 technician that his or her work issued mobile 25 device is wiped of all personal data and is</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

<p>1 handed back over to the person taking over 2 their role. No images of devices are taken. 3 No messages are retained." 4 But importantly, and this is really important 5 in the context of the use of WhatsApps, 6 emails created or accessed on that mobile 7 device are retained because they are stored 8 on the RGP servers. Now, this policy does 9 not just bite on Mr McGrail and 10 Mr Richardson's work phones because they 11 retired, but on the others because they 12 changed their phones in November 2020. 13 The GoG parties' suggestion that somehow 14 this policy is defective, and it is remarkable 15 that the RGP should have undertaken these 16 wipes and deletions before repurposing their 17 phones, it is not, in all due respect, a fair 18 analysis of the position. It is only fair if you 19 think that WhatsApps are a fundamental part 20 of any investigative process and there is 21 nothing else to it. 22 I make five points. Firstly, whether the 23 policy which, as I have said, appears to be 24 unique in Gibraltar can be improved is not 25 contentious. Notwithstanding that it was</p> <p style="text-align: center;">Page 149</p>	<p>1 Whether some form of back-up needs to be 2 taken or not is still under consideration, up 3 for debate, but I am not sure that regular 4 back-ups of devices is best practice or 5 practical, and I think in terms of further 6 explanation, the point about making notes on 7 an appropriate system, Mr Wyan, for 8 example, has evidenced his notes during 9 Operation Delhi. I think there are 120 pages 10 of notes which record decisions made in 11 an investigation, so I would suggest that if 12 a communication by WhatsApp, if it 13 occurred, was transmitting a crucial piece of 14 information, it is likely that that would have 15 been transposed onto those notes. That, 16 again, seems to be, I repeat for the third time, 17 what colleagues in the UK are doing in terms 18 of best practice." 19 Mr Chairman, the reality is a lot of that is 20 done. We saw that in the evidence of 21 Mr Richardson and the fact that he made 22 notes of his daybook. But in any event, I 23 think it is recognised by counsel for the GPA, 24 the RGP are improving and it is improving 25 its policy. As I understand it, there are</p> <p style="text-align: center;">Page 151</p>
<p>1 based on UK policing best practice, Mr Yeats 2 explained two days ago, you might want to 3 take a reference point, page 58 to 60, Day 22, 4 and I will quote from what he said because I 5 think it is important: 6 "So, the practice and best practice that we are 7 seeing from colleagues in the UK at the 8 moment is that, and this aligns with the 9 College of Policing principles, risk 10 principles, where they talk about professional 11 judgment having to be taken about what is 12 recorded and what is not, and I think that 13 makes sense because the point there is that if 14 there is a communication, a decision, that is 15 relevant or important in the context of 16 day-to-day business, then it should be 17 recorded, and it should be recorded on 18 a force system that is not that device and that, 19 again, as I repeat what we have seen, is the 20 practice that most forces in the UK that we 21 have been able to research are doing. So, in 22 our case it would be an email or our Cyclops 23 Recording Management System. That is 24 where I think we should be encouraging 25 officers to record decisions in the future.</p> <p style="text-align: center;">Page 150</p>	<p>1 currently two drafts being considered, I think 2 one in relation to work phones and one in 3 relation to personal phones. That is a work 4 in process but it has already moved 5 significantly, at the moment that you, sir, 6 raised it in your ruling. 7 Secondly, even if you were now, in 2025, to 8 interpret the 2019 mobile policy as 9 ambitiously as is suggested by my learned 10 friend, counsel for the government parties, 11 that silence in this policy should mean that 12 there should have been backups, or in some 13 way connected to this Inquiry, then the RGP 14 position is that most WhatsApps in question 15 that we have seen since June are not largely, 16 save a few, relevant or would be considered 17 to be work related. 18 Firstly, they require hindsight, i.e. looking at 19 these WhatsApps from today's prism of 20 relevance in the context of a public inquiry. 21 Secondly, most if not all WhatsApps do not 22 include policing obligations, keeping the 23 peace, security, investigating and detecting 24 crime and prosecuting crime. Thirdly, the 25 RGP reiterates what it has already said. It</p> <p style="text-align: center;">Page 152</p>

<p>1 does not do its business on WhatsApp. As 2 Mr Ullger said in answer to my learned 3 friend KC Mr Gibbs, WhatsApps as a source 4 of disclosure were of very little significance, 5 at the bottom of the list. It is not accepted 6 that there would have been information, 7 reference Operation Delhi, whose deletion in 8 the routine deletion of repurposing phones 9 would have been considered important 10 because if it had it would have been recorded 11 in daybooks such as the ones of Mr Wyan 12 and Mr Richardson. 13 Fourthly, as you heard from Commissioner 14 Ullger, with all the challenges the RGP face, 15 with all due respect, the first thing on 16 people's mind, I am not saying it was the 17 last, but the first thing on the people's mind 18 when the Commissioner McGrail was 19 dispatched or SI Richardson retired, in this 20 Inquiry, was this Inquiry, which had been 21 discussed in Parliament in 2020. The policy 22 in these documents are 2019 and the phone 23 changes happened in November 2020. The 24 reality is that this Inquiry was not constituted 25 until 2022. Nor was it in contemplation of</p> <p style="text-align: center;">Page 153</p>	<p>1 November 2020, can support the concept that 2 it was somehow done with an intention to 3 deprive the government parties of 4 WhatsApps in this Inquiry. As is made clear 5 by Mr Yeats, shortcomings during the 6 Inquiry in relation to work phones and the 7 RGP policy is being addressed by the RGP. 8 Clearly, with the benefit of hindsight, the 9 exchange of work phones from one 10 manufacturer to another which occasioned 11 the loss is regrettable, but it cannot alter the 12 fact that this information was not available. 13 It simply was not available and remains 14 unavailable. 15 So the conclusion here is the RGP simply did 16 not have the WhatsApps on the SMT chat, 17 also requested by Mr McGrail, or on 18 Mr Richardson's chat in relation to the work 19 phones. In July 2022 it simply could not 20 produce what it did not have. Any 21 (inaudible) that have been carried out are 22 carried out in accordance with that policy. It 23 is the 2019 policy. 24 Now, dealing with personal phones. As 25 explained by Assistant Commissioner Yeats</p> <p style="text-align: center;">Page 155</p>
<p>1 those police officers, dealing with what they 2 were dealing with in the aftermath of 3 Mr McGrail's departure, the HMIC report 4 and all the rest, just post Covid, nor was the 5 case theories of the government parties that 6 they had no idea about or Mr McGrail's case 7 theories, that was not foremost in their 8 minds. 9 Fifthly, the reference to a personal data being 10 wiped before a phone is repurposed is 11 a reference to data that would make the 12 phone personalised. It is not, you know, 13 "See you in the pub in five minutes." It is 14 more than that. It is what makes the phone 15 personalised. In other words, inputted by the 16 user. Because the obvious idea is to give to 17 the new user of that phone a clean device. 18 Finally, Mr Chairman, what we suggest 19 would be a gargantuan leap and defective is 20 to somehow assert, and perhaps is suggested, 21 that this 2019 policy, that predates the spring 22 2020 events and the actions to repurpose 23 phones upon the retirement of Mr McGrail 24 and Mr Richardson, or the change from the 25 Samsung phones to the iPhones in</p> <p style="text-align: center;">Page 154</p>	<p>1 on the stand, he did not believe he had any 2 relevant messages. He reviewed them, he did 3 not believe he had any. It appears that 4 counsel for the Inquiry accepts that Mr Yeats 5 had that assessment. Counsel for the Inquiry 6 or solicitors to the Inquiry have, out of 300 7 disclosed, identified 15. And of course we 8 all accept that that is a matter of subjective 9 assessment. The few messages he had with 10 Mr McGrail during the material time, 11 specifically 12 May 2020 and 9 June, reflect 12 empathy with a work colleague going 13 through a very difficult time, for no apparent 14 reason, or certainly no obvious reason, and 15 without any due process. Neither 16 Commissioner Ullger or Wyan, for different 17 reasons, had access to their personal phones 18 when asked in July 2022. They reviewed, 19 they did not have access. In the case of 20 Mr Ullger, he has explained on the stand that 21 he suspects, he does not know, but it may be 22 because he changed phones. In the case of 23 Mr Wyan, he says it was because there was 24 inoperable. He could not use it. It was 25 an old phone. The position therefore is that</p> <p style="text-align: center;">Page 156</p>

<p>1 as of July 2022 until after the Inquiry 2 hearing, until after the closing submissions, 3 in other words until June 2022, there simply 4 was not access to this information. 5 So then we get to 27 June. Now, on 27 June 6 we have a focus request from STI. That is 7 not again in any way to criticise the letter of 8 July 2022. It did say WhatsApps and it did 9 say electronic data, we do not deny it, we 10 simply did not have it. But when we 11 received this letter on 27 June, the same day, 12 the very same day, I respond to the solicitors 13 to the Inquiry, saying: "Please could you give 14 us the date range in relation to what 15 matters?" On the same day, the response is 16 12 May to 9 June. So we now have 17 a specific request in relation to specific 18 WhatsApps and a specific date range and 19 specific issues. Now, this is not meant as 20 an excuse, it is just an explanation of how 21 a focus, when you go into a library and 22 somebody says, "Pass me the book", it is 23 much easier when somebody says, "Pass me 24 the blue book on the third shelf." And this is 25 really what happened. The RGP in</p> <p style="text-align: center;">Page 157</p>	<p>1 point but, Mr Chairman, I know that you 2 have taken it but it is important that it is said 3 here in public. There is a suggestion by the 4 government parties, and they seem to insist 5 on it, that a phone secured in the context of 6 a criminal investigation for a particular 7 offence could be accessed without 8 permission of its owner for any other 9 purpose, namely the Inquiry. With all due 10 respect, I think government parties must 11 know such a proposition is wrong. You 12 cannot access a device, obtained lawfully for 13 one purpose, for another entirely separate 14 purpose without a legal basis, such as 15 consent or a court order. But nevertheless 16 they employed us to criticise the RGP. 17 Now, there is an important distinction 18 between disclosing search warrant 19 applications, charging advice reports, NDMs 20 and WhatsApps between former Delhi 21 defendants and Mr Levy that appear in those 22 documents. Firstly, the Operation Delhi was 23 a leading issue in the preliminary list of 24 issues. Secondly, their phones had been 25 searched whilst criminal proceedings were</p> <p style="text-align: center;">Page 159</p>
<p>1 June 2024 understood the context, they also 2 understood the case theories. They 3 understood the importance that they were 4 given by some core participants to this aspect 5 of disclosure, rather than in the context of 6 over a million documents disclosed and 7 reviewed since 2022. It had specificity. It 8 was easier to look for something identified, 9 to try and find something. Or, if you did not 10 have it, as we did not, to try and find it from 11 an alternative source. And that is precisely 12 what happened. 13 So that request was sent by us, our firm, the 14 very next day to Commissioner Ullger. And 15 Commissioner Ullger responded saying he 16 did not have those but he came up with 17 a pragmatic solution. He suggested 18 an alternative, which was to ask SIO McVea 19 whether the mirror image of Mr McGrail's 20 phone that had been taken in the context of 21 a criminal investigation, a specific criminal 22 investigation, could be accessed to see if 23 there were messages on it. 24 Now, I will take a break from the chronology 25 just for a moment. Others have made this</p> <p style="text-align: center;">Page 158</p>	<p>1 being progressed and this information was 2 lawfully obtained in relation to Operation 3 Delhi, not any other matter. It is important to 4 remember that this information, Operation 5 Delhi, was specifically requested by the 6 solicitors to the Inquiry in their July letters 7 and in meetings where disclosure was 8 discussed. Further, the prosecution had been 9 discontinued by the Attorney General in the 10 form of a nolle prosequi. The reality is the 11 RGP had WhatsApps, they were in charging 12 documents and all other documents. 13 Physically having the iPhone of Mr McGrail 14 in the context of a specific criminal 15 investigation does not mean that they possess 16 or control its contents for any other purpose. 17 If I can use an analogy. When the RGP had 18 possession of Mr Levy's iPhone but agreed 19 not it search it without pending 20 representations or legal action, this lawful 21 possession would not have allowed them, had 22 they still retained it in July 2022, to have 23 accessed that phone for anything related to 24 the Inquiry. If the RGP were to adopt the 25 government's position and employ that logic,</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

<p>1 that simple possession with nothing more 2 would now allow or have allowed the RGP to 3 take a mirror image of Mr Levy's phone, 4 knowing or suspecting it would contain 5 material connected to this Inquiry, I am sure 6 there would have been strong objection. 7 Mr Chairman, the argument is neither cogent 8 nor correct in law. 9 Going back to the chronology, Mr Chairman, 10 on the same day I was instructed by 11 Mr Ullger to seek permission from 12 Mr McGrail, I sought permission from 13 Mr Gomez, from Charles Gomez & Co. 14 Such permission was granted. As soon as 15 permission was received, Commissioner 16 Ullger and Yeats ordered a forensic 17 extraction of all messages, and that took 18 place. A forensic extraction report was 19 produced. Insofar as SI Wyan was 20 concerned, when he learned that the DFU 21 had managed to carry out such an extraction, 22 he volunteered and thought maybe my 23 inoperable phone can be accessed by you, 24 Mr Garcia. That is exactly what happened. 25 On 22 August, not long after the process just</p> <p style="text-align: center;">Page 161</p>	<p>1 anything connected to. This triggered, I 2 believe, when it was circulated on 4 3 November, that is just over two months later, 4 this triggered 5 (14.40) 6 this application that brings us here today. 7 You can blame me as well for that one. On 9 8 December the STI said, "We would like 9 a further date range, namely the expanded 10 one, 1 January to 30 June." We were given 11 very little time, just before Christmas, to 12 produce this. It was produced by 20 13 December with witness statements. That was 14 circulated on the 24th. 15 Mr Chairman, the point I make here -- and it 16 should scream out loud, hopefully -- is that 17 despite suggestions to the contrary, as matters 18 have evolved -- and despite any possible 19 suggestion of prior inadvertent failings, 20 should you conclude there have been -- they 21 have been addressed timely, and throughout 22 the process there has been no failure, no 23 delay, and every effort to comply. The efforts 24 of Mr Ullger to look for a phone from a 25 completely different source and the efforts</p> <p style="text-align: center;">Page 163</p>
<p>1 got completed, I wrote to the solicitors for 2 the Inquiry and the Commissioner to the 3 Inquiry explaining that we had received most 4 of the disclosure but that I, who had conduct 5 of the matter, was away in sunny Scotland 6 and would be meeting the RGP on 2 7 September. I advised that I could disclose 8 most, most, of the disclosure or wait until 2 9 September. Now, while counsel to the 10 Inquiry and solicitors to the Inquiry were, I 11 assume, on their summer holidays as well, 12 the wonderful and universally acclaimed 13 Ms Hope did respond to me on the 23rd 14 saying they would prefer the 2 September 15 date to avoid duplication, a very sensible 16 position. 17 Mr Chairman, there has been a question as to 18 why did we not explain the position. I have 19 to shoulder responsibility for that, the issue 20 of not explaining Mr Ullger's problems. It 21 was not down to instructions, quite the 22 opposite. And perhaps in the heat of Scottish 23 summer I missed a trick. On 2 September 24 that memory stick was sent through with all 25 the information, not just relevant but</p> <p style="text-align: center;">Page 162</p>	<p>1 made by the RGP in forensically analysing 2 are not actions of a party or a person with a 3 predisposition to suppress or not disclose 4 information. Quite the opposite. And 5 thankfully, as Mr McGrail on the stand 6 rightfully pointed out, you now have these 7 WhatsApps. There was then a question about 8 deletions from personal phones. Mr 9 Chairman, unless you say otherwise, I think 10 that issue has been largely addressed and it is 11 addressed in Mr Garcia's witness statements 12 and that of Mr Yeats. There have been no 13 deletions, at least none detected forensically, 14 insofar as that is concerned. So, moving on 15 to the third criticism about (?) the RGP: that 16 is, of double standards. With all due respect, 17 that is a mischaracterisation of the RGP's 18 position by the government parties: it is not 19 correct. Nor did the RGP have this case 20 narrative. The RGP's position has always 21 been one of process. In its closing 22 submissions, it made the point, even if, as 23 they both (Mr Picardo and Mr Pyle) have 24 suggested, they had lost confidence in the 25 Commissioner of Police in this case, Mr</p> <p style="text-align: center;">Page 164</p>

41 (Pages 161 to 164)

<p>1 McGrail, for reasons they explain, then the 2 RGP believes that inviting the GPA to utilise 3 the Section 34 powers, or resorting (even if 4 possible) to Section 13F without any 5 constructive engagement, is most worrying. 6 The whole point of the RGP's position was a 7 lack of process. That is our focus, and one 8 can check that by looking at our submissions 9 and our line of questioning. So, we reject the 10 suggestion that it has done anything other 11 throughout this, other than maintain a neutral 12 position, which we emphasise does not mean 13 in the middle. If the truth, which is what the 14 RGP aligns itself with, happens to be more 15 aligned with one party or the other: well, that 16 is a different matter, and it is a matter for 17 you, Mr Chairman. The government's 18 position is -- well, with all due respect to 19 Section 33 of your ruling, that we join the 20 attack on the government witnesses or the 21 other parties. Look, the RGP is not shy, and 22 it might surprise you but nor am I. If they 23 had chosen to adopt this line of questioning, 24 then we would have: you would had have 25 seen it in our questioning, you would have</p> <p style="text-align: center;">Page 165</p>	<p>1 about confusing Gibraltar's interests. He 2 then, when pushed, went on to talk about Mr 3 Levy and the Chief Minister. I do not know 4 if you (?) want the point of the transcript: it is 5 day 11, April 2024, page 63. It appears to us, 6 perhaps like other parties and maybe to 7 others who are watching this, that the 8 question from government parties seems to 9 forget that distinction: it seems to make it 10 indistinguishable. Perhaps it now needs to 11 add the Gibraltar Police Federation to that. 12 But importantly, I did not ask one single 13 question of Mr Levy. I did not make one 14 single criticism of Mr Levy in any 15 submission. None. None at all. So, how do 16 the government parties align us with Mr 17 Grail? Well, they do so by reference to the 18 questions, the two questions I asked Mr 19 Baglietto. But it is important to understand 20 the context of those questions. First point is, 21 Mr Baglietto is not a government party. 22 Again, the evident risk in conflating, but 23 context is everything. Now, at page 198 of 24 the transcript, Mr Baglietto is asked the 25 question, I think in response to an</p> <p style="text-align: center;">Page 167</p>
<p>1 seen it in our opening submissions, you 2 would have seen it in our closing 3 submissions, you would have seen it in 4 throughout. It is there not. It can be easily 5 tested. According to the government parties, 6 and this may be an important point, the 7 government parties are the Government of 8 Gibraltar, the Chief Minister, the Attorney 9 General and Mr Pyle. No one else. But even 10 if we were to extend that to Mr Rocca and 11 Mr DeVincenzi, that is as far as it goes: does 12 not go any further. I did not ask any 13 questions of Mr Picardo, or Mr Pyle, or Mr 14 Llamas, or Mr Rocca, or Mr DeVincenzi. 15 Not one. Not one criticism, not one implied 16 suggestion. Not one. Nothing. Not one 17 criticism in any opening, closing, written, 18 oral submission. Nothing. So what about Mr 19 Levy? Well, I think the point here is: to our 20 knowledge, he is not a government party. He 21 is a witness to the Inquiry. Now, it is 22 important that we do not conflate issues. 23 One will remember the sensible suggestion in 24 the exchanges between the Solicitor General 25 and the Attorney General about his anxiety</p> <p style="text-align: center;">Page 166</p>	<p>1 intervention by you, Mr Chairman: were they 2 considering a judicial review? Because I 3 asked whether or not it was a procedural 4 issue he had foremost in his mind. And Mr 5 Baglietto agreed with that and said, and I 6 quote, "and we have also mentioned the 7 possibility of a misfeasance claim". I 8 clarified if that was against the police 9 officers, and Mr Baglietto said: that is right. 10 At page 204, the question is raised by me for 11 the RGP, and I take him back to his 13 May 12 2020 letters. And I ask whether they are still 13 alive, and he responds, "Well, they are still, I 14 think. Mr Levy had made a reference." It is 15 in answer to that, and the possibility that he 16 had got rid of material -- and WhatsApps 17 within that material because he had said that 18 previously, he said the matters were all over 19 by 2020, he had found an alternative route. It 20 is in relation to that that I asked him whether 21 he wants to rethink his question. His answer 22 in relation to that was that those WhatsApps 23 were neither here nor there for the purpose of 24 such proceedings -- in other words, the 25 misfeasance proceedings that I was asking</p> <p style="text-align: center;">Page 168</p>

<p>1 about. No further questions were asked by 2 me, no criticism was made of his answer, no 3 submissions were made in relation to this 4 exchange criticizing Mr Baglietto, or indeed 5 his client, or indeed any government party: 6 we simply have not done that. Mr Chairman, 7 the RGP do not consider that line of question, 8 in context, to be criticism. And Mr Ullger 9 said as much to Sir Peter when he was asked: 10 more clarification sought in the face of a 11 threat of legal action against normal police 12 officers. But if they are wrong and it is a 13 criticism of Mr Baglietto, then it is Mr 14 Baglietto alone, not government parties. We 15 simply cannot be dragged into that. There is 16 no position where we have made that 17 criticism of government parties. Now, it is 18 worth adding that in the government's 19 submissions, there is different volumes of 20 criticism. And if we go back to what I call 21 the secret submissions, there is significant 22 criticism about that line of attack and 23 whether or not there should be inferences 24 drawn. And in the 18 March submissions, in 25 relation specifically to the RGP, they say,</p> <p style="text-align: center;">Page 169</p>	<p>1 -- and this can be deducted by the words at 2 section 6.1 of the government's secret 3 submissions, "the implausible coincidence 4 that neither RGP nor Mr McGrail chose to 5 disclose them". Well, if coincidence is 6 deemed to be implausible, what it is saying is 7 not true. So therefore what is left, it is 8 certainly implied, is that they have somehow 9 colluded in that coincidence. Before I 10 address this, I make three simple points. We 11 do not think, and we draw some solace from 12 paragraph 61 of your rulings, that the 13 information that you have now considered is 14 likely to change your core findings 15 significantly. That is the first point. Second 16 point we make is that the RGP did not have a 17 case narrative. There is talk about aligning 18 case narratives; we did not have a case 19 narrative. The government parties had a case 20 narrative, Mr McGrail had a case narrative; 21 we had no case narrative. But if we did have 22 any arguments or case narrative, it was 23 purely the failure to follow process. As I 24 explained when I started these submissions, 25 they are strong suggestions by the</p> <p style="text-align: center;">Page 171</p>
<p>1 "They have criticised others, especially Mr 2 Baglietto, for not doing so, while manifestly 3 failing to do themselves." But we have not 4 criticised others, and I do not think we 5 criticise Mr Baglietto but it simply cannot be 6 extended in that way. Mr Chairman, the RGP 7 has never invited adverse inferences of any 8 government party for any disclosure, or any 9 party for any disclosure. And all I can do is 10 point to my submissions. If there is been an 11 attack, it is been on process: process, process 12 and process; not on disclosure. So that, I 13 think, Mr Chairman, hopefully deals with our 14 answer to the suggestion that they are double 15 standards. So, Mr Chairman, we say that it 16 has been demonstrated that the RGP have an 17 extraordinary appetite for comprehensive and 18 timely disclosure, far beyond what any other 19 party has been engaged in. But if it is to be 20 harshly and uniquely judged, with hindsight 21 and out of context, then they will be open to 22 criticism. But I hope, at least, that there will 23 not be any sinister motives assigned to that. 24 Now, in relation to the suggested -- the 25 implied or otherwise conspiracy or collusion</p> <p style="text-align: center;">Page 170</p>	<p>1 establishment against its own police force. I 2 mean, it is quite shocking. Mr Chairman, 3 you have read the sixth witness statement of 4 Mr Ullger and heard his evidence. You have 5 heard the evidence of Mr Yeats. The RGP 6 unequivocally reject suggestions that they 7 individually or collectively have colluded or 8 conspired or agreed methodology or 9 implausible coincidences with Mr Grail or 10 Mr Richardson or any other corporation 11 participant. Never, never, never. Not on 12 disclosure, not on case theories, not on 13 analysis: on nothing. I cannot, on behalf of 14 the RGP, emphasise enough: no, no, no. It is 15 just not justifiable. It is inelegant. It is 16 regrettable that the government parties 17 should adopt that it is... yeurgh -- which 18 probably is Russian for something. Mr 19 Chairman, you can see from Mr Ullger's 20 sixth witness statement how he disinvented Mr 21 McGrail from the Senior Officers' Club 22 event. You can see from the September 22 23 exchange of the Chief Minister the lengths he 24 went to draw lines. He did everything he 25 could to ensure professionalism. He</p> <p style="text-align: center;">Page 172</p>

43 (Pages 169 to 172)

<p>1 understood it. He understood the ethical 2 behaviour, the need for it. Mr Ullger's 3 behaviour towards what had been a very, 4 very close friend was hardly cosy. The 5 reality is: however much he suffered and I 6 know still suffers for personal reasons, it 7 reflects the incredible professionalism he 8 dealt with whilst Commissioner of the Police. 9 He finishes on Monday. Mr McGrail in 10 evidence yesterday accepted that the RGP, 11 and I quote, "Had their reasons, but my take 12 is that they needed to uphold the perception 13 of conflict or bias that could affect them or 14 me or anybody else." He is right. Mr 15 McGrail feels ostracised from the extended 16 police family. That is at transcript, day 23, 17 page 181. This Inquiry does have a human 18 dimension, and we should not forget or lose 19 sight of that. It should make us sad; well, it 20 makes me sad. Mr Chairman, such 21 suggestions by the government parties about 22 collusion: the use of language, "implausible 23 coincidence", "the RGP suggest", "its most 24 senior (?) officers succeeded in deleting", 25 "the RGP claimed to have lost": Mr</p> <p style="text-align: center;">Page 173</p>	<p>1 she saw no reason for dispatching Mr 2 McGrail out of office. She worked well with 3 him. She did not think the HMRC report, or 4 indeed anything else, was insurmountable. 5 And this was confirmed by Mr Britto in his 6 recent email that we all saw this week, the 7 email of 21 April timed at 14.03. The 8 kitchen meeting with Mr Ullger and Ms 9 Sacramento on the 29th demonstrated that 10 even then solutions were being sought, at 11 least as far as Mr McGrail and Mr Ullger 12 were concerned. And her evidence is that she 13 thought she was invited to mediate. Mediate 14 what? The WhatsApp exchange about 15 coordinates in relation to Operation Kram. 16 Well, they show that Mr McGrail 17 communicated the best information, 18 presumably -- if you look at the timing from 19 SI Field, perhaps without the caution that he 20 would have expressed to the Governor, about 21 where he thought the collision had taken 22 place. We might all understand why 23 colleagues exchanging views may not have 24 the same caution as when you put it out to a 25 Governor who may act on it in the context of</p> <p style="text-align: center;">Page 175</p>
<p>1 Chairman, they are suggestions of just of 2 collusion, but also that they have given false 3 evidence, and we reject them entirely. Mr 4 Chairman, if the government parties thought 5 that the current RGP leadership would be 6 taking this lying down, they are mistaken. 7 Mr Chairman, the current RGP leadership 8 will not take this lying down. They have 9 fought for the rule of law since before this 10 Inquiry started. They will continue 11 undaunted, unafraid, however many things 12 have been unfairly thrown at them, including 13 this. However many senior officers are 14 required to take the stand, even after the 15 current leadership has left on 11 April. This 16 police force is simply not for turning. The 17 RGP shares your views in relation to the 18 likely impact on core issues, but if there is 19 anything to be taken from the WhatsApps 20 that we have seen, with all due respect, it is 21 that the RGP's concerns about process and 22 rule of law and the rest are emphasised. I 23 mention that there is some evidence there 24 that might be of interest. The statement from 25 Ms Sacramento, the Minister for Justice, that</p> <p style="text-align: center;">Page 174</p>	<p>1 international relations. In fact, Mr Ullger 2 said on the stand that he understood that "six 3 miles north, to the east" meant on the median 4 line. Not off, on the medium line. So, even 5 he did not quite understand what was being 6 said. And in relation to the GPF and these 7 redacted emails: look, all it shows is that 8 there was huge frustration with the GPF. 9 Certainly not, as has been implied or 10 suggested, some form of bullying. And it 11 does not support retrospectively what Mr 12 Pyle thought: it simply cannot get you there. 13 The RGP notes that the government parties 14 do not take issue with the relationship 15 between Mr Ullger and Mr McGrail, that 16 they they were very close friends, but they 17 use that to somehow seem to suggest that that 18 therefore licenced the Chief Minister to take 19 the action he did. Well, there is such a 20 difference between emotional support of 21 people in one situation and another, and you 22 just cannot maturely or sensibly somehow try 23 and equate them. There is a complete 24 difference between the Chief Minister and a 25 suspect, and work colleagues when one is</p> <p style="text-align: center;">Page 176</p>

44 (Pages 173 to 176)

<p>1 about to be sacked. It is just, again, apples 2 and London buses. Moreover, and this is 3 important, when the RGP gives its 4 unconditional support to Mr McGrail, it has 5 done so without knowledge. Not in the other 6 case, when they had knowledge: it is done so 7 without knowledge. Mr Yeats said that he 8 felt lonely, vulnerable -- not him personally, I 9 think as a force -- and did not know which 10 pillars to turn to. Well, that of course was a 11 feeling they all shared. So, there was 12 unconditional support given in the context of 13 what they understood. And particularly of 14 concern to them was a lack of any fair 15 process, any institution to turn to, anything at 16 all. And Mr Chairman, that pretty much 17 brings me to an end, I think in time. But 18 there is one clarification, if I may, to Mr 19 Wagner's submission. Not controversial, but 20 I think it is important it is accurate. Yes, Mr 21 Wagner talked about the 12 May 2020 email: 22 the email by Mr McGrail to self, 23 documenting the interference issue. I think it 24 is important to understand that not only did 25 DC Garcia in his report -- which is, I think,</p> <p style="text-align: center;">Page 177</p>	<p>1 the information that he could not access; it 2 should go to his credit that he did that. It 3 certainly should not go against Mr Wyan that 4 he suddenly thought, but he had not before, 5 whether the digital forensic expertise could 6 open up the inoperable phone. And Mr 7 Yeats, he gave his disclosure, and of course 8 the policy on work phones is the policy on 9 work phone. But we repeat, the RGP has 10 given timely disclosure of what it has had, 11 when it has had. And we ask, Mr Chairman, 12 that they are judged in light of all the efforts 13 over the last few years. So, finally, Mr 14 Chairman, as in the past, I am instructed to 15 thank you, Mr Chairman, the Inquiry team, 16 all core participants and counsel, and the 17 public for listening to us and giving us an 18 opportunity to express our views. Thank 19 you, Mr Chairman. 20 THE CHAIRMAN: Thank you. Yes, Mr 21 Santos. 22 MR SANTOS: Two short points. First of all, 23 I have been asked by Sir Peter Caruana to 24 correct something said by Mr Gibbs KC in 25 this morning's session. The suggestion that</p> <p style="text-align: center;">Page 179</p>
<p>1 Mr Yeats fourth witness statement -- confirm 2 that it was authentic, but on 20 June the 3 lawyer, part of the government team, 4 attended together with DC Garcia not at the 5 RGP offices, which is what Mr Wagner 6 thought was the case, but actually at the 7 government's IT offices. It was not the 8 RGP's offices, it was the government's IT 9 offices. Where, in the presence of both, the 10 authenticity of that email was confirmed with 11 reference to metadata. So, it was not the 12 RGP offices, it was the government's IT 13 offices. It is just, I have been asked to point 14 that out because it was an assumption that 15 perhaps Mr Wagner incorrectly made. So in 16 conclusion, Mr Chairman, I think 17 perspective, context, analysis is important. 18 And all that I have said, I would hope, points 19 you to an RGP that learns, that adapts, that 20 changes, that is absolutely not infallible, 21 made mistakes, continues to make mistakes, 22 will always make mistakes, but reacts. And 23 when it can help, it does help. And it 24 certainly should not go against Mr Ullger that 25 he suddenly found an alternative source for</p> <p style="text-align: center;">Page 178</p>	<p>1 Mr Picardo was unable to provide the Inquiry 2 with his WhatsApp messages with Mr Levy 3 is incorrect. Mr Picardo has disclosed to the 4 Inquiry a full set of WhatsApp messages with 5 Mr Levy from his phone, and stated on oath 6 that he holds no other relevant 7 communications with Mr Levy. So, I just 8 want to make that clear. And the second 9 point is that Mr Cooper, on the back of an 10 apparent evidential dispute between Mr 11 Cooper and Mr Wagner, has asked me to read 12 out the findings of the Garcia report into Mr 13 McGrail's laptop at E52, which I am happy 14 to do. It reads as follows. "Although the Ian 15 McGrail profile has not been registered as 16 having been used in a long time, there clearly 17 is plenty of user activity after 20 August 18 2018; therefore, I cannot explain why the last 19 login for this profile is registered as that date, 20 when clearly there is evidence showing that 21 the profile was being used well after that 22 date. For example, there is evidence of user 23 activity on 23 June 2020 at 0347 hours, with 24 a deletion of audio file with the following file 25 name, "Meeting with AG and DPP, 20 May".</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 This audio file is also deleted a further two 2 times: once also on 23 June 2020 at 0346 3 hours, and another one at an earlier date of 4 4 June 2020 at 0701 hours. There is also a 5 further deleted Word document", that is not 6 relevant for our purposes. And then the next 7 paragraph says, "All artefacts which I have 8 analysed to answer these questions have been 9 created by the profile' Ian McGrail'." And 10 the other piece of evidence that I have been 11 asked to read out by Mr Cooper is E1119, 12 which is DC Garcia's evidence in his second 13 statement in relation to Mr McGrail's phone 14 and the messages exchanged between Mr 15 McGrail and Mr Richardson, where we 16 referred to the disclosure provided by Mr 17 Richardson and pointed out the messages 18 sent between Mr McGrail and Mr 19 Richardson, which did not appear in the 20 report. The extract from the image of Mr 21 McGrail's phone. And we asked DC Garcia 22 to explain why they did not appear on the 23 phone. And his answer is that in his view -- 24 well, I will read it out, "In my view, there are 25 two reasons why the messages did not appear</p> <p style="text-align: center;">Page 181</p>	<p>1 was lost, not the phone. But anyway, I have 2 read out the position as the evidence has it, 3 and I think we should just leave it at that. 4 THE CHAIRMAN: Yes. 5 MR SANTOS: Thank you. 6 THE CHAIRMAN: Okay. Well, now I think 7 it might just be helpful if I gave everyone an 8 update of the progress that we have made. 9 When I received the application to reconvene 10 the hearings, the draft of the report was in an 11 advanced stage of preparation. It ran to 12 many hundreds of pages, it divided into 13 chapters dealing with the different topics and 14 issues, and as I completed each chapter on 15 each topic, I sent it to the Inquiry team to 16 review. The responsibility for writing the 17 report, of course, is mine: it is not for the 18 Inquiry team to amend my findings or 19 conclusions, and they would not seek to do 20 so, nor would I allow them to do so. But 21 their role is not just confined to correcting 22 typos: I have asked them to identify any 23 repetition or inconsistency, or to make sure 24 that I have correctly stated the evidence on 25 which I have relied, and that I have not</p> <p style="text-align: center;">Page 183</p>
<p>1 during the analysis of Mr McGrail's phone. 2 The first is that they were never on that 3 specific device, and the second could be the 4 result of limitations during the forensic 5 process." So, I have just read that out in 6 compliance with Mr Cooper's request. 7 Those are my only two points, sir. 8 MR WAGNER: Sir, may I just clarify: the 9 concern that I raised was that the submission 10 was that Mr McGrail retained access to his 11 laptop after he left the RGP, which is not 12 what DC Garcia's report says. It says that 13 somebody logged in after Mr McGrail left, 14 and his evidence is that he did not retain 15 access to his laptop in any way. So, that was 16 the issue I had with that. And the other point 17 was that Mr Cooper's submission was that 18 Mr McGrail lost his phone, his personal 19 phone, which was not addressed in -- 20 MR COOPER: No, that is wrong (inaudible) 21 -- that is a factual mistake, but I am happy 22 that it has been corrected. Thank you. 23 THE CHAIRMAN: Okay. 24 MR SANTOS: -- is at pains to say, to 25 emphasise that what he said was that data</p> <p style="text-align: center;">Page 182</p>	<p>1 omitted any other relevant and significant 2 evidence. I then consider the points that they 3 have made, to produce a revised draft. But 4 the whole point in reconvening these 5 hearings was to receive further evidence on 6 these disclosure issues, and I now need to 7 consider the further evidence that we have 8 heard and the submissions that I have heard. 9 Not just the oral submissions which I have 10 heard today, but the written submissions -- 11 the focused written submissions, I hope -- 12 which are due two weeks today, 25 April. I 13 will then need to write a further chapter on 14 these disclosure issues and make some 15 consequential amendments to some of the 16 chapters which I have already written in 17 draft. That will necessarily take some time. 18 Of course, I have a duty (and it is my 19 intention) to alert anyone whom I might 20 explicitly or significantly criticise, alert them 21 to the allegations which may be made against 22 them. That is the so-called Maxwellisation 23 process that will take place, named after the 24 inquiry where the procedure was first 25 developed. But my intention is to commence</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

<p>1 preparation of the Maxwellisation letters as 2 soon as I have prepared the revised draft of 3 the report. It would, I think, be premature to 4 do so before that. I then need to consider the 5 responses to those letters, and I will need to 6 make such changes to the draft as are 7 necessary. I am acutely aware, as is the 8 whole Inquiry team, of the need to finalise 9 this process. The experience of the Inquiry 10 has been to demonstrate that it is unwise to 11 give a timetable and I am unwilling to do so, 12 but I make clear that we will go about our 13 task with a sense of urgency. I will deliver 14 the report as soon as I can, consistent with 15 my duty to deal with these complex issues 16 fully and fairly. I will then deliver the report 17 to the government in accordance with 18 Section 24 of the Inquiries Act, and under 19 Section 25 of the Act (subject to certain 20 exceptions which I do not foresee are likely 21 to apply) the government have a statutory 22 duty to publish the report. I will keep the 23 parties and the public informed of progress. I 24 finish yet again by thanking you all for the 25 assistance that you have given in the course</p> <p style="text-align: center;">Page 185</p>	
<p>1 of this hearing and indeed the last hearing.</p> <p>2 Again, thank you very much.</p> <p>3 (14.08)</p> <p>4 (Hearing concluded)</p> <p>5 1</p> <p>6</p> <p style="text-align: center;">Page 186</p>	

47 (Pages 185 to 186)

A				
able 3:13 13:1 68:20 150:21	133:17 177:20	address 25:9 44:17 49:1 132:3 147:3 171:10	afterthought 33:24	allow 124:25 129:10 145:25 161:2 183:20
absolutely 23:9 88:4 110:4 114:4 178:20	accusation 105:8 135:16	addressed 6:21 24:1 60:11 155:7 163:21 164:10,11 182:19	AG 180:25	allowed 27:2,5 29:1 31:10,12 61:14 160:21 161:2
absurd 52:23 106:19 114:10	accusations 88:25 94:13 95:18 128:12 130:13	addresses 45:12	age 48:25 49:12	alluded 142:15
abundance 144:9	accusatory 87:17	adjectives 41:11	Agency 136:16	Alright 122:22
abuse 27:10 31:19 85:14	accuse 52:24 110:25	adjournment 123:14,19	agenda 50:20 54:22,23	alter 29:8 112:18 155:11
abused 41:14	accuser 91:11	adjudicator 140:16	ago 45:15,22 46:4 81:4 83:6 140:25 150:2	alternative 120:18 142:1 158:11,18 168:19 178:25
accept 100:18 127:16 135:11 138:12 156:8	accusers 89:2	administrative 99:13	agree 72:2 146:19	ambitiously 152:9
accepted 26:18 32:25 85:23 153:5 173:10	accusing 95:24	admirably 119:10	agreed 36:20 71:11 81:22 85:18 86:5 142:3 160:18 168:5 172:8	amend 183:18
accepts 4:25 126:7 156:4	acknowledged 60:12	admission 52:2 54:19	agreement 19:13 19:17 82:1	amendments 184:15
access 6:8 8:5,10 8:20 9:6 14:12 16:25 17:6,10 18:4,24 20:18 50:8 63:25 93:2 101:3 105:21 133:13 145:20 146:15 156:17,19 157:4 159:12 179:1 182:10,15	acknowledges 28:18	admission 52:2 54:19	ahead 16:5 52:21	amount 70:17 101:14
accessed 149:6 158:22 159:7 160:23 161:23	acknowledging 32:24 63:9	admitted 80:18,21 84:21 89:16 101:9 117:9	AI 113:13	amusing 118:22
accessing 8:21	acquired 14:22	adopt 59:17 160:24 165:23 172:17	airport 4:21	analogies 70:23 106:8
accidental 49:6	acquitted 106:1	adopted 43:10 129:2 147:22	airtime 112:22	analogy 71:2,3 73:1,24 75:7,7,8 75:13 119:12,15 136:9 160:17
accidentally 4:21 94:6	act 31:20 134:6 136:7 175:25 185:18,19	advance 54:23 94:20 147:5,7	Albert 57:19	analysed 126:21 181:8
acclaimed 162:12	action 64:17 69:13 124:9 160:20 169:11 176:19	advanced 2:7,11 29:15 31:17 37:22 38:19 183:11	Aldrin 103:19	analysing 164:1
account 36:9 121:2	actions 41:21 50:13 76:24 91:5 91:9 120:16 137:8 154:22 164:2	advised 162:7	alert 4:16 184:19 184:20	analysis 56:14 134:16 138:13 149:18 172:13 178:17 182:1
accountability 91:10	actively 76:25	advice 81:16,16,17 82:13 136:25 144:9 159:19	align 167:16	and/or 20:13,16 128:11
accountancy 136:11	activity 180:17,23	advised 162:7	aligned 165:15	angrily 80:2 85:19
accounts 55:7 145:24	acts 7:4	afford 116:23,24 117:1	aligning 171:17	Animal 97:2
accumulate 84:20	actual 106:24 148:10	afforded 59:19	aligns 150:8 165:14	annex 45:5
accuracy 66:7	acutely 185:7	affording 46:18	alive 168:13	announced 13:23 15:7 21:14
accurate 68:18	adapts 178:19	affront 113:25,25	allegation 88:6 116:16	answered 54:4 62:15 87:1 108:5
	add 40:10 48:20 51:1 96:4 167:11	after-thought 61:22	allegations 89:23 90:24 96:13 106:9 120:3 129:19 133:20 184:21	answering 62:8
	added 28:9,10 40:8 61:21	aftermath 154:2	allege 50:18 116:14	
	adding 169:18	afternoon 81:3 123:22	alleged 6:17 7:4 23:13 27:10 31:18 33:8 36:21 37:17 41:2 50:25 93:19 115:8 129:12 130:8,8	
	addition 28:11		allegedly 2:18	
	additional 2:24 59:18 105:6 128:19		alleging 93:1	

antagonistic 41:4	appropriately 56:4	asking 168:25	Attias 19:14	27:18 36:12
anxiety 166:25	approved 60:3,6	aspect 57:12 158:4	attitude 41:2,5	49:17 61:5 63:18
anybody 70:4	131:25	aspersions 10:4	attitudes 41:21	65:19 70:13
76:15 120:4	April 1:1,6 7:23	assert 35:20	Attorney 11:4,21	77:14 82:17 83:9
144:4 173:14	81:3 117:7 167:5	154:20	28:10 33:2 35:18	93:23 94:5,12
anybody's 36:17	174:15 175:7	assertion 23:21,23	37:25 43:7 48:23	103:8,10 111:4
anyway 117:13	184:12	asserts 21:6	50:5 68:3 72:14	119:21 149:1
183:1	arguably 135:4	assess 141:9	81:6,9,14,20 82:2	161:9 168:11
apart 65:6	argued 25:14	assessment 16:18	82:11 83:9 85:17	169:20 180:9
apologise 59:20	argument 70:24	130:10 156:5,9	85:22 95:12	back-up 151:1
85:12	161:7	assigned 170:23	111:13 113:10,15	back-ups 151:4
apologised 89:17	arguments 20:4	assist 51:6 76:12	121:22 160:9	backed 83:13
98:2 112:14	171:22	85:23 88:23	166:8,25	backing 12:9
apologising 112:13	arisen 124:10	92:21 145:8	audio 50:4 180:24	backstop 147:25
apology 23:9	arises 38:20	146:5	181:1	backup 146:10
appalling 119:4	arising 25:23 66:2	assistance 39:13	August 161:25	backups 152:12
apparent 60:7	71:25	138:1 140:12,13	180:17	bad 101:25
63:8 90:7 156:13	arose 14:10 20:1,2	145:7 148:23	authentic 178:2	baddish 118:22
180:10	143:9	185:25	authenticity	bag 108:19
apparently 8:23	arranging 137:7	Assistant 1:12	178:10	Baglietto 2:18
12:15 51:4 107:3	arrest 37:19 38:5	57:2 60:14,16	authorisation	9:15,19 21:18
appear 42:4 75:5	75:18	99:24 133:24	46:23	25:1 90:21 96:16
95:1 159:21	arrested 46:3 73:4	136:4 138:10,25	authorities 26:20	96:19,22 167:19
181:19,22,25	73:5	145:18 155:25	authority 11:23	167:21,24 168:5
appeared 96:17	arresting 37:16	associated 148:20	26:21 33:2 85:13	168:9 169:4,13
appears 22:20	38:8	assume 162:11	89:7 94:14	169:14 170:2,5
51:15 149:23	arrests 18:7 119:5	assumption	136:13,15	balance 130:9
156:3 167:5	arrival 27:12	178:14	authors 55:6	balanced 138:13
appetite 170:17	30:13,14 31:7,9	assured 61:12	avail 112:2	bald 23:22
Apple 146:15	artefacts 181:7	attack 9:14 77:4	available 12:25	banks 136:10
apples 138:5,5	artificial 38:22,24	92:1 133:9	45:7 47:5 51:3	137:6
177:1	87:20	165:20 169:22	51:22 58:4,17	bark 13:12 37:3,12
application 92:18	Aside 91:1	170:11	59:2 104:21,24	136:23
96:10 140:2	asked 4:14 7:22	attacked 77:12	144:19 155:12,13	barked 136:23
163:6 183:9	8:18,21 9:2 11:4	attempt 7:21 53:1	avoid 29:4 91:10	base 84:3 92:10
applications	15:23 16:21,24	88:15,17 91:2	162:15	based 150:1
159:19	17:3 31:11 34:2	93:7,7 94:17	avoided 105:5	baseless 88:9,9
applied 3:2 79:8,9	45:21 51:23 62:6	95:2 103:20	106:14	basic 42:19 45:17
147:12	63:23 64:24 65:3	108:9 112:8	avoiding 43:15	48:5
apply 185:21	65:23 67:4 71:10	114:19	75:18	basically 133:21
approach 9:7	72:4 74:19 77:13	attempted 89:19	await 27:12 30:13	basis 17:3 23:22
48:15 51:11	105:23 118:6	119:12	31:7,8	60:5 93:15 123:8
59:17 69:12	140:11,13 156:18	attempting 115:1	aware 6:1,10 9:9	148:3 159:14
94:14 105:24	167:18,24 168:3	attempts 92:21	18:3 56:22	batting 124:1
142:2	168:20 169:1,9	attended 178:4	140:18 185:7	beast 42:22
approaching	178:13 179:23	attention 36:17	awareness 6:13	beat 92:22
82:16 106:1	180:11 181:11,21	42:6 56:9 62:22	142:22	becoming 4:5
appropriate 36:16	183:22	70:18 77:10 87:5		began 62:25
60:22 151:7		108:9 135:5,6	B	beginning 87:25
			back 8:4 12:17	

begins 43:11	book 77:19 157:22	136:6 150:16	156:22 158:2	16:15 21:20 25:2
begun 90:3	157:24	153:1	164:19,25 171:17	35:14 42:7,11
behalf 13:4 21:19	books 107:24	businesses 136:10	171:18,18,19,20	55:12,16 57:21
21:24 23:3,11	108:12,16	butter 51:14	171:21,22 172:12	57:25 58:3,9
24:11 27:22	border 134:3		177:6 178:6	59:11,21,25
59:23 67:24 79:3	Borders 136:16	C	cases 18:7 42:21	60:23 61:1,5,11
88:4 93:13 96:8	borrow 42:10	call 58:5 107:13	90:14	61:16,18 79:16
172:13	bother 39:16 40:9	148:17 169:20	cast 109:7 111:9	122:12,20 123:13
behaved 64:19	bothered 114:9	called 93:21 118:8	casting 10:3	123:21,22 124:6
behaviour 41:2	115:4	122:7 143:4	catch 71:5	125:14 127:4,16
89:13 134:4	bothering 12:9	calmly 119:9	categorically	129:8,17,20
173:2,3	bottom 75:4 153:5	cameras 87:7	46:21	130:13,17 132:20
believe 54:14	bought 16:1	candid 73:17,22	category 95:8	133:20 134:9
94:24 126:17	boutique 81:1	Candidly 22:21	Cathal 85:4	135:14 140:1
135:7 156:1,3	brains 146:4	candour 52:15	cause 53:22 57:5	142:13 147:15
163:2	breach 48:4 75:22	canine 136:22	95:3	151:19 154:18
believed 114:17	86:7 97:21 99:2	capacity 128:10	caused 8:23 20:25	159:1 161:7,9
believes 165:2	128:8	captured 69:13	31:16 116:14	162:17 163:15
benefit 98:21	breached 89:13	car 36:12	128:7,18	164:9 165:17
130:24 155:8	134:5	care 81:12	causing 56:17	168:1 169:6
benefits 98:25	breaches 46:1,19	career 120:15	caution 40:10	170:6,13,15
berated 80:2 85:19	bread 51:14	careers 42:15	71:19 72:4 77:2	172:2,19 173:20
berating 35:9	break 61:6,9	carefree 12:15	144:9 175:19,24	174:1,4,7 177:16
113:8,15	123:15 158:24	careful 12:3,19	cautious 12:17	178:16 179:11,14
best 27:2,23 29:2	breaking 84:4	20:7 21:7 81:12	cavalier 48:17	179:15,19,20
32:8 34:18 53:14	brief 23:5	81:17 82:13	51:11	182:23 183:4,6
113:6 115:21	briefly 26:2 38:12	95:17 142:6	cease 56:12	Chairman's 94:25
150:1,6 151:4,18	44:17 97:6 106:8	carefully 22:1,6	cent 137:11	challenge 73:11
175:17	bring 2:15 36:17	106:13 119:20	central 12:21 69:5	122:6 128:19
better 112:23	56:8 91:10,21	carried 155:21,22	84:18	challenged 49:11
115:2 130:14	113:19	carries 74:9	centre 71:17,19	129:14
135:10	brings 119:21	carry 141:14	centred 70:19	challenges 97:20
beyond 81:21	163:6 177:17	161:21	certain 2:6 70:17	127:22 153:14
82:16,22 114:10	Britto 115:14	carrying 128:20	79:3,4 105:12,18	challenging 128:5
143:23 170:18	118:7 175:5	cart 110:16	134:5 140:8	147:11
bias 173:13	broad 62:24	Caruana 1:4 69:25	185:19	chance 68:11
big 42:22	broadly 146:19	73:16 80:7	certainly 9:21	124:22
birds 115:3	broke 80:15	122:14,22 179:23	20:11 24:21	change 34:4,5 94:2
bit 70:16 148:13	brought 13:9	Caruana's 77:14	78:18 79:14	99:9,10 128:8,25
bite 149:9	121:2 143:7	case 2:7,23 4:23	85:16 98:24	129:1 154:24
blame 163:7	buckled 97:18	11:17 13:6,22	106:4 111:12	171:14
blaming 116:18	bulk 104:22	19:8 20:12 26:7	118:14,17 124:13	changed 22:7
bliss 130:22	bullying 41:14,20	29:15 33:5 35:21	126:18 131:3	111:18 121:12
blue 157:24	118:1 176:10	37:3 39:14 73:3	141:10 146:17	145:10,23 149:12
blunders 92:25	bundle 65:24	73:4,7 78:21	156:14 171:8	156:22
boasts 108:2	buses 138:6 177:2	79:5 106:10	176:9 178:24	changes 15:2
bodies 137:5	business 57:7	110:17,17 120:6	179:3	20:19 153:23
body 102:25	80:16,19,20	120:9 128:2	chairman 1:3 3:3	178:20 185:6
bolster 53:21	99:12,19,20,22	139:1 150:22	10:7,11 11:22	changing 22:14,18
		154:5,6 156:19		

channelled 143:6	85:10 118:16,16	clause 148:17,18	coincidental 103:5	57:2,3 60:12,14
chapter 183:14	121:4 122:11	clean 3:16 12:12	colleague 48:6	60:16,16 81:15
184:13	choices 79:21 88:1	14:17 22:11	156:12	90:2,8 91:8 95:6
chapters 183:13	110:3 119:22	154:17	colleagues 4:19	96:1 99:24,25
184:16	choose 26:12	clear 14:7 19:17	5:13,18 6:4,12,14	103:7 118:2,11
character 42:14	34:12 121:9	28:21 33:22	6:22 11:12,24	120:7 129:23
50:19 68:1	chooses 53:11	39:20 43:5 46:17	12:5 41:12 72:20	133:23,24 136:4
characterised	choosing 51:17	51:9 52:7 54:19	137:21 150:7	137:24 138:10,11
25:17 89:5	chopped 84:8	81:21 88:4 92:16	151:17 175:23	138:25 139:12,22
charge 46:7	91:13	98:7,12 112:12	176:25	144:19 145:17,18
charged 49:12	chorus 47:20	112:25 132:17	collective 47:11	153:13,18 155:25
charging 137:1	chose 14:21 26:17	134:9 138:25	collectively 133:21	156:16 158:14,15
159:19 160:11	35:13 51:19	141:13 142:15	172:7	161:15 162:2
Charles 161:13	53:21 54:23	143:25 155:4	College 150:9	164:25 173:8
chase 40:2 111:21	62:24 63:4 86:13	180:8 185:12	Collins 99:14	Commissioner's
chat 6:9,14 7:11	132:12 171:4	clearly 4:25 6:10	collision 39:22	25:15
28:14 56:9	chosen 65:17	29:7 53:18 55:1	40:2 175:21	common 51:4 79:9
101:17 135:19	85:11 86:14	101:12 127:1	colluded 171:9	90:15
146:16 155:16,18	165:23	136:4 143:18	172:7	communicated
chats 7:15 9:17,20	Christmas 163:11	155:8 180:16,20	collusion 132:8,23	99:10 175:17
9:22 13:10 16:11	chronology 33:23	client 23:12,13	170:25 173:22	communication
16:20 17:16	45:9 158:24	121:22 169:5	174:2	57:14 150:14
22:13,16,18	161:9	clients 80:23	combined 141:22	151:12
25:24 67:5	chutzpah 121:17	clip 32:3	come 57:20,22	communications
144:24	circulated 163:2	cloak 72:15	68:24 77:13 82:4	47:22 51:8 53:2
check 11:5 101:7	163:14	close 51:20 76:1,8	87:23	58:13,16,19
103:13 105:3	circumstances	114:13 121:14	comes 10:22	103:25 104:4
165:8	18:20 55:5 79:19	142:6 173:4	124:12	106:15 180:7
checking 118:3	79:22 80:13 88:2	176:16	coming 82:17	community 9:16
chief 2:16 9:14	119:22 123:25	closed 77:24	84:10 110:13	comparable
10:5 26:20 28:12	citizen 79:9	closely 95:19	117:4	107:16
33:1 37:24 57:18	civilians 52:24	closeness 46:9	command 40:24	compared 100:2
77:12 80:2,8	claim 57:12 68:5	closing 21:25	42:1	comparing 138:5
82:19 84:20,25	68:16 168:7	72:13 79:22 86:8	commence 184:25	compass 76:17,17
86:2 89:8,9,10,18	claimed 10:14	86:11 124:6	commend 56:14	competition 42:23
90:1,4,5,7,25	26:12 47:8 86:23	157:2 164:21	comment 76:2	compiling 101:8
91:14 106:13	116:12 133:17	166:2,17	125:1	complaint 134:10
107:2,7,13	173:25	Cloud 12:17 22:17	commentary	complaints 50:21
109:16 111:5,12	claims 31:6	22:19	137:9	75:20
114:14 119:19	clarification	Club 172:21	commenting 36:25	complete 68:18
120:5 122:24	122:18 128:11	clutching 117:20	commercial 42:22	110:7 176:23
123:9 137:25	169:10 177:18	co-opted 69:8	136:10	completed 162:1
141:6 166:8	clarified 168:8	Coastline 136:16	Commission	183:14
167:3 172:23	clarify 144:13	cogent 161:7	136:14	completely 40:17
176:18,24	182:8	coincided 23:17	commissioner	72:23 74:6,10
child 84:2 92:9	clarity 29:13	coincidence 24:12	1:11,12 3:21 4:5	76:10 163:25
chink 115:20,23	140:10	132:11,16,20	27:4 34:11 39:17	complex 87:7
choice 81:6 83:9	class 55:2	171:3,5,9 173:23	44:11,16 46:7	105:18 120:4,12
83:18,22 84:3	classified 99:6	coincidences 172:9	51:16 52:3,4	185:15

<p>compliance 182:6 complicated 69:25 129:7 139:6 complied 24:2 52:2 127:10 comply 44:7 115:16 163:23 comprehensive 19:5,11 125:8 127:21 131:21 135:17 138:8 141:16 143:16 170:17 comprehensively 62:13 compromised 58:22 128:16 computer 12:21 20:23 48:1 93:2 computers 48:9 conceal 22:24 concealed 102:17 concealment 103:20 concede 19:8 concept 120:25 155:1 concern 27:4,7,7 28:25 37:11 38:20 57:5 177:14 182:9 concerned 38:15 39:11 46:15 94:18 114:21 161:20 164:14 175:12 concerns 11:18 35:21 42:4 94:21 94:23 96:5 174:21 concessions 85:12 86:13 conclude 121:23 121:24 163:20 concluded 186:4 conclusion 70:12 84:11 134:12 146:21 155:15 178:16</p>	<p>conclusions 94:25 122:5 131:3 183:19 conduct 55:11,17 136:5 139:20 162:4 conducted 136:8 conducting 17:15 conducts 136:24 confidence 26:19 28:9 32:6 33:4 43:21 73:18 76:22 107:3 111:15 114:3,7 114:16 115:6,9 127:5 164:24 confident 134:25 confidential 11:25 confidentially 31:24 confined 183:21 confirm 66:7 73:3 73:6 178:1 confirmation 30:6 confirmed 8:12 30:9 43:11 116:3 175:5 178:10 confirms 40:11 67:12 conflate 166:22 conflating 167:22 conflict 76:14 173:13 confronted 29:19 confusing 167:1 connected 143:24 144:11 152:13 161:5 163:1 connection 8:2 51:8 connections 76:8 conscience 78:12 conscious 6:2,11 28:19 39:10 consent 18:14 159:15 consequence 12:11 105:17 consequences 80:6</p>	<p>83:10 consequential 184:15 consider 5:12 55:1 60:19,21 71:12 102:11 132:3 140:17 169:7 184:2,7 185:4 Considerable 2:24 consideration 25:15 69:17 151:2 considered 3:7,24 10:24 69:6 130:11 143:24 152:1,16 153:9 171:13 considering 168:2 consistent 98:12 185:14 conspiracy 23:14 88:19 92:22 93:19 109:6 132:23 135:24 170:25 conspired 172:8 constable 145:4 constant 41:24 103:2 119:8 constitute 35:17 41:20 constituted 153:24 Constitution 80:17 constitutional 80:25 constraints 45:3 constructive 165:5 consulting 81:23 contact 90:9 142:6 contain 161:4 contained 14:15 20:22 43:6 48:10 59:4 92:25 104:10 137:17 containing 50:13 contains 25:7 32:3 contemplation 153:25 contemporaneous</p>	<p>48:18 55:6 111:7 contend 26:1 116:2 contended 26:17 content 3:10 9:12 12:15 55:4 59:17 69:21 73:24 contentious 131:19,20 148:17 149:25 contents 2:1 48:2 64:25 71:18 72:5 72:10 112:16 160:16 context 42:24 43:4 97:19 104:18 108:11 127:7 128:13 130:11 144:8 149:5 150:15 152:20 158:1,5,20 159:5 160:14 167:20,23 169:8 170:21 175:25 177:12 178:17 continue 89:15 99:21 174:10 continued 5:9 35:3 50:8 63:1 68:2 100:11 121:13 141:24 144:13 continues 7:19 37:11 178:21 continuing 7:18 142:18 continuous 133:10 contradict 73:4 contradicted 147:20 contradictions 13:9 contrary 29:12 38:10 40:22 123:4,11 163:17 contrast 82:23 contrasts 38:18 contribute 68:12 contribution 124:7 contrived 38:22,23</p>	<p>38:24 control 14:9 17:19 62:10 67:17 97:15,15 114:25 116:9 125:13 127:3 146:23 160:16 controversial 177:19 convened 74:14 convenient 5:10 46:10,14 123:15 conveniently 93:17 conversation 27:19 36:12 113:11 115:15 conversations 7:3 7:7 67:13 74:23 107:24 109:25 converted 69:14 conveys 38:4 convicted 68:1 92:6 convictions 44:5 convince 78:22 Cooper 34:24 42:8 42:9,12 55:13,14 57:24 58:2,7,11 59:16 67:23 68:10 69:23 101:9 180:9,11 181:11 182:20 Cooper's 92:24 104:15 182:6,17 coordinated 89:21 coordinates 175:15 coordination 137:8 copied 48:7,22 108:18 copies 11:15 12:9 108:22 109:3 copy 8:25 9:3 12:1 16:19,22 17:16 49:25 51:20 93:5 103:23,25 copying 8:8</p>
---	---	---	---	---

core 43:24 63:7 90:6 94:2 127:1 127:19 128:1 129:15 130:15 131:6 134:14 138:18,21 142:24 143:1 158:4 171:14 174:18 179:16	130:16 156:7 177:10 179:7 183:17 184:18 185:25 court 47:5 48:16 77:7 124:21 159:15 courts 49:16 covertly 11:19 Covid 154:4 CPEA 55:24 CPIA 55:23 CPs 105:11 created 113:13 139:7 149:6 181:9 credibility 10:1 13:6 20:6 45:2 credible 4:1 5:16 29:18 credit 22:21 179:2 Cressida 120:9 crime 4:7 71:5 75:25 92:6 152:24,24 crimes 92:7 criminal 4:8 15:9 15:18 26:15 32:19 33:20 37:6 43:8,18,21 44:1 44:25 45:18,25 46:12 48:15 51:18 53:6 55:7 59:5 80:4,11 83:2 95:13 110:21 111:2 119:19 128:22 137:19 158:21,21 159:6,25 160:14 criminals 71:5 critical 21:20 criticise 2:15 105:11 142:10 157:7 159:16 170:5 184:20 criticised 24:7 170:1,4 criticising 21:17 criticism 10:2	38:16 135:11 164:15 166:15,17 167:14 169:2,8 169:13,17,20,22 170:22 criticizing 169:4 Crome 89:22 cross 91:17 cross-examined 1:25 cross-examining 23:1 crossed 82:21 Crown 65:3 crucial 43:14 114:4 151:13 crushing 42:23 Cruz 123:21,22 cry 135:12 crystal 112:25 CTI 142:7 culture 51:11 current 3:21 95:25 107:17 131:15 132:24 148:13 174:5,7,15 currently 152:1 curtailment 120:14 curve 54:14 custody 4:12 cutting 80:25 Cyclops 57:9 150:22	147:9 148:25 154:9,11 157:9 182:25 date 27:8 31:4,14 62:23 63:2 65:16 66:9 81:3 111:18 125:25 157:14,18 162:15 163:9 180:19,22 181:3 dated 25:12 David 30:14 day 12:6 13:19 21:4 23:2 28:13 30:1,7 44:13,13 63:22 74:18 77:18 79:12,24 80:1,15,16 83:6,7 107:23 108:11,16 113:15 119:3 124:21 150:3 157:11,12,15 158:14 161:10 167:5 173:16 day-to-day 150:16 daybook 37:10 47:24 57:9 69:15 151:22 daybooks 21:2 45:14 47:3,18 48:9 51:22 58:23 59:1,8 69:21 153:11 days 30:16 47:16 50:9 70:16 84:5 93:14 113:3 114:1,3 140:25 150:2 DC 50:3 130:2 146:11 177:25 178:4 181:12,21 182:12 deal 112:19 135:15 144:23 185:15 dealing 68:15 113:23 154:1,2 155:24 183:13 dealings 5:19,23 deals 170:13 dealt 71:14 118:9	119:9,20 148:8 173:8 dearly 91:20 debate 151:3 deceit 133:19 December 7:16 13:22 14:24 22:8 125:9 126:13 143:22 163:8,13 decent 51:14 decide 16:15 54:2 62:13 69:11 70:6 decided 16:13 26:25 27:9,15 31:2,13 32:5,17 34:7 38:11 83:21 83:22 86:15 106:18 142:1 deciding 27:14 55:8 decision 3:4 26:8 28:24 29:10,16 30:9 31:15 33:22 64:2 69:13 86:18 150:14 decisions 50:11 150:25 151:10 dedicated 69:8 deducted 171:1 deem 134:17 deemed 54:21 142:25 171:6 deeply 133:6 defamation 119:5 defective 149:14 154:19 defend 32:14 78:22 92:5 defendants 18:6 47:6 109:9 137:18 159:21 defendants' 18:13 defending 86:9 96:17 deficiencies 92:15 deflect 108:9 deflecting 70:17 deflection 49:21 delay 50:20 61:24
		D		
		daily 47:21 damage 95:4 damaging 102:18 Dame 120:9 dared 119:1 dark 78:14 Darren 57:17 data 15:2,4 20:19 20:24 45:11 46:1 47:1 48:6 49:9 50:13,15 51:20 75:21 97:20 99:1 103:25 120:1 125:18 128:7		

63:5,7 91:24 124:14 128:10,19 130:8 163:23 delayed 78:23 120:2 delays 128:7 129:12 delete 133:15 deleted 13:24 20:14,15,15,16 20:19 21:11 45:6 50:6 67:5,10 131:23 144:18 181:1,5 deleting 2:20 133:13 173:24 deletion 153:7,8 180:24 deletions 62:3 67:4 67:14 129:13 135:20 149:16 164:8,13 Delhi 15:8 18:5,13 21:14 26:15 32:19 45:1 46:24 50:15 56:21 57:16 59:5,9 63:22 67:22,24 69:4,22 77:11 79:5 81:8 85:25 92:2 106:16 108:23 109:8 114:10,11,12,24 121:17,19 136:21 137:3,17 151:9 153:7 159:20,22 160:3,5 deliberate 88:17 deliberately 10:17 78:14 88:7 102:17 deliver 127:12 185:13,16 demands 52:12 demonstrate 185:10 demonstrated 170:16 175:9 demonstrates	44:23 133:7 demonstrating 52:20 111:23 denied 115:15 deny 35:7 157:9 departed 140:23 department 128:6 145:7 departure 154:3 depend 55:3 depending 37:25 deployed 39:25 52:24 deploying 49:16 deployment 9:23 deprive 124:17 155:3 deprived 2:2 16:17 20:11 124:19 deputy 113:2 describe 41:11 127:13 described 18:21 77:23 92:11 130:14,18 describes 100:13 description 36:18 64:20 designed 71:8 desk 4:24 12:8 20:24 desktop 20:23 48:1 despaired 78:17 desperate 89:2 91:9 desperation 96:3 118:20 despite 9:12 10:23 15:22 21:5 29:12 37:1 80:3,9,16 89:7,7,11 100:9 112:4,5 114:18 123:24 124:15 163:17,18 destroy 49:19 51:17 destroyed 45:6 47:3 109:2	destruction 45:10 108:13 detail 45:12 130:6 138:17 detailed 7:1 111:22 details 80:23 detained 8:2 detect 51:15 detected 164:13 detecting 152:23 detection 4:11 detective 4:6 determined 66:5 developed 184:25 device 73:2,6,9,13 131:25 145:4 147:14,16,18 148:25 149:7 150:18 154:17 159:12 182:3 devices 45:7,14 51:21 60:2 98:5 99:22 104:7,10 134:16 144:15 145:21 146:15 148:19 149:2 151:4 DeVincenzi 81:25 82:10,24 86:2 166:11,14 DeVincenzi's 78:10 DFU 161:20 Dick 120:9 difference 18:9 75:17 176:20,24 different 18:7 27:7 70:24 72:24 73:25 74:6,10 78:9 81:3 82:4 82:11 140:6 145:24 146:25 156:16 163:25 165:16 169:19 183:13 difficult 3:4 100:2 118:16 140:15 141:6 156:13	difficulty 53:18 digital 48:21,25 49:9,12,13 50:3 130:3 147:10 179:5 dignified 28:15 diligently 95:16 dimension 173:18 diminish 125:15 direct 88:6 directing 6:6 direction 49:20 directly 76:20 89:22 109:16 116:3 139:22 Director 11:21 72:1 disagree 19:9 21:10 disappear 50:12 disappearance 47:15 disappeared 74:13 disappointing 74:12 disappointment 38:21 disarm 39:14 discharge 15:16 139:21 discharging 84:23 116:22 disclosable 55:3 59:4 disclose 1:7,17 2:22 4:14,18 5:1 5:3,22 6:2,20 7:15,18,22 9:4,10 9:22 10:15,16 13:2,18 15:21 16:4,23,24 19:3 20:1 23:22 24:2 24:13 25:24 48:13 52:10 62:1 62:9 103:23 105:12 125:23 132:12 142:19 162:7 164:3 171:5	disclosed 1:16 3:19 4:16 5:20 6:18 7:12 14:5 17:13,21,25 18:12 52:11 54:18,20 66:19 67:2,18,18 100:25 109:2 123:2 126:6 127:2 133:4 156:7 158:6 180:3 disclosing 9:16,21 61:25 98:2 105:15 144:1 159:18 disclosure 1:22 7:21 14:10 15:10 15:16,17 19:5,11 24:5 43:2,6,8,13 43:16,19 44:2,19 48:24 51:4,24 52:7 55:1,9,20,25 56:1,9,21 57:11 58:14,17 59:9 61:17 62:16 67:16,19 68:15 68:19,25 69:6,10 86:22 88:3 93:18 93:23 94:24 95:8 96:6 97:9,11 98:11,17 101:13 103:18 106:6 107:17 112:10 125:8,11,12 126:6,24 127:6 127:21 128:11,15 130:9 131:15,21 135:11,17,18 138:9,14,15 139:16 141:18 142:8,16,25 143:5,16,19,23 144:7 153:4 158:5 160:7 162:4,8 170:8,9 170:12,18 172:12 179:7,10 181:16 184:6,14
--	--	--	---	--

discomfited 85:20	63:6	DPP 35:19 45:24	early 29:11 30:4	147:9 148:9
discontinue 33:15	disturbing 133:6	64:23 92:16	31:1 39:21 84:6	149:6 176:7
discontinued	diversionary	180:25	earth 146:5	embarrassed 22:4
92:14 121:22	130:15	Dr 118:6	easier 145:11	embers 94:10
160:9	divided 183:12	draft 183:10 184:3	157:23 158:8	emerged 97:24
discredit 93:8	division 4:7	184:17 185:2,6	easily 102:13	emerging 51:9
discretion 86:17	document 45:21	drafted 106:25	166:4	emotional 176:20
discuss 64:25	65:1 69:16	drafting 11:6	east 176:3	empathy 137:21
discussed 81:8	144:10 181:5	drafts 152:1	easy 87:16	156:12
82:5 89:24	documentary	dragged 45:19	economical 107:10	emphasise 43:16
153:21 160:8	45:11 47:2	169:15	edited 107:4	165:12 172:14
discussing 72:20	documentation	dramatically	effect 1:22 36:25	182:25
disengage 34:3	7:2	52:25	74:17 78:4	emphasised
disgrace 94:15	documented 11:14	draw 13:13,15	123:11 128:4	174:22
disgraces 94:15,16	documenting	24:17,20,22,23	132:7	employ 160:25
disguise 29:8	177:23	25:21,23 119:12	effectively 43:20	employed 159:16
disingenuous	documents 11:16	171:11 172:24	48:2	employment 56:12
105:10	11:25 12:2 49:19	drawing 28:16	effects 38:17	encouraging
disinvited 172:20	49:25 62:9	85:24	effort 163:23	150:24
dismissal 120:7	105:18 108:14,23	drawn 24:10 85:8	efforts 163:23,25	ended 1:18 17:24
dismissed 120:1	108:24 109:1,4	133:5 169:24	179:12	98:22 99:4
dismissing 118:1	110:1 125:17	drew 62:21 77:9	egregious 46:19	endorsement 52:5
dismissive 41:4	126:1 138:23	125:25	egregiously 117:15	energy 70:17
dispatch 137:24	139:19 141:21	drive 4:22 46:25	either 14:16 18:18	engage 142:14
dispatched 153:19	153:22 158:6	49:24	36:14 72:22 85:9	engaged 41:13
dispatching 175:1	159:22 160:12,12	drives 110:15	88:11 94:2	68:4 72:17 142:3
dispelled 112:15	dog 13:12 37:3,11	dropped 121:15	107:13 133:20	170:19
display 53:8	136:23	drum 92:22	135:23 139:22	engagement 33:15
disposal 86:21	doing 2:18,18 3:24	due 41:1 63:22	elapsed 50:23	165:5
142:9 144:3	12:11 21:18	75:19 138:4	electorate 78:21	English 41:15
disposition 140:8	23:10 24:7 29:3	149:17 153:15	electronic 6:4	55:23
dispute 86:17	111:1 122:10	156:15 159:9	45:11 103:24	enhance 20:5
180:10	150:21 151:17	164:16 165:18	104:4 109:1	enjoyment 78:23
disputed 81:20	170:2	174:20 184:12	125:18 157:9	ensure 27:1 56:6
disrespectful 41:7	domain 99:5	duplication 162:15	else's 80:20	110:12 172:25
dissected 21:22	door 12:8	duties 43:25 56:2	email 30:6,8 32:16	ensuring 43:2
disseminating	doors 77:24	119:1 139:21	49:23 57:9 69:15	enterprise 84:17
90:23	doorstep 64:9	dutifully 67:18	108:12 110:9,10	enthusiasm 92:2
distinction 28:16	double 9:24 86:15	duty 34:14 44:6	110:13 111:6,23	enthusiastically
38:19 40:1,3	132:2 135:22	52:15 85:23	112:9 126:8,9	89:18
84:24 141:17	164:16 170:14	105:15 125:23	145:24 150:22	entire 52:18 91:2
159:17 167:9	doubling 131:13	184:18 185:15,22	175:6,7 177:21	entirely 35:13 42:4
distinguished	doubt 64:4 73:18	dying 94:10	177:22 178:10	52:13 72:24 92:3
42:15	83:16 95:20		emails 11:6,8	140:5 159:13
distinguishing	98:18 100:21	E	12:19 18:6,13	174:3
53:18	109:7 111:9	E1119 181:11	47:25 58:23	entitled 13:13 34:4
distract 135:5	113:12 125:6	E52 180:13	72:19 89:24	106:4
distracting 127:14	130:25	earlier 26:25 30:7	107:23 108:25	entry 37:10 127:25
distributed 7:24	doubts 112:8,8,16	55:22 80:7 92:20	110:9 136:25	envisaged 121:6
		132:1 181:3		

envisages 56:13	57:2,13 60:8,18	111:24 119:14	163:9	54:17 101:17
episode 134:23	62:5 63:13 65:4	161:24	expect 44:16 65:22	102:16
equal 85:1 120:21	67:11 68:17 69:1	exaggerated 23:19	119:25	exposing 21:23
equally 5:25 48:17	72:21 73:14	23:24 31:23 32:2	expected 6:16 21:7	express 15:13
129:17	74:17 77:9 78:11	examination 66:13	expecting 117:2	98:15 179:18
equate 137:14	79:4 81:10 83:23	66:17 72:9,10	expense 2:24	expressed 31:25
176:23	84:21 86:25 88:8	144:14	experience 49:8,16	41:8 175:20
equivalent 55:24	88:11,18,20	examine 77:3	100:16 185:9	expression 38:2
Ergo 141:6	89:11 90:17	112:1	experienced 4:10	expressly 43:10
error 104:14	91:23 92:14,15	examined 66:22	4:11	48:25 133:2
errors 107:16	93:3 96:2 98:12	examining 8:8	expertise 49:15	135:23
especially 2:17	98:13 101:8,10	example 16:12	179:5	extend 166:10
15:5 170:1	101:17,20 102:1	44:17 56:11	explain 34:22	extended 94:17
essence 126:25	102:21 103:6,18	58:25 93:1	38:25 46:18 50:2	146:20 170:6
134:19 139:7	104:3 105:7,23	136:20 143:6	53:15 67:5 89:3	173:15
146:19 148:1	108:4,7 109:11	151:8 180:22	130:5 162:18	extensive 37:1
essential 43:15,22	112:24 115:7	examples 44:4	165:1 180:18	45:16 49:15
104:18	117:10 118:7	exception 65:2	181:22	93:23 107:21
establishment	123:1,2,3,12	137:4	explained 127:7	extensively 97:10
133:23 172:1	124:22 125:1,5	exceptions 185:20	138:9 141:12,17	extent 2:14 38:14
ethical 173:1	126:13 134:1,7,8	exchange 155:9	142:4 143:19	41:6 52:9,20
ethics 113:19	135:2,25 136:3	169:4 172:23	144:25 145:16	64:18 75:3
evasive 40:15	140:9,20,24	175:14	146:9,11 147:2	135:21
event 33:21 107:19	142:20,21 143:9	exchanged 181:14	147:21 150:2	extra 66:3
141:11 143:7	144:25 147:19	exchanges 37:1	155:25 156:20	extract 12:3
148:12 151:22	151:20 172:4,5	41:19,22 49:2,23	171:24	181:20
172:22	173:10 174:3,23	137:12,16,20	explaining 70:18	extracted 66:14,23
events 7:3 33:23	175:12 180:20,22	166:24	162:3,20	147:10
45:9 70:19 88:12	181:10,12 182:14	exchanging 67:9	explains 23:25	extraction 67:1,6
97:14 109:13	183:2,24 184:2,5	175:23	explanation 3:22	161:17,18,21
142:19 143:20	184:7	excluded 28:11	4:1 7:13 8:13,17	extraordinary
154:22	evidenced 53:17	excuse 3:22 5:11	14:9 50:11 71:24	87:12 94:19
eventually 103:4	151:8	6:18 47:7 49:21	89:1 98:9 100:8	97:16 111:9
107:1	evident 124:15	134:19 157:20	100:9,22 101:5	121:17 132:4
everybody 1:5	135:8 137:18	excuses 49:6 57:1	106:23 121:16	170:17
13:17 73:15	142:4 167:22	129:6 139:9	129:14 133:8	extreme 113:4
121:1,21	evidential 91:3	142:12	141:3 146:2	extremely 80:10
everyday 44:14	114:4 180:10	execute 79:25	151:6 157:20	95:17
evidence 3:9,12	Evidently 99:21	executing 35:12	explanations	
4:13 11:9 13:13	evolution 143:7	exercise 27:10	46:19 50:1 97:7	F
21:8 28:7 29:19	evolved 127:9	51:24 147:11	100:18,19 106:20	Fabian 83:3 84:14
33:14 40:13	148:14 163:18	existed 9:5,6 14:8	129:12 141:4	86:9,10
41:23 42:20 43:4	evolves 127:8	existence 2:10	143:11	face 77:19 100:18
44:15,19 45:17	ex 32:10	9:11 17:25 18:2	explicitly 88:16	127:13 134:20
47:16,19 48:20	ex-Superintende...	140:18	96:17 184:20	135:2 137:1,2
48:22 49:13,14	1:13	exists 56:3 132:22	explored 72:6	153:14 169:10
49:18 50:10	exactly 13:14 40:6	exit 28:15	export 54:12	faced 79:21 97:16
51:18 53:5,9,13	62:13 81:4 83:6	exoneration 75:19	102:12,14	121:5 127:22
53:19 54:1,6	93:19 110:25	expanded 65:18	exported 54:13,16	128:12
				faces 119:7 122:7

facing 97:19	fair 23:7 43:2,14	Fifthly 4:15 154:9	141:20 153:15,17	foremost 154:7
fact 7:6 10:23	56:19 149:17,18	fig 111:16	167:20 171:15	168:4
24:18 25:18	177:14	fight 119:6	179:22 182:2	forensic 32:2 50:3
27:23 28:25 29:8	fairly 42:19 43:20	figures 121:15	184:24	66:12,17 72:9,9
31:18 34:10	185:16	file 128:11 180:24	firstly 4:3 44:18	130:3 134:16
35:24 36:19,22	fairness 24:19	180:24 181:1	63:16 66:1 67:22	147:10 161:16,18
37:5 38:15 52:6	56:18	filed 123:5 126:13	131:19 135:15	179:5 182:4
60:11 66:2,5	faith 122:8	131:5	136:2 138:8	forensically
67:11 77:8 82:13	faithfully 105:15	files 50:4	149:22 152:18	126:21 144:14
91:12 98:21	fall 49:17 50:1	filled 108:8	159:22	164:1,13
102:6,7,11	false 70:23 71:2,2	final 52:17 122:4	fit 46:8 88:10	foresee 185:20
105:20 107:11	73:1 75:6,7	finalise 185:8	fits 89:4	forget 131:7 167:9
110:9 119:13	106:8 174:2	finally 67:2 78:19	five 81:4 83:6 84:9	173:18
124:3 127:3	falsity 73:23	119:10 135:22	86:19 87:14	forgiven 130:22
151:21 155:12	familiar 43:1	154:18 179:13	97:18 119:2	fork 83:11 84:12
176:1	family 42:15	financial 27:3 29:2	121:10 149:22	119:22
facto 32:10	173:16	57:19 68:5,16	154:13	form 47:18 69:20
factor 36:5	famous 99:5	90:14 115:3	fix 81:2 118:5	107:9,9 109:1
facts 23:8 34:6	far 27:3 35:21	136:14	fixed 79:24	132:23 135:24
45:3 46:16 48:13	46:15 54:17	find 66:16,16,24	fixes 118:8,10,12	142:11 151:1
53:12,14 120:5	101:18 135:12	67:7 72:14 79:20	fledgling 42:23	160:10 176:10
147:1	166:11 170:18	144:4 148:6,10	floor 21:4 123:16	formal 136:25,25
factual 122:5	175:11	158:9,10	focus 13:10 39:2	formally 1:6
182:21	Farm 97:2	findings 94:2	87:25 125:21	formed 35:16
fail 43:24	fastidious 11:14	121:7 127:1	157:6,21 165:7	former 10:9 86:1,4
failed 5:1 7:21	fate 115:1	129:20 171:14	focused 184:11	89:9 90:12,16
9:22 10:16 13:17	faultlessly 88:23	180:12 183:18	focusing 131:17	93:13 95:25
15:20 16:4 22:5	fear 82:22 130:14	finish 39:5 124:2	follow 79:4 83:22	107:17 128:8
42:18 62:1 85:23	feared 31:11	185:24	171:23	132:24 137:17
91:21 93:17 95:7	feature 34:17 54:6	finished 52:11,16	followed 99:14,15	139:13 142:7,11
130:12 134:17	February 129:8	63:13	128:23	144:20 145:19
138:14	146:3	finishes 173:9	following 4:1	159:20
failing 46:14 51:2	Federation 5:20	fire 93:9,10 94:8	10:12 18:6 28:13	forthcoming 135:8
105:12 144:8	5:24 40:21,25	106:12 108:15	32:22 33:16 34:2	forum 52:24
170:3	41:3 42:2 117:20	109:7 112:3	36:9 128:25	forward 124:10
failings 44:19	167:11	firm 158:13	131:24 139:17	fought 174:9
45:20 52:17,18	feel 35:2	firmly 59:13	144:14 145:6	found 4:22 8:5
52:25 147:3,4	feeling 177:11	firms 136:11,11	180:24	20:22 24:8 29:6
163:19	feels 173:15	137:6	follows 54:5	65:24 68:17
fails 52:21	feet 124:8	first 6:19 8:16,23	180:14	87:12 88:2
failure 1:22 2:21	fellow 11:24	15:2 18:14 29:22	forbid 73:13	102:13 115:8
5:2,9 19:1,10	137:22	33:9 39:2 50:10	force 37:15 42:17	118:11 120:10
21:25 24:1 25:24	felt 37:19,23 40:13	53:25 57:6,20	52:1 99:10 116:5	128:18 129:17
27:12 52:9 56:20	42:17 91:6 141:8	61:20 62:25	131:14 134:20	168:19 178:25
57:4 163:22	177:8	65:24 67:12 71:2	150:18 172:1	four 16:7 28:9
171:23	Field 147:6 175:19	75:6,24 81:23	174:16 177:9	69:8 79:11,12
failures 2:25 23:21	fielding 89:23	89:7 111:17	forced 28:16 52:12	102:8 106:12
44:2 45:16	fifth 60:13 129:24	112:21 116:12,16	80:14	138:24
129:13	129:25	121:24 130:3	forces 56:5 150:20	fours 148:15

fourth 28:10 126:17 130:1 143:13 178:1	117:8 124:8 140:12,13 142:24 143:19,21 144:6 151:5 160:8 163:9 166:12 169:1 181:1,5 184:5,7,13	Gibbs 23:2 61:13 61:17,19 92:19 98:13 106:7 119:14 122:16 153:3 179:24	giving 11:8 53:25 56:17 63:13 81:15 144:6 179:17	96:11,14,24 97:4 97:4 99:7 105:9 106:5,11 110:14 110:21 111:8,25 114:8,18 117:21 118:20 119:16 126:10 128:6 130:7,19 131:1,4 131:7,12 132:5,8 132:22 133:7 134:11 136:19 137:13 143:5 152:10 154:5 155:3 159:4,10 164:18 165:20 166:5,7,7,20 167:8,16,21 169:5,14,17 170:8 171:19 172:16 173:21 174:4 176:13 178:3 185:17,21
fourthly 4:13 135:21 153:13	Furthermore 2:9	Gibbs' 122:24	glad 112:13	118:20 119:16 126:10 128:6 130:7,19 131:1,4 131:7,12 132:5,8 132:22 133:7 134:11 136:19 137:13 143:5 152:10 154:5 155:3 159:4,10 164:18 165:20 166:5,7,7,20 167:8,16,21 169:5,14,17 170:8 171:19 172:16 173:21 174:4 176:13 178:3 185:17,21
fractious 40:20,24 41:25	future 11:17 150:25	Gibraltar 5:19,24 6:7 11:22 13:21 26:21 40:21,25 41:3 42:1 43:10 55:24 70:2 79:7 82:20,21 83:1,15 83:25 84:13,16 85:2 86:24 87:4 88:5 91:19 92:9 92:13 94:16 95:14,20,23 96:25 104:1 117:17,19 120:19 120:20 121:4 122:7 136:12,15 147:17,24 149:24 166:8 167:11	glasses 4:23	government's 1:20 33:5 86:11 131:10,17 160:25 165:17 169:18 171:2 178:7,8,12
frank 105:23 134:3	<hr/> G <hr/>	Gibraltar's 4:3,6 75:25 131:5,8 134:23 167:1	go 11:7 64:10 113:11,20,21 121:14 124:3 148:2 157:21 166:12 169:20 178:24 179:2,3 185:12	governor 26:20 27:11,13 28:12 30:13 31:9 33:1 40:5,6,9 86:5 89:10 90:2,11 107:1 115:17 116:1,3 137:25 175:20,25
frankly 52:22 105:7	Gaggero 50:22	give 7:13 44:2 73:20 77:22 129:12 130:24 135:14,16 143:10 146:22 154:16 157:13 185:11	goal 73:25	governor's 31:20
free 37:19 38:10	gains 39:16	given 8:13,22 17:10 45:2 46:9 57:25 68:11 76:1 76:21 85:14 87:14 88:21 96:12 97:8,8 98:14 99:23 100:9 101:4 126:19 131:15,20 134:1 135:25 141:4 142:8 143:15 144:10,24 147:20 158:4 163:10 174:2 177:12 179:10 185:25	goes 9:25 43:16 56:11 166:11	GPA 28:12 30:4 30:10,19,20 32:16 59:24 60:3 60:4,19 107:5 114:3 115:10,12 115:17,20,24 131:25 138:1 151:23 165:2
frquent 22:20 41:9	gallantly 50:17	gives 49:5 177:3	GoG 149:13	GPA's 30:7
Friday 1:1	game 116:10 124:2 127:24,24		going 44:14 45:25 69:16 70:22 74:4 74:4 78:16 79:2 93:11 116:5,5 119:13 124:1 138:17 148:9,12 156:12 161:9	GPF 41:6 117:16 176:6,8
friend 34:23 67:23 68:21 76:13 113:2 122:15 123:8 125:20 132:1 152:10 153:3 173:4	Garcia 67:4 130:2 146:11 161:24 177:25 178:4 180:12 181:21		good 1:5 5:7 50:10 50:19 68:1 88:20 101:25 111:3 113:2 123:22,23 134:18	gradually 21:22
friendly 81:16	Garcia's 50:3 67:11 164:11 181:12 182:12		goodish 36:18 118:21	Grail 167:17 172:9
friends 75:12 176:16	gargantuan 154:19		goodness 110:6,20	
friendship 75:9,9 75:13,14 76:1 119:10,13,18,18	gather 72:21		goose 111:21	
front 62:20 118:13	GBC 87:6		governed 53:4	
frustration 113:24 176:8	general 11:5,21 15:17 28:11 33:2 35:19 37:25 50:5 68:3 72:15 81:6 81:14,20,25 82:3 82:12 83:9 85:18 85:22 86:1 95:12 111:13 113:10,15 121:23 135:16 136:2 160:9 166:9,24,25		government 3:2,3 3:24 5:7,14 8:11 9:24 11:19 13:5 19:9,21 21:10 23:6 24:12 26:6 26:16 32:20 33:18 35:6,19 61:20 69:24 70:2 70:9,15 71:10 75:16 84:14 85:9 88:14 89:14 92:19 93:14,16 94:11,22 95:9,11 95:11,18,23	
fulfill 56:2	General's 43:7 48:24 81:10		government's 1:20 33:5 86:11 131:10,17 160:25 165:17 169:18 171:2 178:7,8,12	
fulfilled 105:15	generated 53:6		governor 26:20 27:11,13 28:12 30:13 31:9 33:1 40:5,6,9 86:5 89:10 90:2,11 107:1 115:17 116:1,3 137:25 175:20,25	
full 19:4,11 42:17 93:5 98:8 134:20 143:15 180:4	generously 59:19		governor's 31:20	
fully 28:19 40:16 185:16	gentleman 130:2		GPA 28:12 30:4 30:10,19,20 32:16 59:24 60:3 60:4,19 107:5 114:3 115:10,12 115:17,20,24 131:25 138:1 151:23 165:2	
fulsome 63:9	George 97:1 120:21		governor's 31:20	
fundamental 42:18 46:14 56:18 120:18 149:19	getting 73:24 114:13		GPA's 30:7	
fundamentally 58:15	GHA 136:13		GPF 41:6 117:16 176:6,8	
fundamentals 51:12			gradually 21:22	
furnish 127:19			Grail 167:17 172:9	
further 39:12 53:16 65:19 76:2				

grand- 120:24	114:20	98:7,14 104:22	39:9 118:3 154:3	173:17
granted 63:25	happens 91:17	104:25 105:6,12	HMRC 175:3	hundreds 102:22
77:7 161:14	165:14	105:14,22 106:19	hold 23:5	102:23 183:12
granular 130:6	happy 29:5 50:18	108:8 111:17	holder 148:19	hypocrisy 53:8
grateful 3:4 42:5	52:16 180:13	112:19,22 118:9	holds 180:6	
55:14 59:17 61:1	182:21	122:3 124:15	holiday 63:20	I
great 34:22 105:2	hard 45:3 46:25	138:20 139:11	holidays 162:11	i.e 152:18
127:10	49:24,25 63:22	142:21 143:9	hollow 49:18	Ian 57:17,18 80:13
greater 75:2	85:6 109:3	157:2 186:1,1,4	home 4:22,24	81:7,11,21,24
Grech 57:18	hard- 103:24	hearings 1:14 2:1	homes 42:16	82:9,15,23 83:7
grim 89:4	hard-copy 108:14	2:3,12 3:1,6 6:24	honest 85:6	83:16,25 84:6,7
grossly 120:11	harder 53:15	7:17 9:10,11	honestly 31:25	85:2 86:6,23
grotesque 53:7	124:4	13:3 14:3 16:6	84:23 116:22	91:21 107:6
grounds 14:23	harm 23:7	17:22,24 24:5	honesty 13:7	109:10,23 113:18
group 6:10 7:11	harnessing 49:12	65:16 81:18	honour 96:18	113:22 114:5
90:1 99:3 104:8	harsh 130:10	183:10 184:5	Honourable 42:15	118:3,23 121:10
grow 111:16	harshly 170:20	heart 43:20 70:21	honoured 65:5	122:7 180:14
guidance 19:13,18	Hassans 23:3,12	73:10 85:15	hope 38:3,6 86:24	181:9
56:6 139:15	70:10 80:1 82:18	93:20 122:9	95:14,22 97:25	iceberg 78:6
guided 48:14	90:22 96:12,25	heat 162:22	112:15 115:20,22	idea 106:1 114:24
guidelines 43:7	97:4,5 108:1	heaven 73:13	124:5,7,13	115:4 141:2
48:24	114:14	held 94:5 113:21	162:13 170:22	154:6,16
guilt 72:22	Hassans' 76:4	145:21	178:18 184:11	identification 4:12
	106:6	hell 80:15 84:4	hoped 13:18 29:22	identified 55:21
H	Hassans's 25:13	help 8:21 47:12	30:12 31:8 37:20	56:17 62:19
hacked 120:1	25:16	72:13 148:2	71:20 130:21	118:5 146:3
hacking 92:12	head 4:7 84:8	178:23,23	hopefully 84:10	156:7 158:8
half 61:14 63:1	91:15 113:21	helpful 4:20 54:21	93:7 124:1	identify 183:22
78:4	heading 55:20	183:7	148:15 163:16	identifying 56:16
hand 63:18 75:22	132:15	helpfully 43:6	170:13	ignorance 2:9
75:23	heads 28:4	helping 32:8	hopes 79:14	130:22
handed 22:10	health 40:8,10	herrings 135:3	122:10	ignored 12:22 24:4
149:1	136:13	hide 103:16	hoping 37:14	ii 28:24 29:1
handful 30:16	heard 32:22 43:5	104:12	113:5 115:21	illegality 49:4
handset 64:4	49:7 69:2,3	hiding 48:9	horse 96:12	illustrated 64:18
happen 7:10 31:19	74:18 85:4 98:25	high 80:23 109:20	110:16	image 18:1 66:21
57:12 65:8	100:19 114:6	113:22	hostile 40:23 41:4	102:13 106:3
110:23 127:6	136:2 137:9	higher 73:14	41:24 88:24	158:19 161:3
happened 7:9 8:15	153:13 172:4,5	highlight 89:6	89:19 90:17	181:20
22:19 31:14	184:8,8,10	highlighted 45:16	hotly 81:19	imagines 149:2
34:14 37:7,8	hearing 1:18 2:23	126:11	hour 61:14	immediately 4:4
69:18 83:15	5:17 6:5 7:25	highly 3:19 4:9,11	hours 30:18 39:21	73:10 142:3
85:22 86:12	15:22 16:7 19:20	21:20 105:17	137:12 180:23	imminent 30:15
87:15 89:4	44:20 45:5 54:25	hindsight 152:18	181:3,4	imminently 77:1
108:20 110:13	68:14 71:11	155:8 170:20	HQ 47:13	impact 44:23
129:16 146:24	74:13 82:8 85:16	hint 83:13	huge 101:14	94:25 104:19,19
153:23 157:25	86:15 87:2,5	history 103:21	102:25 118:10	105:1 121:8
158:12 161:24	89:24 93:6 94:20	116:18 134:24	176:8	174:18
happening 39:22	96:10,16 97:2	HMIC 38:12,16	human 129:5	impeccable 42:14
77:23 78:1				Imperfect 85:5

implausibilities 87:18	138:2 144:13 149:4 167:12	138:6	25:21 133:5 169:23 170:7	37:2 38:19 39:25 40:23 41:9 42:21
implausibility 132:18,19	impossible 50:2 58:20 97:5 141:8	incomplete 46:20	influence 91:22 126:25	43:4 45:8,18 46:16 47:7 48:16
implausible 5:11 5:15 24:16 37:2	impression 82:5	incomprehensible 9:23	information 1:9 2:3 7:2 11:16	52:6,11,15,18 53:10,19 56:15
102:10 106:20	impressive 47:7	inconsistencies 60:10	20:8,11,12 21:9	56:20 60:9,18
132:10 136:22	improper 33:8,19 35:7,18,25 89:12	inconsistency 183:23	22:4 25:19 48:10	62:7,12,19 63:3,8
146:24 171:3,6	91:2 120:15	incontrovertible 53:14	56:3 64:15 76:21	64:8 65:7,18
172:9 173:22	135:20	incorrect 20:4	99:6 132:25	66:6 68:13 69:5
implement 39:17	improperly 36:2 131:22	incorrectly 20:4 130:20 131:2	133:4 134:2,15	71:16 72:19
implementation 39:2,6,9,14,16	impropriety 75:21 89:6	134:2 135:25	140:9 142:9	79:23 81:10
implemented 60:6	improved 149:24	180:3	143:11 144:4	84:10,13 85:4,15
implication 88:7 88:16 133:14	improving 151:24 151:24	incorrectly 178:15	146:7,22 151:14	87:22 88:8,11,23
implications 45:1	impunity 13:7	incredibly 173:7	153:6 155:12	90:3,18 91:22
implicit 135:24	imputed 25:3	incredibly 83:24	157:4 160:1,4	92:4 93:9,21
implicitly 21:17	inability 24:13	independence 34:16,20	162:25 164:4	95:1,16 97:3,11
implied 135:12,23 136:18 166:15	inadvertent 5:4,6 6:17 98:8 107:16	independent 55:10 55:16,18 56:15	171:13 175:17	97:19,22,23 98:7
170:25 171:8	163:19	128:17	179:1	98:25 101:18,23
176:9	inadvertently 7:14 125:2	index 62:20	informed 34:1 131:2 185:23	102:22 103:1,6
imply 93:16	inaudible 136:20 155:21 182:20	indexed 65:24	initial 7:20	103:16,17,22
implying 88:19	incident 4:21 39:19,21 40:1	indication 55:15	initially 18:22 65:23	104:11,22 105:12
importance 15:5 23:24 31:22,24	99:2,5 117:5,16	indistinguishable 167:10	initiated 51:19	105:18,22 106:19
43:1,3 45:20	121:19 145:3	individual 28:2 101:16 140:8	innocence 72:22 73:8	107:21 108:4,18
47:18 48:12	include 106:23 107:2 152:22	individually 133:21 172:7	innocent 73:15	109:2,5 110:7
49:14 74:11	included 5:22 62:16 125:19	individuals 9:15 28:2,9 141:7	inoperable 156:24 161:23 179:6	111:17 118:8,9
103:10 158:3	147:8	induced 93:10	input 60:21	120:1,10 121:24
important 3:19 5:25 15:13 21:8	includes 16:12 31:16 90:21	inducement 120:3 121:14	inputted 154:15	122:6,8 123:5
23:18,19 26:5,9	including 6:3 13:7 14:17 15:17	inducements 119:4	inquiries 51:23 98:10 144:11	124:23 125:9
36:22 37:5 43:17	24:15 36:14	ineffective 138:1	185:18	126:17 127:12,25
47:23 58:15	47:24 62:9,19	inelegant 172:15	inquiry 1:6,9,15 2:2,8 3:12,16	129:9,15 134:2,8
82:25 83:11 88:1	76:23 92:10	inevitable 128:7	4:14 6:24 7:13	136:17 138:24
94:3,5 96:23	95:25 102:22	inevitably 55:3 57:10 58:24	7:20,23 8:13 9:5	139:13 141:25,25
98:16 102:12	104:4 125:18	124:10	9:7 10:7,18 12:4	142:20,23,23
109:19 127:7	128:21 174:12	infallible 178:20	12:25 13:23 14:1	143:8 152:13,20
139:4 142:13	inclusion 68:22	inference 13:15 25:3 49:5 133:3	15:6,23 16:24	153:20,20,24
146:13 147:15	incoherent 46:20	inferences 13:14 24:10,17,21	17:5,8,22 18:17	155:4,6 156:4,5,6
149:4 150:5,15	incomparable		19:14,18,21,24	157:1,13 159:9
153:9 159:2,17			20:9,10,17 21:13	160:6,24 161:5
160:3 166:6,22			22:25 23:20 24:3	162:2,3,10,10
167:19 177:3,20			24:17 25:20,21	166:21 173:17
177:24 178:17			25:6,23 16:24	174:10 179:15
importantly 125:12 135:6			17:5,8,22 18:17	180:1,4 183:15
			19:14,18,21,24	183:18 184:24
			20:9,10,17 21:13	185:8,9
			22:25 23:20 24:3	inquiry's 2:9 24:4 52:12 53:13,20
			24:17 25:20,21	70:18 86:21 91:2
			25:23 26:12	134:6
			29:15 31:18 36:8	

insight 85:12 86:13 109:15	interface 14:24 100:3	51:9,18 53:7 55:7 57:16 59:6	issue 35:21 37:15 47:11 100:21	145:4 146:14 155:19 156:18
insignificant 57:7	interfere 76:11	64:22 70:13,19	104:9 112:21	157:1,8 160:6,22
insist 79:8 90:8 159:4	interfered 35:10 36:3	76:12 80:5,11	115:25 138:8	June 20:2 29:12,16
insofar 161:19 164:14	interference 26:14 32:18 33:9,19	81:13,22 83:23	146:21 159:23	32:17 33:9 45:15
inspected 21:2	34:13 35:4,8,18	85:25 107:23	162:19 164:10	45:22 46:22
Inspector 49:24	35:24,25 36:21	109:18 110:22	168:4 176:14	55:19 62:14 63:5
inspiration 70:6	36:23 37:6,17,24	111:2 114:13	177:23 182:16	63:24 65:17,19
inspires 68:25	75:18 77:17	128:17 137:19	issued 100:1 148:19,24	66:9 79:23 84:5
instance 19:7 21:9	110:18,19 111:2	151:11 158:21,22	issues 16:10 37:2 38:22,25 43:17	103:21 116:4
institution 177:15	114:9 115:5	159:6 160:15	56:18 86:3,22	126:2,8,10 143:4
institutions 136:12	116:14 121:20	investigations 128:21,23 136:7	87:1 88:3 98:11	144:16 146:20
instructed 116:15 134:9 161:10	177:23	139:6	98:16 106:5	147:9 152:15
179:14	interfering 110:21	investigative 149:20	117:4 118:5	156:11 157:3,5,5
instruction 66:25	international 176:1	investigators 56:1 74:25	120:13 128:3,4	157:11,16 158:1
instructions 162:21	interpret 152:8	investigators' 71:3	130:15 139:17,24	163:10 178:2
instructive 55:20	interpretation 32:10	invisibility 72:15	139:25 140:2	180:23 181:2,4
insulting 41:7	interrupt 122:15	invitation 29:23 30:5,8,11,21	143:13 157:19	junior 128:12
insuperable 29:24 30:17	intervened 70:11 80:21	140:12	159:24 166:22	jurisdiction 80:22 121:9 148:1
insurmountable 175:4	intervening 85:21	invite 130:10	174:18 183:14	justice 27:21 43:15 43:18 44:3 45:20
integrity 44:12,23 56:19 58:21	intervention 68:3 72:11 112:6	invited 13:15 24:18,20,22	184:6,14 185:15	86:7 89:14 94:23
64:21 113:18,18	168:1	25:22 143:10	items 62:22 65:25	174:25
131:14 133:6	interventionist 129:3 142:2	170:7 175:13	ITLD 145:7	justifiable 172:15
intend 44:17	interview 71:19 75:19 77:1	inviting 10:4 165:2	<hr/> J <hr/>	justification 5:8 138:4
intending 10:17 77:1	introduced 51:25 145:2	invoked 116:6	James 37:14 80:1 80:3,24 82:18,24	justified 42:5
intention 10:3 30:3 31:1,5	investigate 42:19 46:8	involved 59:7 78:2 81:5 83:24	106:17 114:13	justifies 23:25
133:14 155:2	investigated 91:25	101:19 141:18	January 128:9,25 146:20 163:10	justify 19:19 117:25 118:1
184:19,25	investigating 34:21 35:1 71:4	involvement 75:24	JL 76:2	justly 43:20
intentional 5:5 133:10	71:7 76:25 77:11	involving 99:6 111:22 145:3	job 87:19 118:25 139:8	<hr/> K <hr/>
intentionally 25:5	152:23	iPhone 100:12 145:12 160:13,18	jobs 44:15 90:13	KC 81:7 153:3 179:24
intentions 76:24	investigation 4:8 15:11 17:15	iPhones 14:22 100:3,7 145:10	Joey 115:14	KC's 106:7
interactions 107:12,22 108:1	26:15 32:19	154:25	join 165:19	keep 78:18 93:23 110:13 122:23
interest 3:15 52:21 64:6,7 71:15	33:20 34:13,25	ironically 140:4	joined 92:1	185:22
76:14 174:24	35:3,8,11 36:2	irony 90:7	judge 68:8	keeping 11:15 110:5 152:22
interesting 75:2 125:4	37:7 44:25 45:25	irrational 118:17	judged 79:19,21 170:20 179:12	kept 8:3 78:14
interests 167:1	46:12,25 47:4	irrelevant 54:3 91:23 124:23	judgement 66:8,11 96:20	key 5:3 26:19 34:16 54:24
	48:3,12,19 49:3	125:11	judgment 150:11	56:20 109:24,25
		irrespective 144:12	judicial 73:11 168:2	kind 20:5 58:11 83:20,20 87:21
			July 1:10 15:23 20:3 25:12 52:8	87:22 88:17
			62:7 99:1 126:4	kitchen 175:8

knew 8:24 9:3,4 12:10,23 26:18 28:19 32:7 65:7 76:9 78:5 104:16 119:24 120:4	164:10 larger 148:2 late 127:25 launched 9:13 law 34:17 43:23 44:1 76:22 83:2 84:14 89:8,9 119:2 120:24 134:20,22,22 136:11 137:6 161:8 174:9,22	learns 178:19 leave 28:3 34:19 56:11 106:18 113:21 122:17 183:3 leaving 86:6 112:20 114:6 lectern 42:10 led 71:22 72:1 80:13 84:3 86:6 87:1 100:3 111:21 141:23 left 12:7 21:3,4 58:6 63:2,4,18 86:9 93:3 100:5 108:16,19,19 110:1 121:20 127:18 148:8 171:7 174:15 182:11,13	23:15 24:25 37:14,19 38:2,5 70:11,20 71:1,20 71:21 72:3 73:20 75:15,24 80:1,3,9 82:18,25 90:21 96:15,18,22 106:17 107:12 108:2 114:13 137:18 159:21 166:19 167:3,13 167:14 168:14 180:2,5,7 Levy's 80:24 108:1 160:18 161:3 liberty 47:6 library 157:21 licenced 176:18 lied 91:6 lies 55:5 85:15 life 88:21 118:24 129:7 light 13:8,19 115:23 179:12 lightly 89:3 likes 6:25 limit 19:6 limitations 182:4 line 39:3 75:4 82:16,17,20 91:17 118:13 165:9,23 169:7 169:22 176:4,4 lines 42:21 77:4 80:25 85:8,24 172:24 lingering 112:15 link 90:15,16 linkage 35:23 links 33:8 list 38:22,24 48:21 128:4 139:25 153:5 159:23 listed 59:8 128:3 listened 35:14 listening 70:4 179:17 litany 21:5 literally 116:24	litigation 43:9 68:4 little 69:24 124:4 130:24 153:4 163:11 live 26:14 32:18 33:20 34:13 37:6 43:24 44:25 45:17 46:24 47:4 48:12 49:3 51:18 55:7 77:6 137:2 lived 21:6 Llamas 11:5 78:12 81:7 82:12 83:2 84:15 166:14 Lloyd 81:25 82:9 82:24 86:1 location 45:14 logged 182:13 logic 160:25 login 180:19 London 138:6 177:2 lonely 141:8 177:8 long 1:18 6:5 11:13 15:6 17:23 20:21 45:22 48:21 50:22 60:2 69:4 90:3 106:21 113:7 161:25 180:16 long-term 137:20 longer 8:5,10 17:5 40:19 63:17 122:21 look 44:10 54:3,9 87:6 102:3,15 124:10 144:16 147:14 158:8 163:24 165:21 175:18 176:7 looked 54:10,25 97:3 102:19 146:6 looking 27:24 74:7 103:10 110:2 139:2 152:18 165:8 loomed 39:12
knowing 22:11 64:11 80:3,10 119:7 146:5,5 161:4 knowingly 133:4 knowledge 1:8 16:12 32:1 107:5 128:1 147:17 166:20 177:5,6,7 known 44:9 78:15 78:18 81:18 knows 23:5 65:11 121:21 127:4 Kram 175:15	lawful 160:20 lawfully 159:12 160:2 laws 79:8 121:1 147:25 lawyer 58:18 69:8 78:3 79:7 84:24 112:1,6 178:3 lawyer's 77:9 lawyers 9:13 10:20 11:4 13:15 21:17 33:17,25 68:8 69:24 70:3 76:20 76:21 84:19 87:16 92:4 95:22 103:9,22 115:11 116:13,15 lawyers' 30:5 lead 6:16 44:16 leadership 41:1,6 41:10 44:10 117:19 131:15 132:24 174:5,7 174:15 leading 45:22 159:23 leads 84:9 87:22 120:19,23 leaf 111:16 leap 154:19 learned 34:23 44:18 50:9 54:24 67:23 68:21 122:15 123:8 125:20 132:1 152:9 153:2 161:20 learning 54:14	legal 70:15 81:16 97:9 114:1 115:10 116:7 141:23 159:14 160:20 169:11 legally 18:9 length 27:18 lengths 34:22 111:9 127:10 172:23 lent 22:2 lesser 2:13 75:2 lesson 51:9 letter 62:6,18 103:9,11,21 107:4 114:3 115:12,19 157:7 157:11 letters 106:15 124:11 143:25 146:13 160:6 168:12 185:1,5 letting 119:24 level 60:7 113:19 levelled 10:3 38:16 Levy 2:17 9:14,18 10:15 19:14 21:20,22,25 22:13,15,19	Levy's 80:24 108:1 160:18 161:3 liberty 47:6 library 157:21 licenced 176:18 lied 91:6 lies 55:5 85:15 life 88:21 118:24 129:7 light 13:8,19 115:23 179:12 lightly 89:3 likes 6:25 limit 19:6 limitations 182:4 line 39:3 75:4 82:16,17,20 91:17 118:13 165:9,23 169:7 169:22 176:4,4 lines 42:21 77:4 80:25 85:8,24 172:24 lingering 112:15 link 90:15,16 linkage 35:23 links 33:8 list 38:22,24 48:21 128:4 139:25 153:5 159:23 listed 59:8 128:3 listened 35:14 listening 70:4 179:17 litany 21:5 literally 116:24	
<hr/> L <hr/> lack 25:17 44:21 46:11 92:14 165:7 177:14 lacked 128:1 lacunae 60:9 language 41:7,15 82:11 133:11 173:22 laptop 20:20 48:2 50:7 139:2 143:14 180:13 182:11,15 large 51:5 90:14 92:18 largely 130:14 137:21 152:15				

loose 80:15 84:4	91:6,9 92:10	144:13 157:15	101:14,25 102:20	15:21
Lordship 122:16	109:19	163:17 168:18	103:12 104:5,9	McVea 17:14,17
lose 12:16 17:12	man's 120:15	maturely 176:22	104:16 105:2,7	66:21 128:17
116:24 117:1	managed 56:5	Maxwellisation	105:10,20 106:4	158:18
133:15 173:18	161:21	124:11 184:22	106:18 107:3,6,8	MDM 64:25
losing 2:20 22:17	management 95:5	185:1	108:14,16,21	mean 29:5 32:4
101:3 115:5	150:23	McGrail 1:7,19,23	109:23 110:10,24	67:7 72:7 78:8
133:13	mandate 95:1	2:5,7,12,23 3:18	111:15,21,24	152:11 160:15
loss 11:17 32:6	manifestly 20:4	4:3,24 5:2 6:13	112:12,20 113:18	165:12 172:2
33:3 111:14	170:2	6:16,23 8:7,16	113:22 114:5,22	meaning 38:4
114:2,7,16 115:8	manipulate 115:2	9:12 10:13,23	114:25 115:9	81:19
155:11	manipulated	11:10,13 12:19	116:8 117:7,11	meanings 32:12
lost 12:14,20,24	109:19 113:13	16:3,11,13,21,25	117:14 118:4,15	means 16:16 37:18
14:13,19 15:3,25	manipulating	17:8,9,16 18:2,5	118:23 119:11	38:8 70:22 80:22
16:19 18:19,25	116:11	18:16,18,21 19:1	121:11,20 122:7	110:23 118:21
20:18,23 21:1,2	manipulative	20:25 21:3 23:14	129:10 132:12	120:25 146:12
22:8,13,15,16	41:21	23:17 24:15,22	140:22 141:1,11	meant 28:8 31:10
26:19 28:8 48:20	manner 60:5	25:13,22 26:4,10	144:21 149:9	33:3 67:6 123:8
49:4 53:9 93:4	120:8	26:11,23,24 27:9	153:18 154:23	157:19 176:3
95:14,22 105:20	manufacturer	27:17,19 28:8,14	155:17 156:10	measures 39:14
107:3 117:18	155:10	28:23 29:14,21	160:13 161:12	meddling 80:17
131:23 133:18	manuscript 69:20	29:25 30:9,18,21	164:5 165:1	media 99:2,8
164:24 173:25	March 46:4 98:6	30:23 31:2,13,17	171:4,20 172:21	median 176:3
182:18 183:1	101:3 126:11,19	31:21 32:8,10,16	173:9,15 175:2	mediate 175:13,13
lot 49:7 126:21,24	129:22 130:23	32:23 33:7,14,17	175:11,16 176:15	medium 176:4
147:24 151:19	131:5,6,9 132:5	34:21 35:9 36:1	177:4,22 180:15	meet 110:22
loud 163:16	132:15 133:2	36:4,16,18 37:13	181:15,18 182:10	meeting 33:16
love 117:18	137:15 169:24	37:23 38:4,13,15	182:13,18	34:1 35:15 36:13
low-hanging 39:15	mask 19:10 23:21	38:21,23 39:1,8	McGrail' 181:9	36:19 37:9 50:5
luncheon 123:14	matched 112:3	39:19 40:5,15	McGrail's 10:19	50:24 81:19,24
123:19	material 15:18	41:5,12 46:3,9,15	11:4 13:5 14:17	83:10 85:18
lying 123:9 174:6	43:13 51:2,13	47:17 48:4,17	20:20 25:11	106:25 107:14
174:8	53:5 55:8 58:23	49:23 50:11 51:5	28:20 33:25	109:17 111:4,11
	63:12 67:17	53:17,25 54:20	35:22 40:17,22	139:14,18 162:6
	129:5 142:5	57:17,18 59:6	41:18 45:10	175:8 180:25
M	143:17 156:10	62:20 63:2 64:9	46:22 47:10	meetings 11:20
main 81:1 85:16	161:5 168:16,17	64:14,14 74:3	48:14 49:18,21	36:3,10,22 37:17
89:24 98:6	materials 45:7,12	75:12,20 76:13	50:4 59:1,7	78:7 118:18
104:21 105:11,22	47:2 54:21	80:2,13 81:7,11	66:20 74:15	137:1,7 160:7
106:19 111:17	matter 1:24 8:2	81:21,24 82:9,15	87:10 91:15 93:4	members 70:9,10
112:19 125:9	28:3 46:2 65:14	82:23 83:8,16	100:8,22 103:22	99:7
138:2,23 139:14	74:23 156:8	84:1,6,7 85:2,20	103:24 105:13	membrane 96:24
maintain 165:11	160:3 162:5	86:4,6,20,23,25	107:19 108:11	memory 82:3
maintaining 28:4	165:16,16	88:4,7,18 89:20	109:10 112:24	108:3 162:24
major 54:13	mattered 74:24	90:10,18 91:3,11	116:13 139:20	memos 136:25
making 15:10	matters 16:8 31:7	91:19,21 92:8,23	141:3 154:3,6	men 42:14,16
16:18 84:18	31:8 36:9 44:11	93:1,8,9,20 96:9	158:19 180:13	50:18 67:25 68:4
151:6	105:19 116:11	97:7,9,12 98:1,19	181:13,21 182:1	83:3,5,20 84:25
malpractice 44:22	141:10 143:9,14	99:25 100:5	McGrail/Ulger	85:6 88:21 92:17
man 12:6,17 79:10				
82:25 84:2 89:21				

120:21 121:2 Mena 57:19 mention 102:7 108:10 174:23 mentioned 16:8 96:7,13 132:1 168:6 mentioning 127:23 message 16:15 27:16 30:1,22,23 39:23 64:5,13 65:5,9,11 74:7,8 74:9 99:3 messaged 76:19 messages 4:15 5:23 6:4 8:6 9:4 9:6 10:16,22,24 11:6,11 12:25 13:11 14:6,7 17:7 18:1 22:1,6 22:25 26:22 28:22,23 29:17 29:20 38:13 39:18 47:24 52:9 52:10 54:2,4 56:23 61:25 62:2 62:4,9 63:6 65:21 66:3,9,13 66:17,22,25 67:9 67:11 71:13,21 71:25 72:19 73:19,21,25 74:20,25 75:3 93:24,25 98:2,23 100:12,23 101:7 101:21,23 102:4 102:11,18,24,25 103:3,14 104:7 104:20,23,25 105:4,13,21 106:15,22 107:13 107:18,19,23 110:20 112:17,17 113:1 117:24 146:16 149:3 156:2,9 158:23 161:17 180:2,4 181:14,17,25 messaging 47:22	48:19 53:2 89:25 met 76:18 81:7 139:12 141:5 metadata 112:2,3 178:11 method 133:8 methodology 44:20 141:13,23 172:8 Michael 81:6 82:12 83:2 84:15 midday 74:2,2 middle 165:13 miles 86:3 176:3 military 84:3 92:10 million 138:23 158:6 mind 6:21 33:25 34:5 35:23 36:6 39:20 57:20 59:13 101:24 106:3 112:16 113:5 121:23 153:16,17 168:4 minds 10:6 31:25 125:25 154:8 mine 183:17 Minister 2:16 9:14 10:5 26:21 27:21 28:12 33:1,10,15 34:3 37:25 77:13 80:2,8 82:19 84:21,25 86:2 89:10,18 90:1,4,5 90:8 91:1,14 106:13 107:13 109:16 111:5,13 114:14 119:19 122:25 123:9 137:25 141:6 166:8 167:3 172:23 174:25 176:18,24 Minister's 107:7 minute 37:9 58:10 64:13,15 74:1 minuted 78:1 minutes 74:2,5	76:3 106:16 154:13 mirror 158:19 161:3 miscarriages 43:15 44:3 mischaracterisa... 164:17 mischaracterised 125:20 miscommunicati... 117:11 misconduct 96:2 misfeasance 168:7 168:25 mislead 10:18 117:15 misplaced 105:13 misquote 120:20 missed 85:8 162:23 missing 45:6 48:1 74:22 109:6 125:2 misspoken 23:4,5 mistake 25:7 182:21 mistaken 174:6 mistakes 87:24 178:21,21,22 misunderstanding 117:12 mitigation 102:20 mix 131:4 mobile 2:21 14:1,5 14:14 15:1 16:1 20:17 22:7,14 51:25 60:2 66:11 66:20,21 71:9 77:3 79:6 98:4 131:24 147:14,16 147:18 148:19,24 149:6 152:8 modelled 148:7,11 moment 80:12 81:5 87:10 115:7 116:16 150:8 152:5 158:25 Monday 173:9	money 68:7 monitor 60:4 months 7:16 8:4 45:22 46:4 69:9 91:25 100:4 147:7 163:3 moon 94:9,9 moral 76:17 morning 1:5 59:19 70:1 88:16 92:24 96:20 99:15 101:9 104:15 116:12 117:23 121:18 morning's 179:25 mortifying 103:11 motivated 11:18 94:22 motive 117:13 motives 91:5 170:23 move 147:13 moved 131:1 152:4 moves 148:21 moving 26:2 164:14 multiple 24:14 muscle 113:16 muscled 109:21 118:25 mustered 94:13 mutual 41:1 myriad 24:16 mysterious 92:17 mystery 45:13 82:2 108:20 <hr/> N <hr/> naivety 49:17 naked 95:2 name 180:25 named 62:18 184:23 narrative 26:7 31:17 38:18 40:16,23 164:20 171:17,19,20,20 171:21,22 narratives 13:6	171:18 narrow 10:21 narrower 11:2 national 50:16,25 75:25 92:12 natural 32:12 86:7 89:14 145:14 nature 41:6 NDMs 137:1 159:19 nearly 13:20 45:15 79:11 necessarily 184:17 necessary 34:10 37:20,21 38:7,11 60:21 86:16 91:15 124:16 135:21 185:7 neck 84:8 91:12 need 6:2 11:17 35:2 43:5,18 56:2 76:13 87:25 95:19 105:5 107:2 148:2 173:2 184:6,13 185:4,5,8 needed 54:11 65:13 72:2,3 77:22 83:3,5 86:18 128:16 173:12 needs 151:1 167:10 negative 133:5 negotiate 34:18 neither 23:25 34:10 57:12 132:11 145:17 156:15 161:7 168:23 171:4 net 80:23 neutral 165:11 neutrality 124:16 never 3:18,23 7:25 8:12,17,18,20 9:1 9:5 16:7,21 32:13 39:1,4,6 68:1 82:21 85:21 86:22 92:6 93:11
---	---	--	---	--

117:24 170:7 172:11,11,11 182:2 nevertheless 159:15 new 2:21 14:22 16:1,20 20:19 22:14,18 27:12 30:13 31:9 81:1 90:22 100:1 154:17 newspaper 90:19 Nick 84:15 night 37:4,12 nightmare 86:19 116:19 nightwatchman 124:2 nine 114:1,3 147:6 Nobody's 87:15 nolle 160:10 non 55:3 non- 130:8 non-disclosure 2:11 13:11,16 132:16 non-technical 111:20 nondisclosure 19:19 24:24 normal 169:11 normally 54:25 north 76:9,18 176:3 note 77:18 78:19 106:25 111:5,7 111:10 125:4 147:15 noted 10:11 21:21 25:2 notes 107:14 151:6 151:8,10,15,22 176:13 noticed 41:9 noting 138:16 notion 37:22 notwithstanding 19:1 48:11 127:21 149:25	November 14:24 63:19 100:4 131:8 140:14 145:9,22,24 149:12 153:23 155:1 163:3 number 53:22 92:25 102:9 numerous 139:6 <hr/> O <hr/> o'clock 123:16 oath 123:10 134:2 180:5 obfuscation 32:11 39:25 objection 161:6 objectively 36:6 45:13 obligation 7:18 14:10 20:1 142:19 obligations 15:17 24:2 42:19 44:9 55:23 93:18 95:8 96:6 128:21 136:24 138:14,22 139:5 152:22 observation 61:2 observations 23:11 26:3 58:4 59:14 136:2 observed 65:9 observing 109:9 obsess 110:14 obsession 136:22 obtain 32:8 71:8 103:6,18 104:12 105:4 obtained 6:6 17:21 18:4,7 103:4 126:20 144:17 159:12 160:2 obtaining 11:15 obvious 5:8 6:13 10:3 23:25 32:11 46:10 48:12 58:25 74:21 76:16 77:21 85:14 154:16	156:14 obviously 5:5 31:1 55:4 57:8 59:7 69:16 74:14 76:10 146:17 occasioned 155:10 occasions 143:10 occurred 27:8 39:22 151:13 occurrence 8:18 OCPL 43:9 October 60:4 99:17 138:18 offence 105:25 134:8 159:7 offences 46:1 offer 47:19 82:7 89:1 139:9 offered 56:25 72:8 83:8 90:13 office 21:4 43:8 51:7 55:11,17 56:15 79:6 80:14 86:6 175:2 officer 4:4,10 10:25 14:3 17:18 34:21 35:1 51:6 51:14 56:11 58:17 64:3 72:17 72:17 77:11 79:3 89:8,9 111:3 116:23 145:6 148:21,22 officer's 56:9 officers 1:25 4:19 6:9 11:24 13:25 14:13 19:2 20:13 24:15 36:25 44:10,14 45:2 49:8,8,11 52:23 56:1,21 69:9 74:21 76:22 77:25 83:12,20 85:7 90:12,13,16 90:16 93:12,13 93:17 94:18 96:1 99:21 100:6,16 107:18 109:15 110:25 114:19	117:18 128:13 132:25 133:3,12 133:25 134:5,13 134:25 137:2,22 140:20 144:20 146:14 150:25 154:1 168:9 169:12 173:24 174:13 officers' 71:4 172:21 offices 112:7 178:5 178:7,8,9,12,13 oh 49:10 Okay 59:21 61:6 61:16 182:23 183:6 old 4:22 156:25 omission 5:4,6 6:17 omissions 7:4 omitted 7:14 184:1 once 48:21 64:19 65:11 115:24 132:17 181:2 onerous 138:22 ones 74:23 101:21 131:10,19 132:7 153:11 ongoing 15:8 21:15 46:5 60:5 68:5 72:18 128:19 139:4 Op 85:25 92:2 106:16 108:23 109:8 114:10,11 114:12,24 121:16 121:18 open 25:25 70:3 94:23 170:21 179:6 opened 123:25 145:25 opening 166:1,17 openly 131:13 openness 25:18 operate 43:19 operated 36:5 operates 44:12	Operation 15:8 18:5,12 21:14 32:19 45:1 46:24 50:15 56:20 57:16 59:5,8 69:3 81:8 136:21 137:3 151:9 153:7 159:22 160:2,4 175:15 operational 34:15 47:21 56:22 60:7 opinion 10:8 65:4 opportunity 16:17 58:1 67:22 68:9 68:15 87:8 98:15 112:14 129:11 179:18 opposed 53:20 131:23 opposite 31:3 162:22 164:4 opprobrium 2:16 10:5 21:23 opt 29:11 optimistically 130:21 options 115:13,18 oral 1:14 14:3 21:25 28:7 29:19 59:14 60:17 98:13 108:4 117:10 166:18 184:9 oranges 138:5 order 6:6 22:24 38:2 52:1 55:25 73:25 78:25 99:11,16 118:13 159:15 ordered 104:6 161:16 orders 44:8 ordinary 97:17,23 organisation 28:4 original 50:21 62:6 93:8 97:21 Orwell 120:21 Orwell's 97:1 ostracised 173:15
---	--	---	---	---

ought 17:9 67:20	49:7 63:10 78:6	5:14 19:21 26:7	peradventure	persuade 19:7
ousted 121:11	92:4 100:11	32:20 33:18	81:21	103:17
outcome 60:20	149:19 178:3	114:19 130:19	perceived 37:8	Peter 1:4 69:25
outlined 55:22	participant 128:1	133:8 143:5	38:9 126:2	73:16 77:14 80:6
103:9	138:18,21 143:1	149:13	perception 36:1,4	96:7,16 111:17
outplayed 78:15	172:11	partly 70:8	36:11,14 37:11	116:11 119:11
outset 33:5	participants 63:7	partners 72:12	38:10 173:12	121:18 122:14,22
outside 55:9 97:15	90:6 127:20	90:22	perfect 86:23	125:20 169:9
overall 20:5	129:16 131:6	parts 1:21 2:6	87:15 97:8	179:23
115:25	134:14 142:24	121:5 133:22	perfectly 52:7	Peter's 42:10
overrun 57:21	158:4 179:16	party 23:14 95:9	performed 118:25	112:7
oversight 63:10	participating	124:17 134:17	period 20:16 50:22	phone 8:3,6,8,19
101:6 105:16	105:17	164:2 165:15	101:1 116:9	12:7,14,16,18,23
oversights 87:18	particular 26:7	166:20 167:21	146:18	14:5 15:1 16:1,2
112:11,11	44:24 62:8 64:6	169:5 170:8,9,19	periods 3:15 13:25	16:3,21 17:1,1,13
overstated 43:3	126:1 145:16	pass 58:14 63:14	perjury 94:3	17:17 18:24 21:1
overturned 44:5	159:6	64:14 157:22,23	permission 159:8	21:12 22:7,9,10
overwhelming	particularly 87:3	passed 76:20	161:11,12,14,15	22:14,18 49:1
49:5 89:11	94:4 109:8	passing 64:13	permit 23:8	51:25 63:15 64:1
owner 73:7 159:8	123:24 137:23	password 48:6	permitted 2:12	80:24 93:4 98:19
ownership 90:20	177:13	path 84:16 85:1	persistently 10:2	98:20,24 100:10
owns 90:20	parties 3:2,3 8:11	86:14 121:8	person 73:9 79:18	101:2 104:14,17
	9:25 11:20 13:5	paths 120:19	83:1 87:21	106:3 139:2
	19:9 21:10 23:6	pattern 49:4 89:5	100:13 111:20	145:16 153:22
	24:12 26:16 35:7	121:13	139:1 148:8	154:10,12,14,17
	35:20 61:20	Paul 47:17 67:16	149:1 164:2	156:25 158:20
	84:14 85:10	81:25 82:9,23	personal 9:25	159:5 160:23
	88:14 89:14	83:8,17 85:3	12:18 14:5 16:2	161:3,23 163:24
	93:14,16 94:11	103:7 116:25	16:20 21:1 49:1	179:6,9 180:5
	94:22 95:18,24	pay 28:5	53:22 56:23	181:13,21,23
	96:11,15 105:9	PC 84:16	66:11,20 67:10	182:1,18,19
	106:6,11 110:14	peace 152:23	83:19 93:4 98:20	183:1
	111:8,25 117:21	peaceful 78:23	99:11,19,22	phones 2:21 3:14
	118:21 119:16	pen 4:22	112:5 135:18	14:1,14,18 20:18
	124:20 125:1,3	pending 160:19	139:20 141:22	20:19 42:16
	126:10 128:24	pension 77:12	144:22 145:4	56:23 99:11,18
	130:8 131:1,12	116:20,25 117:1	148:25 152:3	99:20 100:1,6
	132:5,9,22	people 4:17 12:4	154:9 155:24	135:18,19 137:16
	134:11 136:19	24:19 32:1 41:11	156:17 164:8	144:22,23 145:1
	137:13 152:10	41:16 53:3 70:8	173:6 182:18	145:5,9,23
	154:5 155:3	73:16 76:7 81:24	personalised	146:17 149:10,12
	159:4,10 164:18	88:1 90:23 95:20	154:12,15	149:17 152:2,3
	165:21 166:5,7	96:14 97:17	personally 89:22	153:8 154:23,25
	167:6,8,16	101:20 109:19	177:8	155:6,9,19,24
	169:14,17 171:19	121:9 140:9	persons 22:23	156:17,22 159:24
	172:16 173:21	145:15 147:13,13	26:19 62:17 78:2	164:8 179:8
	174:4 176:13	176:21	perspective 110:3	photographic
	185:23	people's 7:3	130:12 139:23	108:3
	parties' 3:25 5:7	140:11 153:16,17	140:15 178:17	phrase 118:19

<p>Physically 160:13 Picardo 9:18 10:14,20 22:2 23:12,13,15 24:25 64:11,16 64:19 70:10 71:1 72:11 73:20 75:14,23 76:18 80:18 83:3 84:15 85:19,24 86:9,10 90:20 96:22 107:9,25 111:16 123:2,4 164:23 166:13 180:1,3 Picardo's 35:9 91:4 piece 151:13 181:10 pillars 177:10 pivotal 80:12 81:2 81:5 83:7 place 6:19 8:24 51:22 55:8 56:6 71:20 113:3 161:18 175:22 184:23 placed 47:8 56:8 places 83:16 plain 62:5 65:6 91:1 plainly 20:2 23:20 37:18 38:3,8 42:3 75:12 95:24 123:15 plan 64:24 93:8 planning 41:19 platform 99:8 plausible 132:13 play 34:24 playbook 109:12 played 16:9 92:3 playing 116:10 plc 120:20 Please 157:13 pleased 35:13 plenty 71:15 180:17 plight 137:22 point 16:16 23:3</p>	<p>58:8,12 59:12,23 96:3 100:10 102:20 104:24 106:7 114:5 115:13 119:14 122:17 135:9 138:2 140:14 150:3,13 151:6 159:1 163:15 164:22 165:6 166:6,19 167:4 167:20 170:10 171:15,16 178:13 180:9 182:16 184:4 pointed 42:22 76:14 80:7 92:19 96:8 164:6 181:17 pointing 19:12 points 25:8 69:1 76:5 112:10 124:9 149:22 171:10 178:18 179:22 182:7 184:2 police 3:21 4:4,5 4:10 5:19,24 6:7 10:25 11:23 13:21 15:5,16 24:15 26:21 27:4 31:20 33:2 34:12 34:16,20 35:11 37:23 39:18 40:21,25 41:3 42:2 43:12,22 44:8,11 45:16 46:8,23 47:18 48:18 50:6,12 51:8,14,17 52:1,3 52:8,9,13 53:5 55:11,17,19,22 56:5,23 57:3,3,6 58:13 60:13,15 70:12 71:4,12,12 71:22 72:17 74:20 76:11,24 77:6,25 78:4,14 80:18 81:15</p>	<p>82:22 83:4,12,20 85:6 89:19 90:19 91:8,25 95:6,10 95:19 99:3,12,18 99:20,22 100:1 104:1 107:17,22 109:4,15,18 111:3 114:8,15 116:23 117:19 118:2,12,24 120:7 128:13 131:14 133:24,25 136:6 137:24 154:1 164:25 167:11 168:8 169:11 172:1 173:8,16 174:16 police's 71:24 policies 44:8 60:6 148:13 policing 51:12 56:24 128:20 136:24 139:4 147:23 150:1,9 152:22 policy 51:25 60:2 60:10,18 99:9,14 99:15 129:1 131:25 147:16,18 147:22 148:7,10 148:18 149:8,14 149:23 151:25 152:8,11 153:21 154:21 155:7,22 155:23 179:8,8 political 37:6 77:16 politicians 84:19 120:17 posed 98:10 position 13:9 25:11 28:1,20 29:7 32:25 78:22 110:16 112:18 113:7 115:12 124:16 125:21 134:21 140:11 148:16 149:18 152:14 156:25</p>	<p>160:25 162:16,18 164:18,20 165:6 165:12,18 169:16 183:2 positions 109:20 possess 127:3 146:23 160:15 possession 14:8 62:10 67:17 107:20 125:13 160:18,21 161:1 possibility 168:7 168:15 possible 3:8 11:1 27:2 29:2 31:2 32:9 38:17 73:19 82:7 93:15 111:19 121:25 130:7 133:18 147:3 163:18 165:4 possibly 11:1 27:13 62:3 113:10 124:4 126:22 135:3 post 32:10 34:15 106:18 113:17 114:23 148:19,22 154:4 posts 147:13 148:20 potential 20:11 57:15 73:10 potentially 3:11 15:4,12 17:7 51:2,13 pour 93:20 poured 122:9 power 59:23 60:1 60:25 61:4 79:5 85:14 120:22 powerful 79:7,9 83:3,4 121:2,15 powerfully 136:3 powers 27:11 31:20 116:6 165:3 practical 151:5 practically 82:19</p>	<p>practice 15:14 44:12 51:1 101:15 147:23 150:1,6,6,20 151:4,18 pragmatic 158:17 praise 145:12 pray 30:2,25 prays 31:5 precise 65:14 precisely 11:10 31:9 56:13,16 158:11 predated 141:10 predates 154:21 predisposition 164:3 prefer 29:6 145:15 162:14 preferred 14:23 preliminary 128:4 138:20 139:11 144:11 159:23 premature 185:3 premised 122:25 preparation 183:11 185:1 prepared 185:2 preparing 113:6 115:22 presence 178:9 present 24:14 52:4 presented 124:22 preservation 4:12 21:8 42:20 69:12 74:9,20 preserve 47:20 64:21 preserved 48:7,11 48:22 58:20 69:17 preserving 15:2 20:8 44:15 51:12 pressing 103:3 pressure 97:14,17 113:4 presumably 15:4 17:4 175:18 presumed 68:1</p>
--	--	--	--	--

pretend 47:13	184:24	43:13 52:12	181:16	put 17:20 33:24
pretty 177:16	proceed 81:22	101:25 127:20	providing 53:19	46:13 52:21
prevaricated 40:4	83:22	130:11 138:13	62:14 87:8	53:24 62:20 84:1
prevent 11:16	proceeded 24:6	properly 35:3	provision 77:10	87:9,17,21 91:15
21:16 51:16	35:12 121:19	131:24 140:22	147:25	92:8,20 100:13
prevented 13:1	proceeding 15:9	property 46:24	provisional 139:25	102:9 105:8
40:5 126:5	proceedings 10:12	50:6,12	provocative	107:9 109:10,22
preventing 126:5	159:25 168:24,25	proposed 111:18	131:12	119:3 122:8
134:7	process 25:20	117:14	pub 154:13	134:15 175:24
previous 20:20	43:21 44:24	proposition 19:16	public 2:15,24	putting 95:6
52:3 130:4	45:19,21 55:10	136:18 159:11	3:10 10:8 11:21	Pyle 31:19 84:15
previously 3:8	58:21 86:5 114:1	prosaic 53:12	21:23 32:15	86:5 117:9,24
27:15 29:14 97:8	120:11 122:2,9	100:8	42:25 45:8 46:2	164:23 166:9,13
125:12 130:18	128:15 138:3	prosecuted 92:7	52:21 56:20 72:1	176:12
168:18	141:19 142:8,12	105:25	85:13 86:24 87:4	Pyle's 40:12,16
primarily 49:2	149:20 152:4	prosecuting	87:9,22 88:5,13	41:23 42:3
124:17	156:15 161:25	152:24	88:22 89:7 93:11	
principle 48:5	163:22 164:21	prosecution 15:9	94:13 95:3,14,23	Q
84:18 120:23	165:7 170:11,11	43:9 44:24 45:18	96:19 97:23 99:4	question 53:24
principled 91:7	170:11,12 171:23	57:15 68:2 92:13	107:5 112:24	54:8 63:3 67:15
principles 150:9	174:21 177:15	121:21 160:8	119:5 120:16	77:20 79:1
150:10	182:5 184:23	prosecutions 4:9	127:13,20 129:13	135:17 136:9
printed 108:24,25	185:9	11:22 15:19 72:1	136:11 137:5	152:14 162:17
prior 2:12 96:9	processes 44:21	95:13 119:5	147:19 152:20	164:7 167:8,13
98:4 100:25	51:20 89:13	121:14	159:3 179:17	167:25 168:10,21
163:19	produce 143:11	prosecutor's 51:7	185:23	169:7
prioritisation	155:20 163:12	prosequi 160:10	public's 135:6	questioned 124:19
118:18	184:3	protect 12:3 38:2	publicly 10:2	questioning 34:23
priority 53:16	produced 161:19	70:11 80:20,21	43:11	68:13 80:7 88:25
prism 152:19	163:12	95:20	publish 97:25	93:12 96:8
private 32:13	professing 49:10	protected 1:23	185:22	117:22 131:13
50:21 53:2 81:17	profession 84:24	83:4	published 124:13	133:9 165:9,23
82:13 84:17 99:4	professional 34:11	protocol 140:18	124:18	165:25
privately 31:24	34:14 49:15	proudly 108:2	punctuated 101:2	questions 45:24
privy 64:23	150:10	prove 72:10,21	purely 171:23	46:12 62:8,16
proactive 69:11	professionalism	73:8,14 111:6	purpose 64:12	68:22 69:5 70:5
proactively 97:10	172:25 173:7	provenance	65:10,11 139:14	70:7 72:4 74:19
142:6	profile 180:15,19	111:10	159:9,13,14	77:15 98:9,17
probably 24:22	180:21	provide 6:7 9:2	160:16 168:23	119:6 125:24
26:25 33:24	profile' 181:9	12:2 16:22 60:20	purposes 18:10	143:22 166:13
105:5 126:24	profound 121:8	100:23 102:1	42:12 48:3 54:22	167:18,18,20
129:15 172:18	progress 39:9 46:6	104:2,7 137:7	54:22 55:21	169:1 181:8
probative 91:24	46:11 183:8	180:1	99:13 181:6	quick 39:15 55:15
problem 8:23	185:23	provided 6:23,25	pursue 83:23	110:11 118:8,10
29:24 30:17 55:5	progressed 105:20	53:9 62:23 63:11	pursued 88:15	quite 10:21 68:19
56:3,16 110:24	160:1	65:22 66:4 75:5	pursuing 42:21	87:19 95:10
problems 162:20	prompt 68:18	98:8 101:10,13	pushed 117:2	121:17 132:3
procedural 168:3	promptly 65:22	101:18 102:16,21	141:2 167:2	135:4 145:14
procedure 129:1	proper 34:11 43:6	102:25 140:19	pushing 104:2	162:21 164:4
				172:2 176:5

quote 43:12 55:10 140:17 150:4 168:6 173:11	58:4 59:14 72:25 74:23,24 75:16 87:25 94:22,24 104:25 120:25 134:10 149:4 157:25	recognition 43:5 125:15	referring 106:16 112:23 121:16	relevance 6:11,14 9:9 10:21 11:3 26:3 31:23 54:12 101:24 117:6 128:5 140:3 141:9 144:5 152:20
quoting 81:9		recommendation 39:10	reflect 123:13 137:21 156:11	
R		recommendations 39:7 60:24 98:1 121:7 122:5	reflected 82:6 100:15 143:12	
racking 146:4	reason 8:1 14:2,11 25:20 26:8 27:10 27:14 29:10 31:15 33:12,21 33:23 34:8 44:6 47:19 64:16 92:17 102:1 106:17,24 107:2 107:8 114:22 122:2 134:18 145:8 146:8 156:14,14 175:1	reconvene 3:5 71:11 96:10 183:9	refers 173:7	relevant 1:9,21,21 2:22 3:9,12,19,23 4:13,25 5:14 7:2 9:16,22 11:1 12:4 13:25 14:7 14:13 15:4 16:9 16:16 17:7 18:9 18:23 20:17 22:1 24:13 25:14 29:9 35:21 40:3 42:20 46:24 47:3,24 51:2,13 53:19 62:11,17 67:17 68:15 82:8 88:12 103:24 105:19 107:14 113:1 123:7 124:23 125:17,19 126:3 133:4 139:19 140:5 142:25 143:17,24 144:12 146:18 148:22 150:15 152:16 156:2 162:25 180:6 181:6 184:1
raise 106:4 112:8		reconvened 68:13 129:9	refuse 30:3,25 31:5	
raised 75:20 87:1 98:17 104:9 108:8 112:8 144:2 152:6 168:10 182:9		reconvening 3:1 61:19 184:4	regard 23:11 71:23	
raises 120:13		record 11:14 46:3 59:2 69:15 107:11,25 110:7 110:12 111:11,12 150:25 151:10	regarding 5:18	
raising 20:4	reasonable 134:19 141:15	recorded 11:20 56:4 58:16,23 109:24 113:12 115:16 116:16 126:14 150:12,17 150:17 153:10	regime 43:19	
rally 89:19	reasonably 6:15 25:25	recording 37:10 61:11 150:23	registered 180:15 180:19	
ran 183:11	reasons 2:11 3:6 4:2 24:16 32:22 35:22 56:10 72:5 99:23 112:20 128:3 130:6 132:16 138:9 140:6,23 156:17 165:1 173:6,11 181:25	records 20:8 48:18 107:14,21,23,24 110:5,18	regrettable 112:11 155:11 172:16	
range 62:23 65:16 106:14 126:1 157:14,18 163:9	recall 47:15 50:20 101:19 108:5 140:1,24	recoup 68:7	Regrettably 21:15	
ranging 106:21	recalled 46:16 61:23 117:9	recovered 72:3	regular 49:2 151:3	
ranks 51:5,10 72:13	receive 68:12 184:5	recovery 74:8	Regulatory 136:15	
reach 86:18 96:19	received 57:1 112:22 129:21 144:15 157:11 161:15 162:3 183:9	red 80:25 82:16,17 85:24 135:3	reiterates 152:25	
reaching 134:8	receiving 41:23 124:11	redacted 176:7	reject 19:22,25 165:9 172:6 174:3	
react 142:19	recognise 125:23	reduction 129:4	rejected 91:23	
reacted 64:11	recognised 142:17 142:17 151:23	refer 45:3 131:10	relate 49:24	
reaction 143:20	recognising 71:14	reference 7:5 38:7 53:20 106:24 150:3 153:7 154:9,11 167:17 168:14 178:11	related 46:1 152:17 160:23	
reacts 178:22		references 41:10 53:12,23 67:5 125:24	relates 106:7	
read 22:23 30:24 38:3 41:17 77:8 172:3 180:11 181:11,24 182:5 183:2		referred 67:3 181:16	relating 3:14 98:15 104:3	
readily 18:12			relation 4:20 15:11 16:9 45:9 46:13 48:8 49:3 50:24 55:25 85:25 98:10 125:10 127:17 128:23 136:21 139:20,24 152:2 152:3 155:6,18 157:14,17 160:2 168:20,22 169:3 169:25 170:24 174:17 175:15 176:6 181:13	
reading 19:15			relates 106:7	
reads 180:14			relating 3:14 98:15 104:3	
ready 97:24			relation 4:20 15:11 16:9 45:9 46:13 48:8 49:3 50:24 55:25 85:25 98:10 125:10 127:17 128:23 136:21 139:20,24 152:2 152:3 155:6,18 157:14,17 160:2 168:20,22 169:3 169:25 170:24 174:17 175:15 176:6 181:13	
real 34:8 96:21 106:5,17 107:8 114:22			related 46:1 152:17 160:23	
realise 94:7 113:7			relates 106:7	
realised 54:11 146:8			relating 3:14 98:15 104:3	
realities 139:10			relation 4:20 15:11 16:9 45:9 46:13 48:8 49:3 50:24 55:25 85:25 98:10 125:10 127:17 128:23 136:21 139:20,24 152:2 152:3 155:6,18 157:14,17 160:2 168:20,22 169:3 169:25 170:24 174:17 175:15 176:6 181:13	
reality 121:10 129:6 151:19 153:24 160:10 173:5			relates 106:7	
really 57:22,22			relating 3:14 98:15 104:3	

remark 132:19	representing 76:4	15:18 23:15 25:6	resumed 44:20	183:16
remarkable 14:25	89:8	29:21 33:12	82:8	reviewed 57:10
19:16 149:14	represents 70:2	35:13 36:8 40:18	retain 15:13 22:1,6	58:24 141:21
remarks 124:6	repurpose 154:22	40:20 59:4	45:17 51:2 57:4	156:2,18 158:7
remedy 2:25	repurposed 48:8	123:10 126:6	108:22 182:14	reviewing 58:18
remember 30:15	64:3 154:10	138:4 149:17	retained 49:25	revised 184:3
64:22 71:21 82:1	repurposing	153:15 159:10	93:2 104:3 116:8	185:2
108:6 160:4	149:16 153:8	164:16 165:18	147:10 149:3,7	rewriting 116:17
166:23	reputation 68:17	174:20	160:22 182:10	RGA 29:22
remembered	119:7	respectful 3:25	retaining 44:15	RGP 1:17,24 2:14
63:14	reputational 95:3	19:21,24 20:3	51:13 53:1	3:14,17 4:19 6:4
remind 7:1 42:24	reputations 92:5	28:21 32:20 33:6	retention 45:10	6:9,12,21 8:3,8
74:14	96:18	36:11 40:12	53:5 108:13	8:12,17,19,21,24
reminded 69:7	request 1:11 17:9	respectfully 13:4	rethink 168:21	9:2,8 11:12,24,25
73:16	25:16 49:20 52:7	19:9 21:10 24:11	retire 16:13 26:9	12:1,5,7,12,23
reminds 70:1	62:18 65:6,18	respects 2:7	26:12,18,25 27:5	13:22,25 14:1,3
remove 115:18	84:6 87:2,8	respond 52:13	27:9,25 28:5,24	14:13,14,16,25
140:2	122:4 123:4	67:20 109:13	29:1,16,24 30:3,5	17:2,13,15,17
removed 50:15	127:17 143:5,8	157:12 162:13	30:6,10,11,19	18:4,12,15,24
114:23	144:15 145:6	responded 87:11	31:1,6,10 32:6,17	19:2,4,7,10,23
repeat 76:5 150:19	148:5 157:6,17	87:13 95:16	33:22 34:7,12,18	20:7,13,17 21:6
151:16 179:9	158:13 182:6	97:10 158:15	35:2 115:10,25	21:11,12,16
repeated 132:7	requested 1:6	responds 168:13	116:4	22:21 24:19 35:4
137:10 139:3	61:20,23 103:22	response 25:12	retired 12:1,6	36:25 37:19 38:5
repeatedly 10:14	104:6 125:18	30:7 50:16 126:7	14:18 22:10	38:9,16 41:25
repetition 183:23	155:17 160:5	126:9 145:2	63:19 108:17	42:17 43:24 44:6
replacement 97:21	requests 24:4	148:4 157:15	147:6 149:11	44:9,21 45:2,6,11
replacing 100:6	97:11 121:24	167:25	153:19	45:24 46:18,25
reply 28:18	require 56:5 60:11	responses 185:5	retirement 21:5	47:1,9,11 49:21
report 38:12,17	99:9 103:23	responsibilities	28:6,17 29:11	51:1,5,10 52:20
39:10 50:3 55:17	152:18	53:4	31:16 32:9 33:8	60:2 63:2,4,17
97:25 111:22	required 2:25	responsibility	34:9 35:22 39:12	68:18 70:25
112:5 118:3,4	52:18 63:18	47:10,12 49:9	46:22 50:7 78:24	79:13,25 80:18
122:4 124:12,18	105:16 115:9	74:11 116:22	79:13 84:7 147:8	82:15 88:20 90:4
135:8 154:3	130:13 174:14	162:19 183:16	154:23	90:5,9,11,13 93:2
161:18 175:3	requirement	responsible 4:7	retiring 32:24	93:5,12,16 94:18
177:25 180:12	115:10,17,24	47:5,14 85:13	retribution 119:8	94:19,21 95:4,7
181:20 182:12	116:7	95:13	retrospectively	95:15,25 96:4
183:10,17 185:3	requiring 147:13	responsive 52:14	64:1 66:7 176:11	98:5 99:2 100:5
185:14,16,22	research 150:21	rest 137:6 154:4	return 25:10	100:25 102:13
reports 27:18	resign 116:8	174:22	returned 18:24	103:23 104:2,6,7
41:24 55:11 67:6	resigned 107:7	restore 146:10	revealed 73:22	104:9 105:24
106:16 137:1	resisting 77:5	restored 146:1	117:13	106:2 108:16
159:19	resorting 165:3	restrained 37:24	reverse 115:20	111:23 112:1,7
representation	resource 64:5	result 3:7 12:24	review 25:10 51:4	112:21 117:18
69:22	resources 128:6,20	20:10 84:23	54:1 55:18,22	124:3,7 125:6,7
representations	129:5 147:12	91:24 97:14	56:25 58:17	125:15 126:7,11
160:20	respect 11:11	140:11 182:4	60:19,20 73:11	126:15,23 127:1
represented 83:11	13:25 14:14	resulted 128:9	141:20 168:2	127:4,8,10,16

128:19 129:4,5 129:21 130:12,14 130:18,21 131:22 132:2,11,24,24 133:9,17 134:5 134:12,25 135:7 135:10,16 136:5 136:9,24 138:3 138:12,12,21 139:3,21 141:7 141:20,22 142:16 143:15 144:6,10 145:3,6,17,23 146:14,17,22,25 147:11,14,16 148:5,8,23 149:8 149:15 151:24 152:13,25 153:14 155:7,7,15 157:25 159:16 160:11,17,24 161:2 162:6 164:1,15,19 165:2,14,21 168:11 169:7,25 170:6,16 171:4 171:16 172:5,14 173:10,23,25 174:5,7,17 176:13 177:3 178:5,12,19 179:9 182:11 RGP's 4:7 12:21 14:8,9 17:18 19:19,25 125:13 125:24 128:15 129:7 130:23 131:24 134:21 140:15,19 143:18 148:14,15 164:17 164:20 165:6 174:21 178:8 rich 116:21 Richard 85:3 93:24 117:6 Richardson 1:14 1:16 2:13 14:4 14:20 19:3 21:19 22:5,12 24:23	34:25 36:15 47:17 54:2 61:21 63:11,13 64:24 65:17 66:14,18 66:23 67:1,8,16 69:7 74:3 75:10 77:13,21,24 78:19 82:1,9,24 83:8,17 85:3 92:11 98:4 100:24 103:8,14 103:19 104:23 114:18 116:25 129:11 144:21 145:20 151:21 153:12,19 154:24 172:10 181:15,17 181:19 Richardson's 14:18 21:12,24 64:20 66:8 67:13 149:10 155:18 rid 168:16 ridicule 53:1 right 11:9 15:14 25:9 43:2 73:23 78:10 85:11 108:6 122:11 126:18 168:9 173:14 right-hand 89:21 rightfully 164:6 rightly 28:17 44:10 67:25 68:19 91:22 rights 56:19 Riley 49:24 rings 49:18 rise 44:3 49:5 56:17,17 142:22 rises 122:6 risk 50:25 92:10 94:3 113:8 116:21 119:8 130:5 150:9 167:22 risks 50:16 83:19 road 83:12 84:12 119:22	Rocca 38:1 64:23 65:3,5 166:10,14 role 16:9 34:25 149:2 183:21 rolled 142:22 room 84:11 130:24 round 99:16 125:5 route 168:19 routine 153:8 routinely 15:15 Royal 6:7 13:21 104:1 rucksack 21:3 47:8 rule 34:17 43:23 84:13 119:2 120:24 134:22 174:9,22 rulers 84:18 ruling 3:7 10:11 21:21 25:2 98:18 100:17 129:8,18 138:19 147:6,7 152:6 165:19 rulings 171:12 rumours 117:25 run 59:15 60:3 84:17 running 55:12 rush 39:13 Russian 172:18	sat 9:12 save 12:19 59:1 152:16 saving 12:22 saw 52:4 69:19 79:11 109:18,20 117:4,24 151:20 175:1,6 saying 30:1 64:10 75:23 107:1 110:20 153:16 157:13 158:15 162:14 171:6 says 4:21 5:2,12 7:25 8:24 9:8 13:1 18:21 21:3 27:22 33:3 67:25 81:20 106:17 156:23 157:22,23 181:7 182:12,12 scenario 27:24 scenarios 56:13 scepticism 21:22 schedule 45:5 53:9 schedules 59:9 scheme 89:20 90:12,25 91:20 92:1 scheming 41:18 scope 10:22 55:9 62:11 Scotland 162:5 Scottish 162:22 scream 163:16 screen 62:21 69:19 screens 87:7 scrutiny 87:22 scurrilous 90:24 SDI 143:6 sea 39:20 117:5,16 search 18:8 70:20 71:17 141:15 159:18 160:19 searched 42:17 159:25 second 30:12 57:7 65:4 75:7 89:17 122:4 125:4 130:3 138:20	139:11 171:15 180:8 181:12 182:3 secondly 44:22 51:1 131:22 137:13 138:21 152:7,21 159:24 seconds 40:18 122:17,21,23 secret 78:1 90:24 91:20 131:11 132:6,9 169:21 171:2 secretary 57:18,19 section 116:6 134:6 165:3,4,19 171:2 185:18,19 sector 147:19 secure 29:1 secured 109:25 159:5 security 48:5 50:16,25 76:1 83:25 84:1 92:12 152:23 see 3:13 13:19 48:16 51:20 53:11 57:13 83:17 86:25 91:16 95:3 122:1 123:23 146:4 148:15 154:13 158:22 172:19,22 seeing 74:1 94:8 148:10 150:7 seek 2:15 128:10 161:11 183:19 seeking 18:14 27:3 68:6 148:3 seen 7:10 10:10 13:8 16:10 27:18 39:24 66:4 68:14 89:23 102:7 139:16 150:19 152:15 165:25 166:1,2,3 174:20 seized 8:3 17:2 98:5 selected 54:20
---	--	---	---	---

self 177:22	77:20 80:4,11	shoulder 162:19	169:6,15 170:5	smallest 117:21
self-admitted 111:20	83:24 88:25 92:7	show 26:11,15,23	174:16 176:12	smell 78:8
self-interest 52:22	97:20 99:9	29:18 34:6 36:10	single 7:5 36:24	smoke 94:8 106:11
53:16	100:20 113:8	38:14 39:20	37:9,9 89:16	108:15 112:3
self-interests	118:23 120:8,13	40:22 41:3 85:12	167:12,14	smokescreen 29:4
48:14	137:19	119:16 175:16	sinister 146:23	SMP 6:9 135:19
self-serving 5:11	seriously 57:21	showing 180:20	170:23	SMT 104:8 144:24
23:20,23 32:11	servants 120:16	shows 6:1 36:13	SIO 128:17 158:18	146:15 155:16
127:14	server 12:21	39:11 83:19 96:3	sir 1:4,4,5 5:2 6:6	sniff 114:2
sending 72:19	servers 149:8	96:23 176:7	9:12 10:6 11:13	so-called 6:9 67:3
senior 4:4,6 9:15	service 55:19	shy 165:21	12:6 13:5 14:2	117:10 184:22
14:13 35:1 42:1	88:22 136:14	SI 130:1 144:20	16:14 19:14	social 99:2,8
51:5,10 52:23	session 179:25	147:6 153:19	25:20 26:3 29:3	society 43:23
77:10 78:3 94:18	set 3:6 32:7 41:21	161:19 175:19	30:14 31:1 33:7	softer 132:19
95:4 99:21 100:5	44:13 45:23	side 85:9	35:21 37:18	solace 9:1 171:11
109:15 116:23	53:12 62:11	sight 125:5 173:19	38:12 39:2,12	solely 41:1 56:8
117:18 120:16	76:17 90:1 93:9	sign 110:11	40:19 42:5,9,10	solicited 139:7
133:3,12,22	126:1 139:24	signature 52:5	42:24 45:4 47:15	solicitor 19:13,18
134:12 140:20	145:5 180:4	significance 66:6	59:23 60:9,22	62:6 81:25 86:1
141:22 146:14	setting 106:9	91:4 153:4	69:25 73:15 74:4	142:23 166:24
172:21 173:24	settlement 115:3	significant 2:6	77:14 79:18 80:6	solicitors 62:19
174:13	settlements 90:14	20:22 34:24 44:1	86:24 88:5 94:1	97:22 139:13
sense 90:7 94:7	setup 87:7	57:8 69:12 97:14	96:7,16 98:17	141:14,25 156:6
150:13 185:13	seven 6:23 7:16	126:25 138:22	100:17 104:6	157:12 160:6
sensible 162:15	8:3	169:21 184:1	111:17 112:7,16	162:1,10
166:23	Seventh 4:24	significantly 152:5	112:23 116:11	solution 158:17
sensibly 176:22	severely 2:15	171:15 184:20	119:11,24 121:7	solutions 175:10
sensitive 15:12	sexual 75:21	signifies 124:4	121:18 122:14,22	somebody 36:6
48:10 50:13	105:25	silence 152:11	123:24 125:20	157:22,23 182:13
sent 29:25 30:22	shame 105:2	silent 99:19	152:5 169:9	somebody's
64:8 108:12	shameful 90:25	similar 132:18	179:23 182:7,8	119:18
110:10 111:5,14	91:20	137:11	sitting 89:9,10	somewhat 50:14
111:23 112:1	shape 142:11	similarly 66:19	91:7	103:11 127:14
115:11,19 124:24	shared 99:6 131:6	simple 45:23 67:15	situation 54:17	soon 111:3 118:5
158:13 162:24	131:9 177:11	161:1 171:10	87:12 115:2	121:25 124:12
181:18 183:15	shares 174:17	simplistic 137:8	116:9 176:21	161:14 185:2,14
separate 159:13	sharp 13:10	simply 5:6,10,12	six 69:9 176:2	sorry 54:8 134:23
separately 49:25	shelf 157:24	17:20 24:3 47:9	sixth 60:15 129:23	sort 29:4 72:24
separates 82:18	shield 46:11	47:12 48:11	129:24,25 172:3	74:6,8,9 79:3,4
September 101:1	shocking 172:2	49:18 50:1,25	172:20	116:10
125:9 126:13	shoes 87:10 109:11	51:21 57:11 88:9	Sixthly 4:17	sought 6:5 8:17
138:20 143:21	109:23	100:13 101:6	size 122:6	39:13 77:7
144:1 145:2	short 24:3 59:23	102:2,10 104:17	skew 91:2	161:12 169:10
162:7,9,14,23	61:3,6,9 94:15	107:9 109:21	skied 80:24	175:10
172:22	116:17 179:22	115:6 127:2	slightly 115:23	soul 93:21 122:9
series 41:10	shortcomings	130:12 135:4	132:19 138:17	sound 66:10
serious 5:8 36:23	155:5	139:1 145:10	sling 95:17	sounding 120:25
37:5 72:18 75:25	shortly 64:17	146:22 155:13,15	sliver 94:9	source 153:3
	122:3	155:19 157:3,10	small 148:1	158:11 163:25

<p>178:25 space 50:21 speak 38:1 42:13 53:14 68:11 69:24 speaking 73:18,22 78:13 81:14 82:11 146:19 speaks 69:23 special 44:6 specific 127:17 148:6 157:17,17 157:18,19 158:21 160:14 182:3 specifically 4:14 49:10 95:4,5 123:5 125:10 139:17 156:11 160:5 169:25 specificity 158:7 specified 52:8 speculated 24:24 spent 43:25 68:8 69:9 70:16 spoke 91:11 spoken 29:14 spontaneous 124:24,25 sprang 74:16 spring 104:5 126:16 141:24 154:21 springs 70:7 staff 148:21,22 stage 15:10 67:3 127:18 183:11 staked 93:22 stalking 96:12 stand 84:12 87:16 91:7 119:1 125:17 138:11 140:25 141:18 142:18,20 144:25 156:1,20 164:5 174:14 176:2 stand-in 137:25 standards 9:24 21:7 44:13 132:2 135:22 164:16</p>	<p>170:15 stands 57:12 85:9 stark 43:12 82:14 start 26:17 52:19 122:3 123:16 131:17 143:8 145:13 started 119:21 144:16 171:24 174:10 state 31:25 35:23 84:16 113:5 stated 60:17 180:5 183:24 statement 5:16 11:7 38:3 49:22 60:13,15 62:7,15 64:7 67:12 102:23 129:24,25 130:1,2,23 146:12 172:3,20 174:24 178:1 181:13 statements 6:24 16:6 29:13 102:8 123:6,7 126:15 127:8 128:14,22 129:21 130:4,5 131:16 138:12 139:8,9 142:5 143:13 145:1 146:9,10 163:13 164:11 states 148:18 static 127:8 142:16 status 76:7 statute 134:19 statutory 27:11 44:9 51:24 53:4 185:21 stay 27:3 34:15 63:23 Steel 30:14 steps 110:5 147:2 147:8 STI 120:1 126:8 128:8,9,25 131:9 142:7,11,11 143:25 157:6</p>	<p>163:8 stick 91:16 162:24 sticking 91:11 stoking 90:10 stone 127:18 stood 86:22 stop 67:19 store 22:1,6 stored 12:21 149:7 straight 66:2 straightforward 68:23 101:5 118:14 straightforwardly 78:25 strategy 94:10 straws 117:21 Street 81:1 stressed 129:19 strict 53:3 striking 78:11 strong 97:25 98:1 132:21 161:6 171:25 structure 90:20 135:15 stuck 84:7 studied 21:21 studiously 75:17 subject 15:15 53:3 69:2 83:1 120:10 121:1 141:19 185:19 subjected 88:24 subjective 156:8 submission 2:4 3:25 5:15 19:22 19:22,24,25 20:3 25:7 28:22 32:21 33:7,18 36:11 40:12 62:4 67:15 72:25 75:6 89:3 94:20 117:8 119:9 123:10 166:18 167:15 177:19 182:9,17 submissions 25:12 25:13,17 45:4 60:8 67:20,24</p>	<p>68:20,24 70:5,7 79:15,23 86:8,11 87:3 92:21,24 96:5,9,20 104:15 112:7 122:24 124:9 125:25 126:12 130:19 131:5,8,11,18,18 132:6,6,10,15 133:2,11 135:14 137:15 140:7 157:2 164:22 165:8 166:1,3 169:3,19,21,24 170:10 171:3,24 184:8,9,10,11 submit 24:11 62:12,24 70:23 71:2 73:1 74:11 75:4 79:10 100:20 121:18 submitted 13:4 21:24 66:12 84:6 90:17 99:15 substantial 129:4 substantive 26:3 succeeded 133:13 173:24 successful 10:9 successor 34:20 suddenly 49:10,17 72:8 178:25 179:4 suffered 173:5 suffers 173:6 sufficient 39:8 suggest 68:21 88:15 103:15 110:1 114:19 117:22 126:23 127:11 133:3 136:3 151:11 154:18 173:23 176:17 suggested 77:4 103:6 152:9 154:20 158:17 164:24 170:24 176:10</p>	<p>suggestion 50:14 104:16 124:18,20 125:22 126:3 132:13,17,21 133:16,18 135:20 135:22 149:13 159:3 163:19 165:10 166:16,23 170:14 179:25 suggestions 127:15 130:7 132:4 133:1,22 134:3,4 135:1 163:17 171:25 172:6 173:21 174:1 suited 50:19 summed 113:5 summer 103:8 162:11,23 sums 118:20 sunny 162:5 superintendent 1:13 133:25 145:19,20 supervisory 139:23 supplement 59:13 supplemented 98:11 supply 148:12 support 22:2 89:25 130:9 148:21,22 155:1 176:11,20 177:4 177:12 supported 80:9 89:25 140:25 supports 100:7 supposed 13:16 19:12 24:24 107:7 111:14 supposedly 7:14 26:13 suppress 10:18 22:3 25:4 132:25 164:3 suppressed 134:1 suppression 134:7 Supreme 47:5</p>
--	---	---	---	---

<p>sure 61:15 119:23 119:25 120:3 121:25 151:3 161:5 183:23 surely 137:14 surprise 66:15,16 66:24 67:7 92:20 117:17 165:22 surprising 42:2 107:15 surprisingly 21:15 surrounding 45:13 survive 134:23 suspect 71:6,6,23 73:2 76:5,18,19 76:25 77:2,4,5 80:4,10 119:20 176:25 suspect's 76:19 77:3,9 suspected 9:19 72:23 75:24 77:17 suspecting 161:4 suspects 72:18 75:3 156:21 suspicious 10:4 71:25 73:7 sustain 26:6 41:22 sustainable 135:1 sustained 34:9 40:17 swathes 51:7 switched 16:2 61:11 sworn 5:16 131:16 system 34:17 43:18 51:15 57:10 92:12 150:18,23 151:7 systemic 24:1 systems 56:5 147:5</p> <hr/> <p style="text-align: center;">T</p> <p>tactics 130:15 tainted 91:23 take 12:9 36:8 50:12 67:21 71:20 81:12 94:14 113:7</p>	<p>118:12 121:9 150:3 158:24 161:3 168:11 173:11 174:8,14 176:14,18 184:17 184:23 taken 8:25 9:1 17:16 28:24 63:20 68:10 83:13 84:16 101:2 111:12 147:3 149:2 150:11 151:2 158:20 159:2 174:19 175:21 takes 117:7 talk 61:24,25 62:2 150:10 167:2 171:17 talked 91:12 177:21 talking 113:9 114:6 129:22 tantamount 132:21 tape 81:1 tapes 35:14 task 185:13 taxpayer 91:19 team 42:1 63:8 65:7 70:3,15 76:4,24 79:1 97:9 103:3,12 112:6 113:22 127:19 138:24 141:23 178:3 179:15 183:15,18 185:8 technical 8:21 100:14 111:22 112:5 technically 111:19 technician 148:24 technologically 49:11 telephone 48:19 65:20 66:12,20 66:21 67:10 70:20 71:6,10,16</p>	<p>71:16 72:2,5,16 72:16,24 73:2 77:3 79:6 telephones 71:3,4 71:12 tell 17:5 90:25 109:12 113:23 telling 30:19 33:6 33:6,7,12 40:4,6 82:3 tells 12:7 28:14 template 147:23 148:6 templates 148:3 tempted 22:3 tenor 57:1 tenure 141:10 terms 27:3 29:3 32:2 53:20 56:19 62:11 66:10 127:25 151:5,17 terrified 116:20 test 3:8 58:14 124:22 125:1 128:5 tested 166:5 testing 66:10 text 106:15,21 107:13 110:19 117:5 texts 11:8 thank 1:4 42:5,7,9 42:13 58:11 59:16,21 60:22 61:2,4,6,13 79:16 79:18 87:6 110:6 122:12 179:15,18 179:20 182:22 183:5 186:2 thankfully 84:10 91:18 164:5 thanking 185:24 theme 49:7 54:24 theories 13:6 92:23 128:2 154:5,7 158:2 172:12 thereof 44:21 thin 96:23</p>	<p>thing 21:18 24:7 31:3 85:11 89:17 95:10 106:10 153:15,17 things 1:8 2:18 7:9 10:19 29:21 30:12 34:9 41:17 50:2 71:9 80:18 89:6 110:3 117:7 122:18 135:10 143:23 174:11 think 3:22 18:22 24:20 26:9 36:7 36:16 59:14 65:23 67:12 72:12 73:17 81:13 86:12 87:10 101:6,16 102:3,6,15 110:9 122:23 129:24 137:10 142:13 149:19 150:5,12 150:24 151:5,9 151:23 152:1 159:10 164:9 166:19 167:25 168:14 170:4,13 171:11 175:3 177:9,17,20,23 177:25 178:16 183:3,6 185:3 thinking 69:10 110:11 thinks 25:6 third 36:21 37:18 108:10 126:17,18 143:12 151:16 157:24 164:15 thirdly 4:9 132:1 135:19 138:15 139:3 152:24 thorough 141:16 thoroughly 37:21 thought 32:13 37:20 70:14 82:12 99:4 105:3 106:2 111:1 114:15,21 141:15 161:22 174:4</p>	<p>175:13,21 176:12 178:6 179:4 thoughtful 69:11 thousands 102:21 102:24 threat 34:19 83:25 116:1,2 169:11 three 9:15 30:18 36:3 42:14 50:18 59:1 65:19 66:3 67:22,24 69:22 77:15 81:23 92:2 92:17 95:15 108:17 171:10 three-day 74:13 threw 72:15 throw 94:12 throwing 76:3 thrown 174:12 thumbs 106:22 tidying 4:23 tier 141:20,20 tightrope 95:21 time 2:22 3:15 7:24 12:8 15:6 16:23 20:21 28:6 31:4 33:9 44:1 45:3 50:22 55:13 57:22 58:4 59:15 59:18 62:14 71:23 74:5 75:13 77:17 80:3 85:17 88:12 101:7 102:19 103:13,16 104:1,13 105:14 106:23 107:14 109:24 114:22 116:12 123:15,25 128:13 129:5 131:13 141:4,12 142:10 146:13 151:16 156:10,13 163:11 177:17 180:16 184:17 timed 175:7 timeliness 138:15 timely 17:3 19:5 19:11 23:22 67:18 124:24</p>
--	--	--	---	---

131:21 163:21 170:18 179:10 times 59:12 96:13 97:18 102:9 108:6 142:5 143:17 181:2 timetable 185:11 timing 26:8 55:4 65:12 175:18 tirelessly 88:22 titled 45:5 today 46:5,10 84:9 124:3 132:7,18 163:6 184:10,12 today's 152:19 told 8:25 9:5 11:18 25:8 27:23 33:10 33:14 39:23 40:7 50:23 64:12,19 74:3 76:23 109:4 115:14 139:18 tone 87:17 tool 137:7 top 20:23 106:3 topic 69:9 183:15 topics 77:15 183:13 totally 126:7 141:1 touch 97:6 touched 139:19 track 11:14 61:6 tracking 72:18 trail 73:14 trained 4:10 training 109:12 transcribe 36:17 transcript 36:10 36:15 53:24 167:4,24 173:16 transfer 2:21 14:21 transferring 16:20 transmitting 151:13 transposed 151:15 tread 82:23 treated 83:5 treatment 119:4 tremendous 81:12	trial 43:2,14 56:19 trick 162:23 tried 19:10 79:25 137:14 triggered 101:16 101:20 163:1,4 trim 58:3 triumphs 120:22 trouble 60:1 troubles 97:24 true 5:21 8:12 29:18 32:21 76:18 100:21 146:2 171:7 trusts 122:10 truth 10:18 25:4 82:3 87:20 107:10 135:7,7 165:13 try 34:6 87:9 103:15 105:4 109:10 111:9 122:23 158:9,10 176:22 trying 19:6 71:5 103:17 104:11,12 109:22 113:16 135:4 148:5 turn 78:17 126:8 127:9 177:10,15 turned 140:5 turning 13:21 174:16 two 5:10 14:9 15:8 28:6 29:21 37:16 47:16 50:9 70:16 70:23 74:2,4 76:7 81:7 89:6 110:9 120:18 121:24 123:16 140:25 141:5 150:2 152:1 163:3 167:18 179:22 181:1,25 182:7 184:12 two-tier 141:19 typed 69:20 typing 106:21 typos 183:22	U UK 147:22 148:4 148:13 150:1,7 150:20 151:17 Ullgas 125:16 Ullger 1:11,20,24 2:5 3:20 5:22 7:8 13:2 14:20 15:20 16:19,23 17:3,12 17:20 18:18,19 22:12,15,22 23:1 23:16 26:5,11,23 27:17,18,20,22 28:7,15,18,19 30:1,22,23 31:21 32:7,23 33:3,13 34:1,3 37:14 38:14,22,23 39:19,23 40:7,11 41:5,12,18 46:8 57:4 75:11,17 76:9 85:3 90:2,9 93:24 95:6 98:3 99:24 100:24 102:2,8 103:7,14 104:21,25 113:2 117:6 118:11 119:11 129:10 136:5 137:10 138:10 139:12 144:20 145:17 147:21 153:2,14 156:16,20 158:14 158:15 161:11,16 163:24 169:8 172:4 175:8,11 176:1,15 178:24 Ullger's 17:19 39:13 129:25 140:24 162:20 172:19 173:2 ultimately 58:21 84:3,5 91:21 95:12 unable 19:6 51:6 145:8 146:10 180:1 unaccounted 47:1 unafraid 174:11	unambiguously 28:21 unavailable 155:14 uncensored 101:19 unconcerned 114:20 unconditional 177:4,12 unconditionally 80:8 undaunted 174:11 underlying 120:5 undermine 2:6 26:6 50:14 68:16 undermined 40:18 43:23 undermines 37:22 understand 44:7 68:23 75:16 119:17,17 127:5 134:13 139:15,17 140:3,22 142:14 145:13 151:25 167:19 175:22 176:5 177:24 understandable 27:6 68:11 92:3 understandably 29:2 understanding 10:21 11:2 91:4 128:2 145:15 understood 10:13 82:14 83:18 143:17 158:1,2,3 173:1,1 176:2 177:13 undertaken 15:1 149:15 undisclosed 3:9 undivided 42:6 unequivocally 172:6 unethical 76:11 unethically 11:20 unexpected 98:21 unexplained	137:23 unfair 120:8,11,14 unfairly 174:12 unfold 143:20 unfolding 109:14 unfortunate 92:25 unfortunately 92:23 123:11 148:7 unfounded 128:12 unhappiness 74:15 unimpressive 56:25 uninformed 130:20 uninvestigated 137:23 unique 121:4 149:24 uniquely 126:21 170:20 unit 147:11 unit's 130:3 universally 162:12 unlawful 26:14 32:18 35:25 134:4 unlock 73:13 unmoved 9:13 unnecessarily 131:11 unplanned 98:25 unseemly 52:22 unsupported 115:6 123:12 unsustainable 135:2 136:17 untenable 28:1 33:1,3 untraceable 20:21 unturned 127:18 unused 15:18 43:13 unwilling 185:11 unwise 185:10 update 183:8 updated 48:25 uphold 34:15 173:12
--	--	---	--	---

uploaded 53:10	89:5	watching 85:7	55:19 56:8 57:14	90:10 159:25
uppermost 71:9	voice 32:3 78:11	87:4 88:13	57:17 58:19	173:8
upshot 18:16	volumes 169:19	109:22 167:7	69:13,14 100:12	whistleblower
urgency 185:13	voluminous 7:1	water 78:7	101:17,21 102:24	128:14,22 139:8
urgent 50:16,24	126:12	way 17:23 26:9	102:25 104:8	wholesale 144:3
use 55:18 57:6	voluntary 52:14	35:10 55:2 59:3	131:23 136:6,8	wholly 73:25
77:5 98:19 99:21	volunteered 25:19	64:18 69:4 71:13	137:16,20 144:24	wider 108:11
100:2,11 133:11	64:6 161:22	76:12 94:25	146:16 151:12	widespread 22:20
134:18 144:5	vulnerable 141:8	99:16 101:19	153:1 175:14	wild 111:21
145:3,11,14	177:8	113:14 125:14	180:2,4	wind 78:13
149:5 156:24		142:10,21 152:13	WhatsApps 1:8,16	wipe 12:12
160:17 173:22	W	157:7 170:6	1:17,19 2:2,4,10	wiped 3:16 14:16
176:17	Wagner 25:6	182:15	2:20,20,22 3:14	22:11 48:8,23
useful 20:9 137:7	79:17,18 177:21	ways 78:9	3:17,20 4:16,18	64:2 104:14,17
useless 48:3	178:5,15 180:11	weak 49:7	5:1,3,13,21 6:8	148:25 154:10
user 100:3 145:12	182:8	wealth 84:20	6:11,14,20,21 7:6	wipes 15:1 149:16
154:16,17 180:17	Wagner's 177:19	Wealthier 84:22	8:10,20,22 12:3	wiping 51:21
180:22	wait 162:8	wealthy 84:18	12:10,13,16,18	wish 36:8 54:7,7
users 56:8	walked 12:8	website 45:8 53:11	12:22 13:2,17,18	140:19
usually 34:23	want 28:15 38:5	108:2	13:24 14:12,15	wished 146:25
utilise 165:2	42:24 81:2 88:3	week 3:1 28:7	14:19 15:3,11,15	withdraw 29:23
utterly 88:8,9	109:9 117:3	30:17 33:13 80:8	15:21 18:6,13,17	withdrawing 30:8
	150:2 167:4	81:4 85:5 99:1	19:3,12,20 20:1	withdrawn 30:4
V	180:8	175:6	20:14,15,16,18	30:11,20
vacuum 127:6	wanted 27:25 28:3	weeks 65:19 66:3	20:25 21:11 22:9	withdrew 115:24
valuable 20:12	29:11 30:6,19	106:13 141:5	22:13,17 23:18	withheld 88:8
64:4	32:5 40:8 48:15	184:12	23:24 24:5,13,25	123:6
value 32:2 100:18	84:22 116:19	weight 74:10	25:24 26:4,10,22	withhold 88:18,20
vanished 47:9	118:5,15	weird 138:7	27:16 30:22	93:25
variety 99:23	wanting 47:20	welcome 134:14	31:22 36:24	withholding 94:4
various 45:14 98:9	77:2	welcomed 129:3	38:13 40:21	witness 5:16 6:23
143:14	wants 68:22	well- 11:13	54:25 55:2 57:5	11:7 16:6 19:7
vast 51:7 84:20	168:21	well-deserved	57:6 62:17 101:4	49:22 60:13,15
vent 113:24	warmly 129:3	78:24	103:10 104:10	64:7 78:20 86:9
venture 79:2	warning 40:8,10	well-made 106:7	123:3 125:19	102:8 103:1
verify 59:3	40:10 43:12	well-reasoned	126:3 136:20	121:13 123:5,7
victim 116:18	81:11 82:14	62:25	137:6 144:17	126:15 129:23,25
victims 96:21	warning-letter	went 38:23 48:1	145:21 146:1	130:1,1,4,5
view 1:20 3:5 5:7	122:2	54:7 65:19 69:6	149:5,19 152:14	143:13 146:9,11
11:19 15:13 19:4	warrant 35:12	107:4 142:7	152:19,21 153:3	163:13 164:11
22:2,22 23:17	70:21 71:8,17	143:21,23 167:2	155:4,16 157:8	166:21 172:3,20
41:15 69:17 91:3	73:12 79:25	172:24	157:18 159:20	178:1
105:14 144:3	159:18	WhatsApp 4:15	160:11 164:7	witness- 120:2
181:23,24	warrants 18:8	7:7,11,15 8:6	168:16,22 174:19	witnesses 2:17
views 35:16	77:6,6	9:17,20,22 10:24	whatsoever 14:6	3:10 23:8 24:14
174:17 175:23	wasn't 81:15	13:10 14:6 16:11	whereabouts	57:15 58:14
179:18	wastage 32:4	16:25 37:13	51:23	61:22 89:12,19
vigourously 88:15	watch 81:18	39:18,23 41:19	whilst 4:23 9:13	93:10 95:9 98:14
vindicates 40:11	watched 85:20	41:22 47:22 52:8	17:14 39:17	120:6 125:16
vindictiveness	93:12			

165:20 witnesses' 96:6 woman 84:2 92:9 wonder 42:9 75:15 88:13 93:15 122:16 147:16 wonderful 162:12 woods 30:2,24 word 41:13 52:17 181:5 wording 65:14 words 8:7 17:20 32:4,12 126:16 131:4 132:8 134:18 140:17 144:6 147:23 154:15 157:3 168:24 171:1 work 3:14 8:19 12:7,13 14:18 16:3 20:18 21:12 22:7,10 41:12 63:14,25 65:10 65:12 90:4 95:19 97:12 98:19,24 99:18 100:10,12 104:17 121:25 124:4 135:18 137:21 144:22,23 145:1 146:17 148:24 149:10 152:2,3,17 155:6 155:9,18 156:12 176:25 179:8,9 worked 27:1 39:1 39:5,6 63:17 88:22 91:18 175:2 working 44:1 63:21 85:6 137:12 world 121:5 worried 118:4 worrying 165:5 worryingly 23:16 131:2 worse 54:17 94:16 121:12 worst 53:8 103:20	113:6 115:22 worth 80:23 106:8 127:23 138:16 169:18 wrap 58:7 write 184:13 writing 59:14 183:16 written 25:16 45:4 60:17 98:12 106:14 107:8,11 107:21,25 166:17 184:10,11,16 wrong 15:14 23:23 55:1 58:22 68:6 70:15 89:16 101:11,12 103:15 110:4 118:18 159:11 169:12 182:20 wrongdoing 46:17 128:18 wrote 111:5 139:18 162:1 Wyan 1:13 144:20 145:19 151:7 153:11 156:16,23 161:19 179:3 Wyan's 66:11 130:1	121:10 179:13 years' 28:6 Yeats 1:12 14:20 22:12 23:16 57:3 85:4 99:25 125:16 126:18 129:11 136:5 137:10 138:11,25 139:13 141:18 142:4,15 144:20 144:24 145:16 146:4 147:2,21 148:5 150:1 155:5,25 156:4 161:16 164:12 172:5 177:7 178:1 179:7 Yeats's 129:23 143:12 yesterday 8:25 23:1,2 29:19 34:2 53:17 62:21 65:10 66:1 69:8 69:19 73:16 74:18 79:11 84:1 92:8,11 109:11 112:25 173:10 yesterday's 53:24 yeurgh 172:17	11.36 61:10 12 35:9 49:22 64:9 79:24 80:12 81:2 83:7 84:4 85:18 106:12 108:12 109:17 110:8,11 111:4,11 113:8 117:3 133:1,17 156:11 157:16 177:21 12.30 102:5 12.56 123:18 120 151:9 13 36:13 116:6,17 118:19 168:11 13F 165:4 13th 35:15 78:7 113:9 14 1:10 14.00 123:20 14.03 175:7 14.08 186:3 14.20 143:2 14.40 163:5 15 25:12 36:19 62:13 118:19 156:7 15th 35:15 78:7 16 37:13 18 126:11 169:24 181 173:17 19 90:12 128:14,22 198 167:23	155:23 2020 13:22 14:24 16:14 22:8 27:16 46:22 50:4,6 63:5 70:13 79:24 81:3 100:4 106:12 145:9,22 145:24 146:20,20 149:12 153:21,23 154:22 155:1 156:11 168:12,19 177:21 180:23 181:2,4 2021 63:19,24 2022 1:6,10 4:24 7:23 15:24 20:3 24:4 54:1 62:7 62:18 103:8,21 125:18 126:4 146:6,14 153:25 155:19 156:18 157:1,3,8 158:7 160:22 2023 46:4 62:14,23 64:7 66:8,19 67:2 90:3 98:6 104:5 128:9,25 141:24 2024 1:15 7:16 14:3 20:2 25:12 45:15 65:15 101:1 125:10 126:2,14,16 143:4 144:16 158:1 167:5 2025 1:1 126:19 146:3 152:7 204 168:10 20th 35:15 78:8 21 55:19 175:7 22 52:8 114:23 115:7,14 150:3 161:25 172:22 23 50:3 62:22 101:3 173:16 180:23 181:2 23rd 98:5 162:13 24 62:22 126:10 131:9 185:18
	X		Z	
	Y		Zamitt 65:2	
			0	
	year 1:10 2:4 5:17 6:25 15:22 45:15 45:23 46:18 52:19 64:23 65:16 69:3 71:22 72:6 74:24 76:7 78:20,24 79:24 82:6 86:19 98:6 105:21 year's 13:3 16:5 17:22 years 5:10 14:10 49:8 63:21 79:12 79:12 81:4 83:6 84:9 87:14 95:15 118:24 119:2	0346 181:2 0347 180:23 0701 181:4	1	2
		1 163:10 186:5 10 65:25 129:8 137:15 10.02 1:2 10.30 18:11 100 86:3 11 1:1 65:25 129:21 140:13 167:5 174:15 11.00 40:14 11.24 61:8		2 7:15 162:6,8,14 162:23 20 36:22 40:18 118:19 122:17,20 122:23 138:18 163:12 178:2 180:17,25 2000-word 106:24 2016 39:6 2018 180:18 2019 60:4 63:1 99:1,17 100:11 131:24 145:2,4 148:4,6 152:8 153:22 154:21

<p>24th 163:14</p> <p>25 46:4 62:22 131:8 184:12 185:19</p> <p>27 126:8 134:6 157:5,5,11</p> <p>28 84:5</p> <p>29 16:13 26:24 27:16 28:23 29:10,20 31:13 32:3,5,22 33:11 34:6 115:11,19</p> <p>29th 175:9</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 65:24</p> <p>3.3 148:18</p> <p>30 28:13 29:20 60:3 65:19 146:20 163:10</p> <p>300 156:6</p> <p>31 128:9</p> <p>33 165:19</p> <p>34 132:14 165:3</p> <p>35 108:6</p> <p>36 76:9 118:23 133:1</p> <p>37 133:1</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 1:6 163:2 181:3</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 29:12,16 32:17 33:9 116:3</p> <p>58 150:3</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 62:22 133:1</p> <p>6.1 132:9 171:2</p> <p>60 150:3</p> <p>61 171:12</p> <p>63 167:5</p> <p>67 129:18</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 53:23 65:25 81:3 117:7</p> <hr/> <p style="text-align: center;">8</p> <hr/>	<p>8 49:22 53:23 65:25 131:6 133:1,12 137:15</p> <p>8.2(b) 133:15</p> <p>8.2(c) 133:15</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 1:15 63:4 65:17 66:9 137:15 156:11 157:16 163:7</p> <p>90 137:11</p>			
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