

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 5
(THURSDAY 13 MAY 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Sir Geoffrey Cox QC of Withers LLP (instructed by the Attorney General), Solicitor General Mrs Jo-Ann Williams-Roberts, Mr Hussein Haeri of Withers LLP, Mr Niki Olympitis of Withers LLP and Ms Lauren Peaty of Withers LLP appeared for various BVI Government Ministers and public officials

Ms Nelcia St.Jean of McW.Todman & Co (instructed by Mr Bevis Sylvester) appeared for Mr Bevis Sylvester.

Mr Bevis Sylvester gave evidence to the Commission.

Solicitor General Mrs Jo-Ann Williams-Roberts and Ms Sara-Jane Knock of Withers LLP (instructed by the Attorney General) appeared for Mr Ian Penn.

Mr Ian Penn gave evidence to the Commission.

Counsel to the Commission Mr Bilal Rawat also appeared.

Court Reporter:

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Those present:

Session 1

Sir Geoffrey Cox QC, Withers LLP

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Hussein Haeri, Withers LLP

Mr Niki Olympitis, Withers LLP (attending remotely)

Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Bilal Rawat (attending remotely)

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 2

Mr Bevis Sylvester (attending remotely)

Ms Nelcia St.Jean, McW.Todman & Co (attending remotely)

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Richard Rowe, Silk Legal

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat (attending remotely)

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 3

Mr Ian Penn, Chief Immigration Officer

Mrs Jo-Ann Williams-Roberts, Solicitor General

Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Bilal Rawat (attending remotely)

Mr Steven Chandler, Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning,
everyone.

I think everyone here has been involved in these
hearings before, and you've all had the housekeeping
notices, so I think we're ready to start.

Your application--I think, Sir Geoffrey, you're
speaking on behalf of the Attorney.

SIR GEOFFREY: Yes, I am today.

COMMISSIONER HICKINBOTTOM: First part of the
application is--we'll just leave the Cabinet aside for a
moment, the Attorney represents two Ministers and two
junior Ministers over and above the list that was attached
to Order No. 1.

SIR GEOFFREY: Yes. We want to--we were seeking
the variation of your Order No. 4, which arose--or it
appears by misunderstanding, but whatever the
misunderstandings may have been--

(Overlapping speakers.)

COMMISSIONER HICKINBOTTOM: But a misunderstanding
by whom, Sir Geoffrey?

SIR GEOFFREY: I think the Minis--I'm not
suggesting the Inquiry misunderstood everything. I think
there has been misunderstanding in the liaison between

1 those who made an application before you as to--and the
2 Ministers possibly themselves, Commissioner, as to
3 precisely the capacity in which the application was being
4 made. I really am not in a position, I'm afraid, to go
5 into--because I simply wouldn't wish to mislead you into
6 precisely how this has arisen. All I can tell you is that
7 once told that it was a choice between the Attorney General
8 or Messrs. Silk Legal, the Ministers have expressed the
9 clear desire to be represented by the Attorney General, as
10 you would expect in their ministerial capacities.

11 COMMISSIONER HICKINBOTTOM: You would, but it's
12 not quite as straightforward as that. The bundle which has
13 been kindly put together--

14 SIR GEOFFREY: Yes.

15 COMMISSIONER HICKINBOTTOM: --I'm not sure is
16 complete. But I don't think in the bundle there is the
17 letter from Silk Legal at the 9th of May--

18 SIR GEOFFREY: Yes.

19 COMMISSIONER HICKINBOTTOM: --written on behalf of
20 the four Ministers that you represent today.

21 SIR GEOFFREY: Yes.

22 COMMISSIONER HICKINBOTTOM: Now--

23 SIR GEOFFREY: I find that puzzling, too. But I'm
24 afraid it would be wrong of me to--all I can tell you is
25 that each of the Ministers have expressed full confidence

1 in the Attorney General, and the declaration sent out at
2 Tab 7, I think, is the correct position.

3 COMMISSIONER HICKINBOTTOM: But it wasn't simply a
4 matter--on Friday, and in this letter of Sunday, it wasn't
5 simply a matter of the four Ministers saying, well, we'd
6 really prefer Silk Law to represent us. What they were
7 saying was that there was a clear conflict of interest.

8 SIR GEOFFREY: Well, that's what was said in that
9 letter.

10 COMMISSIONER HICKINBOTTOM: And the Attorney could
11 not act for them.

12 SIR GEOFFREY: That was what was said in the
13 letter.

14 COMMISSIONER HICKINBOTTOM: On behalf of your four
15 clients.

16 SIR GEOFFREY: Well, I am not in a position to say
17 what the ac--it would have taken--we've taken quite a long
18 time to try to sort this out added up to now, which is--I
19 apologise for the lateness of our submissions at 4 o'clock,
20 but it would be wrong of me to say what in each Minister's
21 case was their precise understanding of what was to be
22 submitted before you the other day. Suffice to say when
23 they have been confronted clearly with the position and the
24 requisite choice to be made, they choose the Attorney.

25 I knew you'd ask me on this, and you're quite

1 right to press me, but the truth is unless I'd held an
2 inquisition into precisely the times of the arrival of
3 e-mails, precisely the understanding of each Minister, I
4 frankly thought it counter-productive.

5 The position is clear now. The Government
6 Ministers, as you would expect, and the Premier himself,
7 who has decided that the Attorney should participate in the
8 Cabinet, and all five Ministers, on behalf of the elected
9 Government Ministers--because, you see, as I've said in my
10 submission, and if I might adopt rather than a forensic
11 tone but a more discursive one, as I say in the written
12 document, which I'm afraid had to be prepared in haste in
13 the middle of meetings yesterday, but what I say to you
14 there is that the position of the Government, as I have
15 been instructed, is that the basis of choosing only those
16 Ministries for admittance before you was simply an informed
17 assessment of which Ministries were at that time likely to
18 be concerned.

19 But it was said by the Government, by--always
20 throughout instruction and in the Notice of Application
21 that more would be added as it became apparent that they
22 were concerned.

23 COMMISSIONER HICKINBOTTOM: Well, I'm sorry--

24 (Overlapping speakers.)

25 SIR GEOFFREY: If I might just complete.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 SIR GEOFFREY: The position is that therefore that
3 the Government, which it's always been, that each Ministry
4 and Minister, if admitted, would be represented through the
5 Attorney. So, how this has come about--I mean, I could
6 have held yesterday, if I'd had the time and it would take
7 a long time, some kind of inquiry into who got an e-mail
8 when and if the letter had been seen, suffice to say I took
9 the view that it was better to deal with it this way--you
10 may think I'm wrong--but to put before you a clear position
11 now, which is that we invite you to vary the Order No. 4.

12 COMMISSIONER HICKINBOTTOM: The position is not
13 quite as simple as that, firstly because, among the people
14 on whose behalf letter of the 9th of May was sent was the
15 Premier.

16 SIR GEOFFREY: Yes.

17 COMMISSIONER HICKINBOTTOM: And the letter was
18 written on their behalf in robust terms.

19 SIR GEOFFREY: Yes.

20 COMMISSIONER HICKINBOTTOM: And it was a letter
21 which said the Attorney cannot--even if you wanted
22 to--cannot represent us, and what you're saying is--and
23 this is not pejorative, but it's a complete mystery.

24 SIR GEOFFREY: Well, what I'm saying is that I
25 don't think if the Ministers saw the letter at all as to

1 which I've not been able to get to the bottom in each case,
2 they may have failed to appreciate the implications and
3 consequences. Frankly, they are, even in a small
4 jurisdiction, extremely busy, and I'm not--it's not clear
5 to me that they saw it at all, but I cannot submit that to
6 you because I haven't gone into the facts.

7 What's clear is that they did not appreciate, if
8 any of them did see it, the implications of it.

9 COMMISSIONER HICKINBOTTOM: No, I fully understand
10 that. And--but you accept that, on the face of it, it was
11 written on their behalf. I mean--

12 SIR GEOFFREY: I accept it purports to be--

13 COMMISSIONER HICKINBOTTOM: Quite.

14 SIR GEOFFREY: --I--but again, I just don't think,
15 with respect, if you pardon the discursive formula again,
16 that it's productive to go into it.

17 Yes--yes, it's frustrating, and yes, I appreciate
18 it inconveniences the view, and that is a regret and a
19 subject of apology insofar as we are responsible for it. I
20 know the Ministers would want to express if it's
21 inconvenienced you, and it certainly has because you have
22 given a ruling on what would appear to be a basis that
23 would not be followed through by those Ministers.

24 But I would submit to you that it was a curiosity.
25 When I read it, frankly, I was just astonished because it's

1 always been my understanding that the Ministers were
2 seeking to be represented through the Attorney and those
3 were my instructions from the start.

4 And the only reason that those three were named,
5 the Ministers, is because we hadn't at that stage been
6 satisfied that there was a case under section 12 for the
7 admittance of the others.

8 COMMISSIONER HICKINBOTTOM: Right. Well,
9 let--you're right, Sir Geoffrey, in saying that need to
10 move on.

11 SIR GEOFFREY: Yes.

12 COMMISSIONER HICKINBOTTOM: And the way I think we
13 move on is because Silk, who are not here--

14 SIR GEOFFREY: No, but can I say we've received or
15 I have been sent a copy of letter from Silk Legal,
16 electronically just now, they're aware of this application,
17 and they are simply asking at the moment for confirmation
18 through the speaker that they continue to represent the
19 seventh who remain after the variation. That's the
20 e-mail--

21 COMMISSIONER HICKINBOTTOM: Yes--no, I'll take it
22 from you that that e-mail is there.

23 SIR GEOFFREY: It's from the Speaker, who asks for
24 confirmation as to that matter.

25 COMMISSIONER HICKINBOTTOM: Sorry?

1 SIR GEOFFREY: The Speaker.

2 COMMISSIONER HICKINBOTTOM: No, but the e-mail is
3 from the Speaker.

4 SIR GEOFFREY: The e-mail is from the Speaker
5 asking for confirm--who has apparently organised Silk Legal
6 of (unclear).

7 (Overlapping speakers.)

8 COMMISSIONER HICKINBOTTOM: Yes, he e-mailed us.

9 SIR GEOFFREY: Yes.

10 COMMISSIONER HICKINBOTTOM: He e-mailed us, the
11 COI, to say--

12 SIR GEOFFREY: Yes.

13 COMMISSIONER HICKINBOTTOM: --that Silk Legal had
14 been instructed on behalf of all of the--

15 SIR GEOFFREY: Yes.

16 COMMISSIONER HICKINBOTTOM: --the Assembly--

17 SIR GEOFFREY: Yes.

18 COMMISSIONER HICKINBOTTOM: --including the
19 Ministers.

20 SIR GEOFFREY: Well, he's now seeking confirmation
21 that it's the seven.

22 COMMISSIONER HICKINBOTTOM: I'm sorry, he's
23 seeking confirmation from the seven.

24 SIR GEOFFREY: He's seeking confirmation from the
25 Ministers that it is the seven, and that is the position.

1 COMMISSIONER HICKINBOTTOM: Right. Okay.

2 SIR GEOFFREY: And it doesn't, in other words,
3 appear that Silk Legal object. They've had a copy of this
4 application. They could have been here today. Each of the
5 Ministers has e-mailed them, and they have the declaration
6 that is in the tab in the bundle.

7 So, unless Silk Legal objected, we submit it would
8 be convenient simply to alter the order either in the way I
9 proposed or, alternatively, by some other means best-suited
10 to you.

11 COMMISSIONER HICKINBOTTOM: Okay.

12 SIR GEOFFREY: Two things should be appropriate.

13 COMMISSIONER HICKINBOTTOM: In terms of the order
14 that I'll make, I'll make an order--and this is looking at
15 your submissions.

16 SIR GEOFFREY: Yes.

17 COMMISSIONER HICKINBOTTOM: It's probably
18 elsewhere in the bundle as well.

19 SIR GEOFFREY: Yes.

20 COMMISSIONER HICKINBOTTOM: But in Paragraph 1(b)
21 of your submission--

22 SIR GEOFFREY: That's--

23 COMMISSIONER HICKINBOTTOM: --that's to delete the
24 four Ministers from the Schedule--

25 SIR GEOFFREY: That's it.

1 COMMISSIONER HICKINBOTTOM: --and make it seven.

2 I think the proper order is now to make a new
3 order saying who is representing whom.

4 SIR GEOFFREY: Again, if that's--it may well be,
5 sir. The fact is that--well, I proposed the amendment of
6 the order simply as a possible route.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 SIR GEOFFREY: But that's a matter, of course, for
9 you.

10 COMMISSIONER HICKINBOTTOM: I think it's right
11 that there is a new order. It will set out in the form of
12 the schedule in the form of the organogram, whom the
13 Attorney represents. It will set out in a separate
14 schedule whom Silk Legal represent, and that, I think,
15 deals with (b) and (c).

16 SIR GEOFFREY: Well, in relation to (c), I take it
17 that your content that for completeness sake, they're
18 represented in each of, so to speak, their capacities by
19 the Attorney General.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 SIR GEOFFREY: I'm most grateful.

22 COMMISSIONER HICKINBOTTOM: And just one or two
23 things. Firstly, the declaration at Tab 4.

24 SIR GEOFFREY: Yes.

25 COMMISSIONER HICKINBOTTOM: Most of which is

1 absolutely fine.

2 Three is not quite right. It says, "since the
3 Commissioner has indicated that he will allow only one
4 counsel team to represent Ministers in each of their
5 official capacities"--because I didn't have to determine
6 that in the ruling, because it was inconceivable on the
7 submissions I had before ruling for, that the Attorney
8 could represent the four Ministers.

9 SIR GEOFFREY: Well, we'll duly note, if we made,
10 that, so I think--

11 COMMISSIONER HICKINBOTTOM: I mean, I did say, and
12 I think the Attorney agreed, that there is no reason why
13 she couldn't act on all of--on behalf of all of these
14 people in more than one capacity, particularly as their
15 respective interest in the Terms of Reference appear to be
16 the same, and that was really, fundamentally an interest in
17 good governance.

18 SIR GEOFFREY: Yes, I mean, I won't want to debate
19 that with you now. We might say it extends somewhat wider
20 for the Ministers. And indeed, I think that's how you
21 observed in your ruling that it could be argued that there
22 is a more--at least a more direct interest for Ministers.

23 COMMISSIONER HICKINBOTTOM: Well, because they're
24 more directly interested.

25 SIR GEOFFREY: Yes. Concerned with governance,

1 yes.

2 COMMISSIONER HICKINBOTTOM: With governance in
3 their departments.

4 SIR GEOFFREY: Exactly, and the control of the
5 public service in connection with implementation of policy
6 and so on.

7 COMMISSIONER HICKINBOTTOM: Yes, and we'll--I mean
8 we'll come on to that a bit later on in this application.

9 SIR GEOFFREY: Yeah, yeah.

10 COMMISSIONER HICKINBOTTOM: But in any event--and
11 also there were--there are clear cost implications of a
12 single person being represented by two teams of people,
13 protecting more or less the same interest--

14 SIR GEOFFREY: Agree.

15 COMMISSIONER HICKINBOTTOM: --at the same time,
16 and there were--there are also potential practical
17 difficulties as to how that would work in practice during
18 the course of a hearing.

19 SIR GEOFFREY: Agree.

20 COMMISSIONER HICKINBOTTOM: But I did not make any
21 ruling that any single person could only be represented by
22 one team of counsel. It would depend upon the
23 circumstances. And in any event, it doesn't arise at the
24 moment.

25 SIR GEOFFREY: No.

1 COMMISSIONER HICKINBOTTOM: Okay. That deals with
2 your four Ministers. And I'll--we'll hear from Mr Rawat
3 perhaps on all of these--

4 (Overlapping speakers.)

5 COMMISSIONER HICKINBOTTOM: --if he's got anything
6 to say.

7 SIR GEOFFREY: Yes.

8 COMMISSIONER HICKINBOTTOM: Once we've dealt with
9 who you represent.

10 And in terms of the Cabinet, I've a slight concern
11 about this. Firstly, I'm not sure why the Cabinet want to
12 participate because you will be representing--Attorney will
13 be representing the five Ministers in the Cabinet. Now, I
14 understand the Constitution, we may have to go to it, but I
15 suspect not, the Cabinet comprises of five Ministers and
16 the Attorney.

17 SIR GEOFFREY: Yes.

18 COMMISSIONER HICKINBOTTOM: The Cabinet under--I
19 think it's section~47--does not include--

20 SIR GEOFFREY: The Governor.

21 COMMISSIONER HICKINBOTTOM: The Governor.

22 SIR GEOFFREY: Quite.

23 COMMISSIONER HICKINBOTTOM: But the Governor
24 chairs the Cabinet.

25 SIR GEOFFREY: Chairs.

1 COMMISSIONER HICKINBOTTOM: He, I think, plays a
2 part in the Steering Committee.

3 SIR GEOFFREY: He's one of the Steering Committee
4 of three--

5 COMMISSIONER HICKINBOTTOM: Yes.

6 SIR GEOFFREY: --including the Premier and the
7 Cabinet Secretary.

8 COMMISSIONER HICKINBOTTOM: Yes. And, of course,
9 it would be open to him, as Governors do from time to time,
10 to say that, in Cabinet, that they do not agree with things
11 although they have no vote, and that's taken by the
12 Ministers--

13 SIR GEOFFREY: Quite so.

14 COMMISSIONER HICKINBOTTOM: --as they wish to take
15 it.

16 So, at the moment, the five Ministers comprising
17 the Cabinet, excluding the Attorney, would be able to make
18 submissions, they would be able to make submissions anyway,
19 but they can make submissions now as a participant, and
20 they could say well this--we're all the Cabinet Ministers.

21 SIR GEOFFREY: They could but the--

22 COMMISSIONER HICKINBOTTOM: And what does adding
23 the Cabinet as a participant add?

24 SIR GEOFFREY: I think the concern is that we want
25 to be clear--I speak for the Attorney and for the

1 Ministers--we want to be clear that the Government, in all
2 its echelons other than the Governors group, which you'll
3 see on the organogram--I wonder if we could just have a
4 look at the organogram. It might be useful. Which is at
5 Tab 3.

6 And what is being represented or what we seek to
7 represent is the whole of the Government as shaded in blue.

8 COMMISSIONER HICKINBOTTOM: Well, hold a minute.
9 This is the Executive Government.

10 SIR GEOFFREY: Executive yes--of--yes, I speak of
11 the executive only.

12 COMMISSIONER HICKINBOTTOM: Yes, yes.

13 SIR GEOFFREY: Yes, of course, not the judiciary
14 or the--

15 COMMISSIONER HICKINBOTTOM: Or the legislature.

16 SIR GEOFFREY: Or the Legislature.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 SIR GEOFFREY: We talk about--I'm talking of the
19 Government in its exec--in the sense of executive.

20 And the Cabinet is engaged in your Inquiry because
21 of course, not least, its minutes, its deliberations is the
22 closest--a subject of close scrutiny, as we understand it.
23 So--

24 COMMISSIONER HICKINBOTTOM: But that simply means
25 they're a witness.

1 SIR GEOFFREY: Well, what we feel and what the
2 Cabinet feels--certainly those are my instructions at the
3 moment--is that it would, for the avoidance of doubt, we
4 wish no confusion who we are representing before you. It
5 is the Government in its elected and devolved form.

6 COMMISSIONER HICKINBOTTOM: But on the basis of
7 the organogram, the Attorney will be representing the whole
8 of the Executive Government except the Governor's group.

9 SIR GEOFFREY: And the Cabinet at the moment. If
10 it's not--if it's not shaded in blue.

11 So, yes, if it's shaded in blue, our position is
12 absolutely clear.

13 COMMISSIONER HICKINBOTTOM: But--so, if the
14 Cabinet, as opposed to the five Ministers comprising the
15 Cabinet, are going to make submissions, I assume that those
16 submissions will be submissions of the five Ministers plus
17 the Attorney General. The Governor?

18 SIR GEOFFREY: Well, no, because he's not shaded
19 in blue.

20 COMMISSIONER HICKINBOTTOM: Presumably the
21 Governor then would be able to say, well, I don't agree
22 with this.

23 SIR GEOFFREY: But he could say I agree with it
24 and no doubt he might. There may be all sorts of things I
25 submit you the Governor doesn't agree, but my question,

1 with respect, is so what? I represent--that's what I'm
2 here to do--the voice of the local institutions, the
3 elected and devolved institutions in this territory.
4 That's what I'm here to do. I want no confusion about it.
5 We quite accept that the Governor does not wish to
6 participate in the representation that has been arranged
7 and instructed on behalf of the Attorney and the elected
8 institutions.

9 And that may well have to form a feature in your
10 inquiry as to the relationship between the Governor's
11 Office and the elected institutions. We think it's an
12 important part of the background, and it will certainly
13 form part of the submissions we have for you.

14 But we want no doubt in your mind. What was
15 concerning about your previous ruling, not that it's your
16 fault about it. It came about as a confusion caused by
17 others.

18 COMMISSIONER HICKINBOTTOM: No, it didn't. It
19 did--with respect, there was no confusion.

20 SIR GEOFFREY: No.

21 COMMISSIONER HICKINBOTTOM: I pressed the
22 Attorney--I pressed the Attorney to confirm that she only
23 applied on behalf of the three Ministers. She confirmed it
24 more than once, and why that's important is because the
25 Ministers are concerned in the matters--the subject of the

1 Inquiry, not because we've asked them for documents.

2 SIR GEOFFREY: But you know the reason why now.

3 COMMISSIONER HICKINBOTTOM: But because they are
4 concerned with governance.

5 SIR GEOFFREY: But you know the reason why. We
6 took the view--it may be wrong, but we have been operating
7 significantly in the dark at the moment.

8 COMMISSIONER HICKINBOTTOM: No, there is--with
9 respect--governance is writ large in the Terms of
10 Reference.

11 SIR GEOFFREY: Sir, sir, I quite understand that,
12 but we took the view, wrongly it may be you think, that we
13 needed to be quite disciplined and careful in what we made
14 by way of application before you, and to have a clear case
15 that the persons we were seeking to be admitted to
16 participation were directly concerned.

17 COMMISSIONER HICKINBOTTOM: Okay.

18 SIR GEOFFREY: Now, we didn't think that a general
19 interest in governance at that point would be likely to
20 satisfy you. Now we know it does. But the only reasons
21 those three Ministers were alone in the application, if I
22 had known otherwise, all of them would have gone in, was
23 because we felt we needed to satisfy you on a basis more
24 concrete than simply a general pre-occupation with
25 governance. That's the only reason.

1 COMMISSIONER HICKINBOTTOM: Okay.

2 SIR GEOFFREY: So I--this is why I want to avoid,
3 as does the Attorney, any further confusion about who we
4 represent.

5 COMMISSIONER HICKINBOTTOM: And so--so that
6 the--when the Attorney appears, she will appear for all of
7 those in blue.

8 SIR GEOFFREY: Yeah, all in blue. And then it
9 will be absolutely clear.

10 COMMISSIONER HICKINBOTTOM: Good.

11 SIR GEOFFREY: That's her concern.

12 COMMISSIONER HICKINBOTTOM: That's very helpful.

13 Can I just see whether Mr Rawat has any
14 submissions on this.

15 SIR GEOFFREY: Yes, of course.

16 COMMISSIONER HICKINBOTTOM: Mr Rawat.

17 MR RAWAT: Sir, may I make two observations. The
18 first--

19 COMMISSIONER HICKINBOTTOM: We can't hear you,
20 Mr Rawat.

21 We can now.

22 MR RAWAT: Can you hear me now?

23 COMMISSIONER HICKINBOTTOM: We can. We can.
24 Thank you very much.

25 MR RAWAT: Can you hear me now, sir?

1 COMMISSIONER HICKINBOTTOM: We can, yes. Can you
2 hear us?

3 SIR GEOFFREY: We can hear.

4 (Pause.)

5 MR RAWAT: Sir, can you hear me now?

6 COMMISSIONER HICKINBOTTOM: No, we can hear you,
7 Mr Rawat, but can you hear us? I suspect the answer is no.

8 SIR GEOFFREY: Or, dear. Reboot?

9 COMMISSIONER HICKINBOTTOM: Yes, well that's--

10 SIR GEOFFREY: (Unclear.) that's the best--

11 COMMISSIONER HICKINBOTTOM: He heard you. He
12 heard you.

13 SIR GEOFFREY: Yeah, that tends to do it.

14 I must say, it's amazingly successful, the format
15 the--in terms of--well, the odd glitch like this.

16 COMMISSIONER HICKINBOTTOM: Yes. Yes. I mean,
17 touch wood, and Dame, who is the AV technician.

18 SIR GEOFFREY: Yeah.

19 COMMISSIONER HICKINBOTTOM: --anyway, keeps things
20 going, yes.

21 SIR GEOFFREY: (Unclear.)

22 COMMISSIONER HICKINBOTTOM: Yea. But we do have
23 the odd glitch with...

24 SIR GEOFFREY: (Unclear.)

25 COMMISSIONER HICKINBOTTOM: Okay, Mr Rawat, we can

1 see you. Can you hear us?

2 MR RAWAT: I can hear you. Can you hear me?

3 COMMISSIONER HICKINBOTTOM: We can. I think you
4 couldn't hear us before but we could hear you.

5 MR RAWAT: Oh.

6 COMMISSIONER HICKINBOTTOM: But I think we're now
7 in full context.

8 MR RAWAT: Can I make just brief observations in
9 relation to the two points you canvassed with Sir Geoffrey?

10 The first was in relation to the order that you're
11 minded to make now as to who is representing whom.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 MR RAWAT: And I would invite you, obviously, and
14 perhaps surprisingly, Silk Legal decided not to attend this
15 morning's hearing, but I noted that Sir Geoffrey had said
16 that he had received a communication from them that they
17 are ascertaining the position. It may be helpful if you
18 make a direction that perhaps by 4 o'clock this afternoon
19 they are to confirm in writing who they do represent so
20 that there is no ambiguity at all.

21 In relation to this second point, as to the
22 involvement of the Cabinet, it is helpful to have the
23 clarity that Sir Geoffrey has provided this morning as to
24 who the Attorney General is representing. We must always
25 keep in mind, of course, which is a point that the Attorney

1 made on Monday last, on the 4th of May, that she is the Law
2 Officer to all aspects of Government, and including the
3 House of Assembly, and she advises the House of Assembly,
4 and she advises the Governor.

5 The point that in her submissions the Attorney
6 General made was that she was and had good governance in
7 mind. I make that point because I don't agree that
8 governance has not been at the forefront of the
9 applications that you've heard in the last two weeks. That
10 was canvassed with the Attorney.

11 She also made clear that she had no conflicts of
12 interest and identified no conflicts of interest in
13 representing either members of the House of Assembly or the
14 Governor, indeed. The "arrival" of Silk Legal, if I could
15 describe it as that, was prompted, it seemed, not by the
16 Attorney identifying the conflict but by others identifying
17 the conflict.

18 That leads me perhaps to the last point I which
19 wish to make now, which is that Sir Geoffrey points to the
20 advantage of referring to the Cabinet in any order as an
21 entity because it provides clarity as to who is the
22 Attorney's currently representing. With respect to Sir
23 Geoffrey, I--my submission, the wording is not necessary
24 and could cause confusion, and it causes confusion because
25 section 46 of the Constitution vests--vests executive

1 authority in the Governor. Section 49, as you have
2 mentioned, gives him a role as chair of the Cabinet and as
3 a member of the Cabinet Steering Group.

4 In my submission, the better way would be for any
5 order to identify those elected Ministers who are members
6 of the Cabinet and who are then able--and in my submission
7 what would happen then is that the order would show more
8 clearly who the AG is currently representing. I bear in
9 mind, of course, that she appears--or doesn't require
10 representation before you. As a member of the Cabinet, she
11 is--has been granted the right to participate in her own
12 right as Attorney General.

13 So, unless I can help on any further point, that's
14 all I wish to say at this point.

15 COMMISSIONER HICKINBOTTOM: Thank you very much.

16 Anything on that, Sir Geoffrey?

17 SIR GEOFFREY: I would, if I may, on the Cabinet.

18 The Virgin Islands is almost unique in having the
19 Cabinet created as a constitutional entity. It is in the
20 Virgin Islands an entity, and it is clearly defined as not
21 including the Governor. Those whom I am instructed by and
22 the policy decisions taken in connection with this Inquiry
23 which had included changing the law, as many others have
24 been discussed by the Cabinet and in the Cabinet, it is the
25 natural--a natural body to be included, we submit, as being

1 represented before you because it represents the apex of
2 the devolved institutions on behalf of whom I speak and the
3 Attorney General is instructed. It will lead to clarity.
4 It will lead to complete freedom of doubt. We completely
5 accept, we do not speak nor represent the Governor, the
6 Governor's Office or the Governor's group, and the
7 organogram shows that clearly. I can see no serious or
8 plausible basis on which it could be confused, but somehow
9 the Governor was involved.

10 So, we do submit and it's--may I say to you that I
11 should be seeking not an order now that the Cabinet be
12 admitted because I understand the matter is to be
13 considered next week by the Cabinet. So, what I am seeking
14 is your leave for the Cabinet to be admitted on
15 confirmation next week that it has decided so to be. Those
16 are my instructions.

17 COMMISSIONER HICKINBOTTOM: So, the Cabinet hasn't
18 even given you instructions to make the application.

19 SIR GEOFFREY: No. The Cabinet has--the Premier
20 and the Ministers have indicated to me what the position is
21 likely to be; and so, rather than to wait until next week,
22 I am seeking your leave for it to be admitted.

23 What we would then I submit the appropriate course
24 would be, that we would then write to you, informing you
25 and giving you an extract of the Cabinet decision. If they

1 decided not to, I would not need to--we wouldn't need to
2 trouble you for leave, but my understanding is the matter
3 is going to the Cabinet with a view to the Cabinet deciding
4 that matter.

5 I mean, it's not uncommon, with respect, for
6 decisions and policies to be started to be implemented
7 prior to a Cabinet decision endorsing it.

8 COMMISSIONER HICKINBOTTOM: But--I understand
9 that, but we're here dealing with a situation that you've
10 received instructions from the Cabinet Ministers who, on
11 Tuesday last week, had full confidence in the Attorney
12 General.

13 SIR GEOFFREY: Yes, I know.

14 COMMISSIONER HICKINBOTTOM: On Friday, they
15 didn't, and today they do. The Cabinet meeting is not
16 until next Wednesday. We simply do not know what will
17 happen between now and then.

18 SIR GEOFFREY: Well, I (unclear.)

19 COMMISSIONER HICKINBOTTOM: We don't. We don't,
20 Sir Geoffrey. But I understand the point.

21 SIR GEOFFREY: I wanted to be candid with you.
22 The Cabinet will consider it next week, but the policy, as
23 I understand it, and indeed I'm confident the position is,
24 that it will be put before Cabinet for formal endorsement.

25 COMMISSIONER HICKINBOTTOM: And what are they

1 going to ask for?

2 SIR GEOFFREY: Well, the order that we seek, which
3 is that we're seeking leave that it be joined as a party to
4 the Inquiry, to be admitted to representation.

5 Now, we do submit that it will create
6 ultimately--a concern is the confusion that has arisen. I
7 repeat, I know that you say there was none. I suspect
8 there has been a confusion and a misunderstanding,
9 certainly none by the Inquiry but among the Ministers and
10 elsewhere. This will, I submit, put it beyond doubt, and
11 there is no real risk if the risk of this is what is
12 perceived, that anybody will take the view looking at that
13 organogram, that the Governor is any way implicated in the
14 representation.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 As in previous hearings and particularly given the
17 time because we have other parts of this application to
18 deal with before we get to the witness who we're hearing
19 this morning, I'll give the gist of the order that I
20 propose to make, and then that will be followed by a
21 written ruling with reasons later, but I'll give the gist
22 of the reasons too.

23 First, let me direct that, by 4:00 p.m. today,
24 Silk Legal notify the Commission of Inquiry in writing whom
25 they represent going forward.

1 Secondly, I will ask the Attorney and Silk Legal
2 to write to the Commission to set out how this unhappy
3 state of affairs has arisen. I appreciate that parts of
4 how it has arisen may be covered by legal professional
5 privilege; I understand that, but it is extremely
6 disruptive of how the Commission of Inquiry can progress
7 when major participants make applications over a relatively
8 short period of time on entirely different bases and offer
9 absolutely no explanation.

10 Third, I will make an appropriate direction making
11 it clear who the Attorney represents, and, once we've heard
12 from Silk Legal, who Silk Legal represent going forward,
13 but the list of whom the Attorney represents will include
14 the four Ministers.

15 In respect of the application that the "Cabinet-in
16 inverted commas - becomes a participant in the Commission
17 of Inquiry, section 12 provides that any person whose
18 conduct is the subject of the Inquiry under this Act or who
19 is any way implicated or concerned in the matter under
20 Inquiry shall be entitled to be represented. As I
21 understand it, no decision has been made by Cabinet that
22 they wish to be represented. That will be at the earliest
23 next week.

24 But I can make declaration both that the Cabinet
25 is a person and also that the Cabinet is concerned in

1 matters under Inquiry, namely governance, and that is a
2 declaration I will now make, and that will ease matters
3 next week, once the Cabinet have made a decision.

4 If they apply to be represented, as I understand
5 it by the Attorney, I would propose making appropriate
6 orders under section 2, restricting that participation, and
7 I'll give some thought to how best those restrictions
8 should be phrased.

9 Of course, the Attorney, when she appears either
10 by herself or through the Solicitor General or you, Sir
11 Geoffrey, will be participating. The Cabinet will be
12 participating through the Attorney in those circumstances.

13 But in terms of submissions, what I will probably
14 propose, what I'll probably direct is that no
15 submission--no written submissions be made on behalf of the
16 Cabinet without my permission because, in my view, there is
17 a real prospect of confusion as to precisely who is making
18 what written submissions, and the confusion arises out of
19 the fact that the Cabinet is a legal entity under the
20 Constitution, and the Governor is not formally part of the
21 Cabinet but, nevertheless, chairs it and sits on its
22 Steering Committee.

23 Does that deal with all of the orders)?

24 SIR GEOFFREY: Yes, yes. But may I simply observe
25 on your process that, while I completely accept the clear

1 delineation and scope that you've given, I wouldn't want it
2 to be thought that I necessarily accepted that you have a
3 power to confine the--under section 2, to confine the
4 representation of the Inquiry, but it's a matter I think
5 we'll discuss)--

6 COMMISSIONER HICKINBOTTOM: Not for today.

7 SIR GEOFFREY: --for today. And for that--with
8 that observation, may I say that I otherwise am content
9 with the orders that you seek to make.

10 COMMISSIONER HICKINBOTTOM: Does that mean that
11 don't necessarily accept the proposition, which I think the
12 Attorney accepted, but if she didn't, then it will have to
13 be reconsidered, that I can make directions for
14 proportionate representation. I note that today the
15 Attorney is represented by five people.

16 SIR GEOFFREY: I can only (unclear)--you mean
17 today--I see; yes, yeah, I see what you mean, and I keep
18 forgetting that we have (unclear)--

19 COMMISSIONER HICKINBOTTOM: Yes.

20 SIR GEOFFREY: I apologise to my colleagues.

21 Yes, quite. Yes. Well, it's part, as you know,
22 of the counsel team that's been working with the Attorney
23 in support of her for a long time.

24 COMMISSIONER HICKINBOTTOM: Well, I'm sure it's
25 just a small part, but five people.

1 SIR GEOFFREY: Not a small part.

2 COMMISSIONER HICKINBOTTOM: But five people
3 representing the Attorney on an application such as this
4 might be thought by some to be not proportionate.

5 SIR GEOFFREY: Well, may we reserve it for another
6 time? I--it depends on the nature of the restriction. It
7 may well be that I don't dispute the concept of
8 proportionality. It may be more like what is proportionate
9 that I'm concerned about.

10 May I say that, in connection with the Cabinet,
11 we'll be careful about it, and there is no--the intention
12 at the moment--and we're moving on to a second subject--

13 COMMISSIONER HICKINBOTTOM: Yes.

14 SIR GEOFFREY: --in due course--is for a single
15 submission, a single comprehensive submission, so to speak.

16 COMMISSIONER HICKINBOTTOM: And that submission,
17 as I understand it--and (unclear) have been clear, but they
18 may have moved. But on the basis of your submission on
19 behalf of the Attorney, it's proposed that the single
20 submission covers all of the Terms of Reference.

21 SIR GEOFFREY: Yes.

22 COMMISSIONER HICKINBOTTOM: So, it covers conduct
23 in paragraph 1 but also governance in paragraph 3, and the
24 agencies of law enforcement and justice under paragraph 4.

25 SIR GEOFFREY: Yes.

1 COMMISSIONER HICKINBOTTOM: And the end of the
2 evidence.

3 SIR GEOFFREY: Well, I have to say that that would
4 be the desirable position.

5 COMMISSIONER HICKINBOTTOM: Desirable for whom?

6 SIR GEOFFREY: Well--

7 COMMISSIONER HICKINBOTTOM: For the Government?

8 SIR GEOFFREY: Well, yes. We--

9 COMMISSIONER HICKINBOTTOM: But it's not
10 desirable--not necessarily desirable for the Commission of
11 Inquiry.

12 SIR GEOFFREY: Well, that's what I wanted, if I
13 may, to discuss with you today.

14 COMMISSIONER HICKINBOTTOM: No, good.

15 SIR GEOFFREY: It's that--we're not taking
16 dogmatic positions. We want to be helpful. But may I
17 observe that--and I know you will know this--you've arrived
18 on this island with a team from the United Kingdom. As far
19 as we're aware, there is no local involvement in your
20 Inquiry. Your arrival has obviously been noted, to put it
21 mildly, and it causes, inevitably within the island, a
22 degree of concern, apprehension, consternation,
23 speculation, and, frankly, worry, and that isn't because
24 necessarily there is anybody--those who are worried are
25 necessarily feeling they have anything to hide, but in the

1 absence of precise knowledge about what the Inquiry is
2 doing, for perfectly understandable reasons, it does cause
3 a strain.

4 Now, the fact of the matter is, in this case, what
5 I would seek from you is some transparency as to the
6 structure of participation for represented parties in the
7 future so that we can understand more about its timetable;
8 whether, for example, you propose to have a session at the
9 end of your evidence hearings, when parties, on a limited
10 basis, time limited, possibly preceded by written
11 submissions, may address you on matters connected with your
12 Terms of Reference.

13 These things would go a long way to relieving what
14 is a real concern in the circles of Government because we
15 simply don't know what it is you intend. On March the 1st,
16 as you know, I wrote asking precisely these questions. I
17 was told--or the counsel team was told that it wasn't
18 timely, and you'd get to it in due course, and so we left
19 it.

20 On April 13th, you then published your protocols
21 repre--three months into your Inquiry, your protocols for
22 the first time on representation, and though we are now
23 representing, we don't know what "representation" means in
24 your Inquiry.

25 I mean, forgive me, you may disagree, but that is

1 how it feels this side of the desk, and it's not--I am
2 articulating that feeling, not--it is not necessarily mine
3 because I can appreciate, I think, the difficulties your
4 Inquiry is facing, trying to absorb an enormous volume of
5 material, marshaling it, and focusing it. I really am
6 trying to express a balanced view here.

7 So, what I'm--what we would be grateful for, if
8 you felt "possible" (phonetic), is for some clear structure
9 for the next two months, and then we can see, because we're
10 working flat out, how we could fit inside that structure
11 and whether the timelines are realistic.

12 COMMISSIONER HICKINBOTTOM: I think that--I think
13 it would be helpful if the--if I gave some direction to the
14 Attorney and Silk Legal, assuming they're representing part
15 of the Government, as to how they could assist in terms of
16 submissions and in, particular, on what they might assist.

17 SIR GEOFFREY: That would be very helpful.

18 COMMISSIONER HICKINBOTTOM: But, having said that,
19 firstly, it--this has nothing to do with section 12. You
20 do not have to be a participant to make submissions to the
21 Inquiry.

22 Secondly--and as I've made clear from the outset,
23 although there are a number of Terms of Reference, they
24 fall under two umbrellas. Paragraph 1 concerns conduct,
25 information that may suggest that there has been serious

1 dishonest conduct in public office. That's a paraphrase,
2 but that's what it is.

3 SIR GEOFFREY: Yes.

4 COMMISSIONER HICKINBOTTOM: That turns on conduct.
5 And I can understand it to an extent that--I was going to
6 say the Government but possibly everyone may need to have a
7 steer on where the Commission is going in respect of that
8 conduct to be able properly to respond to it. I understand
9 that.

10 But in respect of governance and the operation of
11 the law enforcement and justice systems, those are
12 free-standing Terms of Reference. They are not linked to
13 conduct.

14 SIR GEOFFREY: I know. I can read it just as well
15 as any man, if I say so.

16 COMMISSIONER HICKINBOTTOM: Quite.

17 SIR GEOFFREY: Yes.

18 COMMISSIONER HICKINBOTTOM: And as you just said,
19 that's been clear from the outset.

20 Now, for example, in terms of governance, you
21 don't have to know what I'm thinking in terms of governance
22 to be able to put forward submissions.

23 SIR GEOFFREY: Well, you see there--

24 COMMISSIONER HICKINBOTTOM: For example, there are
25 various questions concerning governance on which the

1 Government may be able to help, including--including--where
2 they consider governance currently stands in the territory.
3 And that is something which (a) need not await me saying
4 anything, and (b) could have started in January.

5 SIR GEOFFREY: Well, let me--it has started in the
6 sense that the small team, because what you see is not a
7 small resource--it is almost the entire team, who no doubt,
8 because this is the first time we have the opportunity of
9 meeting you in person, at least I have that opportunity,
10 wish to be present. It will not in the future be the case
11 that I am supported in this way. But a great deal of work
12 has been done. As I say in the short document that we'd
13 put before you, huge volumes of material have been drawn
14 together for focused attention and consultations.

15 If we're to help you, it needs to be more than
16 cosmetic, and certainly I'm not going to preside over
17 anything that I think would be cosmetic--I want it to
18 affect your thinking. I want you to take it seriously. I
19 mean in order to be taken seriously, I need it to be
20 directed at things that you think are likely to be of
21 concern to you.

22 Governance, in the abstract, in my respectful
23 submission and certainly my experience, not only in the
24 United Kingdom but around the world where I've advised
25 governments, I was standing counsel to a small island

1 community for many years, can't be conceived in the
2 abstract. It has to be designed for the reality of the
3 particular community in small society in which it is to
4 take root and become embedded.

5 And so, the ideal situation, frankly, would be to
6 have a pro--a dialogue with you at arm's length but on what
7 you felt was likely to be (unclear) my concern in your
8 mind, so I could--(unclear) at the moment been doing case
9 studies. You can't look at governance in the abstract. It
10 has to be based on concrete case studies. It's no use me
11 giving you the VIP manifesto as to what the Government
12 thinks. What I have to give you is worked out case studies
13 where you can see how the system is working, how it might
14 be encouraging undesirable behavior or could encourage
15 undesirable behavior--(unclear) would be a matter for you
16 if you find it--the systems that surround that and how
17 those systems could be ameliorated that would be likely to
18 work here.

19 Now, that can't be done just by handing you a
20 worthy tome on civil service reform and so on. It needs to
21 be worked out in the concrete, and it's bound to be better
22 informed if I know the case studies that you are working on
23 or thinking about.

24 In your letter that, I think, Mr King and
25 Mr Chandler wrote to the Attorney on the 26th of March--if

1 I'm wrong about the date, forgive me--made it clear, and,
2 of course, this is right, your recommendations on
3 governance will manifestly be influenced by and informed
4 by, and I respectfully submit, and will certainly very
5 powerfully informed by what you think is wrong, has gone
6 wrong, if anything.

7 And we need to have a joint mind. If we're to
8 help you best, we need to know, to some extent at least,
9 the core issues that you've identified as you described it
10 to me on the 28th of January, so that we can target our
11 improvements in those systems and to those concrete case
12 studies.

13 Now, that was on a terribly long (unclear), but I
14 hope you see that what I am keenly anxious to do is provide
15 you with genuine, real assistance, and what I don't want is
16 an abstract tome on--we all know what good governance
17 box-ticking would mean, but, speaking for myself, I have
18 never found that kind of box-ticking terribly effective,
19 not even in our country, let alone a territory like this
20 one. I imagine you want to go deeper than that and that
21 you are.

22 COMMISSIONER HICKINBOTTOM: Well, that's very
23 helpful because it's clear that the Government--that
24 the--I'll call them the Ministers, but the Executive
25 Government would benefit from some direction as to what I

1 would consider helpful.

2 SIR GEOFFREY: Yes.

3 COMMISSIONER HICKINBOTTOM: Governance has always
4 been at the forefront of the Government--of the BVI
5 Government's role in the Inquiry, and I discussed
6 governance at some length with the Attorney last week, but
7 it's clear that it will--it will help to give some
8 direction.

9 Now, have you got anything else to say on this
10 particular point?

11 SIR GEOFFREY: And we could, if I may say so, the
12 answer is almost certainly yes, I have a lot to say.
13 Whether--

14 COMMISSIONER HICKINBOTTOM: I have no doubt.

15 SIR GEOFFREY: --(unclear) and I shall, but
16 probably not now, if I may say. It may be of assistance
17 to--I'm very anxious to work within the grain of what you
18 think is appropriate. I know the complexity of the task
19 that you face, and I want to be as adaptable to it as
20 possible. But it may be that the kind of dialogue that
21 we--you and I spoke about on the 28th of January would
22 help. I appreciate you may--you may--you may feel that
23 it's quite manifestly must preserve, its unimpeachable,
24 independence, but in some inquiries, as you know, dialogue
25 with core participants does help tease out issues, enable

1 the core participants to focus on what helps the
2 Commissioner, and I would invite that at some stage by some
3 appropriate means.

4 COMMISSIONER HICKINBOTTOM: Well, at the
5 moment--and I haven't heard from Mr Rawat at all yet, but
6 at the moment I would envisage the dialogue commencing by
7 me asking some questions and the Government answering them
8 and see where we get to.

9 I know that you perhaps have in mind something
10 more fluid, but I think that would be a good start.

11 SIR GEOFFREY: Well, we've had an awful lot of
12 questions. I think my--those whom I represent probably say
13 we haven't had an awful lot of answers, and--

14 COMMISSIONER HICKINBOTTOM: Sir Geoffrey, that's
15 not fair.

16 SIR GEOFFREY: No, well--

17 COMMISSIONER HICKINBOTTOM: We've asked for a lot
18 of information.

19 SIR GEOFFREY: And we've provided a lot.

20 COMMISSIONER HICKINBOTTOM: You've provided a lot
21 but not all that we've asked for.

22 SIR GEOFFREY: Right. We are very willing to
23 provide the rest if you want it.

24 COMMISSIONER HICKINBOTTOM: I know. We've had
25 witnesses here who have said that they have boxes and boxes

1 and boxes of documents which they did not look at, although
2 they knew that there was documents--there were documents in
3 the boxes that responded to our request. We can deal--we
4 can deal with that.

5 SIR GEOFFREY: Yes.

6 COMMISSIONER HICKINBOTTOM: That simply slows
7 things down, but we can deal with that. But we're here
8 talking about something really quite different, and that is
9 submissions, because that's what the Attorney General
10 describes them as, submissions on--

11 SIR GEOFFREY: (Unclear.)

12 COMMISSIONER HICKINBOTTOM: --submissions on, for
13 example, governance. It doesn't seem to me to be necessary
14 or sensible for the Government to wait to make any
15 submission until the end of the Commission of Inquiry. For
16 example--this is just one example--some of the points that
17 the Ministers wish to make other participants may want to
18 respond to. We know that other participants have said they
19 want to - in inverted commas - cross-examine - the
20 Attorney General on them. I'm not quite sure about the
21 context of cross-examining on submissions, but, in any
22 event, they may not agree with them, and they'll need an
23 opportunity to respond.

24 And so, I will hear from Mr Rawat now, but I think
25 that the--at the moment I think the best way to proceed is

1 for me to raise these questions with you and, indeed, with
2 Silk Legal, and to see where we get on the base of the
3 responses to those questions.

4 SIR GEOFFREY: Yes. If I may say, what my
5 (unclear) address to is really not so much the immediate
6 issue of representation or--but really making certain that
7 what we are producing is going to be of maximum telling
8 effect in your mind.

9 COMMISSIONER HICKINBOTTOM: And that's the purpose
10 of the questions.

11 SIR GEOFFREY: (Unclear.)

12 COMMISSIONER HICKINBOTTOM: That will be the
13 purpose of the questions.

14 SIR GEOFFREY: And--but you did indicate that you
15 would--you appreciated that a steer from you as to what
16 your--if this is the same thing, forgive me, I may have
17 misunderstood you--but a steer from you as to what was in
18 your mind, or what would be helpful, would be something you
19 would be likely to be agreeable to. Is that what you mean
20 by the questions?

21 COMMISSIONER HICKINBOTTOM: These are questions,
22 for example, on governance.

23 SIR GEOFFREY: Yeah. Right.

24 COMMISSIONER HICKINBOTTOM: We have to be very
25 careful not to conceptually muddle things.

1 Paragraph 1, which concerns conduct, I understand
2 that's a different kettle of fish. I understand that the
3 Government may not be able to respond to anything until
4 they get a steer on that.

5 SIR GEOFFREY: Or two as a consequence.

6 COMMISSIONER HICKINBOTTOM: And two, but one and
7 two go together. But in terms of governance and law
8 enforcement, there is no difficulty, as I see it, in the
9 Government making submissions in respect of those matters.
10 I accept that it would be helpful for them to have a steer
11 because submissions--general submissions on governance may
12 well be too long and not all helpful.

13 SIR GEOFFREY: Right.

14 COMMISSIONER HICKINBOTTOM: And so I think there
15 is--

16 SIR GEOFFREY: But we've made progress. That
17 would be helpful.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 SIR GEOFFREY: And I'm most grateful for that.

20 COMMISSIONER HICKINBOTTOM: Can I just see if
21 Mr Rawat, what he has to say about this?

22 SIR GEOFFREY: Yes.

23 COMMISSIONER HICKINBOTTOM: Mr Rawat, what
24 contribution have you got to this discussion?

25 MR RAWAT: Again, very brief observations, sir.

1 Firstly that Sir Geoffrey's indication of his
2 wish, and no doubt the wish of those who form his team, is
3 that they want to assist you in as adaptable a way as
4 possible to fulfill your Terms of Reference. That is to be
5 welcomed.

6 The second point is that we've got to remember
7 that this is a time-limited Inquiry. It is not, and should
8 not, fall into the trap of structuring itself like a trial.
9 It has no obligation because it is an inquiry to adopt a
10 particular structure. It has to work, in my submission, in
11 a flexible way, not least because the Terms of Reference
12 are wide.

13 In that regard, it is also important, in order to
14 preserve the wider public interest, that the Inquiry be
15 conducted in as transparent and open a way as possible.
16 Within that, it is always open to any participant to raise
17 matters with the COI team. While we--that--we may not be
18 able to answer all questions, we can at least listen, and
19 that is a normal approach in inquiries.

20 But ultimately, if there are issues that need to
21 be canvassed, they will need to be canvassed before you at
22 a hearing or in writing. That's all I wish to say at the
23 moment.

24 COMMISSIONER HICKINBOTTOM: Well, that's all very
25 helpful, Mr Rawat.

1 Now, Sir Geoffrey, that's probably as far as we
2 can get today.

3 SIR GEOFFREY: Might I just observe one point.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 SIR GEOFFREY: What is really important as well,
6 to add to the list, with all of which I agree that Mr Rawat
7 has enumerated, is local public confidence in the fairness,
8 balance, and independence of your Inquiry. Transparency to
9 those who are affected, even if only emotionally affected,
10 do not underestimate that, because there is a civil service
11 here who feel they are being inspected, they are being
12 scrutinised--not only civil service but other areas--to
13 enable them to understand something about the way in which
14 they will be able to have a voice in your Inquiry, would I
15 submit be likely to enhance its public confidence.

16 And there is an issue--I'm sorry, I need to tell
17 you this clearly--there is an issue of perception in some
18 quarters--and I don't only mean quarters that are
19 undeserving of attention--that your Inquiry is situated in
20 this island in a manner almost like the descent from on
21 high of an organi--of a group looking into them in every
22 aspect but isn't necessarily fully understanding of the
23 situation on these--in this territory.

24 Now, I want to be in a position to be able to say
25 to those who instruct me and to those quarters I'm speaking

1 of, a full and ample opportunity for your voice to be heard
2 by the Commissioner has been afforded. That's all I want
3 to do. So there is this public confidence and public
4 perception point.

5 May I again be candid. I see you looking, how
6 shall I put it? This is not an attack. These are
7 statements of fact. The office that you've set up for your
8 Inquiry was in the Foreign Office. The server that your
9 Inquiry is using is a Foreign Office server. The Foreign
10 Office is a joint Data Controller of the data that you're
11 collecting, which returns to the United Kingdom.

12 Mr Chandler, your Secretary, is a Foreign Office
13 secondee. I'm sorry, but these are realities which your
14 Inquiry needs to be sensitive to. I'm sure it is being so,
15 but these are matters that have been drawn to my attention.
16 And I think it's important that you should understand that,
17 in parts of this island community, these things are being
18 noted.

19 Now, I have no question about the integrity and
20 independence of this Inquiry, but I am submitting that what
21 it needed is an understanding and an embrace of the voice
22 of the local institutions in a manner that is cooperative
23 and helps us make that voice heard. Otherwise, it will, I
24 submit, lack public confidence in certain quarters.

25 COMMISSIONER HICKINBOTTOM: You're speaking on

1 behalf of the Executive.

2 SIR GEOFFREY: I'm speaking on behalf of the
3 elected and local institutions here, as shaded in blue.

4 COMMISSIONER HICKINBOTTOM: Well, which are the
5 Executive.

6 SIR GEOFFREY: Yes.

7 COMMISSIONER HICKINBOTTOM: Not the House of
8 Assembly, but the--

9 SIR GEOFFREY: Well, I'm speaking on behalf of
10 those House of Assembly members I represent.

11 COMMISSIONER HICKINBOTTOM: Correct. I accept
12 that. But many of the points that you've made we have
13 sought to explain, and I think we have explained properly
14 why we have done things in a particular way.

15 SIR GEOFFREY: It's not for me to--

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: In addition to those
18 who are suspicious of the Commission of Inquiry, there are
19 those in--no, and suspicious, not--not generally concerned,
20 but concerned in an adverse way. There are people in the
21 territory who I have met, who have real fears about
22 security of the Inquiry and about giving any information to
23 the Inquiry at all because they fear discrimination, and
24 discrimination at an official level. That is why, as you
25 well know because it's been well-publicised, I have

1 insisted on the database that we're holding being
2 absolutely secure, and on any information that we're given
3 being absolutely secure and untraceable back to its source
4 where the giver of the information wishes that to be so
5 because, otherwise, these people would not come forward.
6 And, therefore, although the Executive may have concerns, I
7 have concerns for the public interest, and the public
8 interest goes beyond the Executive.

9 SIR GEOFFREY: Well, with respect, these are
10 elected representatives. They've all been elected at
11 elections, whom I represent seven. And it isn't just right
12 to say that they only speak on behalf of the Executive.
13 They speak also as members of the House of Assembly who
14 have been elected--

15 COMMISSIONER HICKINBOTTOM: I accept that.

16 SIR GEOFFREY: --by their electorates.

17 And you--as I say, if there has been wrongdoing,
18 then--

19 COMMISSIONER HICKINBOTTOM: Then--

20 SIR GEOFFREY: Then *ruat quia*. That is--and may I
21 make plain that in our submissions we will not disguise any
22 such if we find it, and that is the clear instruction I
23 have from the Attorney General. You will hear about it,
24 and it will be candid.

25 But I also know that there is a tension here

1 between the two halves of Government, and there has been
2 for a number of years. There has been a real problem
3 between the relationship not only with this Government but
4 a previous one and the British administration and the
5 Governor's Office because that is how some perceive it
6 here, the British administration.

7 And there is a political background tension which
8 is relevant to your considerations, too, because it
9 explains some decisions, policy decisions, that were taken.

10 And it hasn't entirely escaped the notice of those
11 who support some of these elected representatives that it
12 is at a time of acute political tension between the former
13 Governor and the elected members that this Inquiry has been
14 ordered. And it is not entirely escaping attention that
15 the Foreign Office in the past has preceded suspensions of
16 Constitution and of local institutions completely. It may
17 be wholly justifiably in those cases but have also resorted
18 to other means by which to gain their objectives inside the
19 overseas territories.

20 I mean, these are facts; they're political facts,
21 and I would not be doing my job on behalf of those whom I
22 represent, if I didn't draw, painful as they may be to your
23 attention. Now, I didn't say the role I have here is, I
24 hope, is to bring these things to your attention so that
25 you can properly consider them and understand that that is

1 a sentiment because what--I think the Attorney
2 wishes--indeed I know she wishes--as indeed those whom I
3 represent, these are my instructions, which is to have a
4 frank and unvarnished submission to you. And if there is
5 wrongdoing, then it must be outed.

6 COMMISSIONER HICKINBOTTOM: Correct.

7 Well, Sir Geoffrey, all I will do is I will comply
8 with my Terms of Reference--

9 SIR GEOFFREY: I know.

10 COMMISSIONER HICKINBOTTOM: --in an independent
11 and impartial way. If anyone is concerned about my
12 impartiality or independence, they should be given comfort,
13 but it does give me comfort that it is part of the
14 Attorney's role, and consequently your role, that, in
15 looking at matters under inquiry, you are going to seek out
16 any wrongdoing and bring it to my attention.

17 SIR GEOFFREY: Yes, that is exactly what will
18 happen. And may I also say, Sir Gary, that, throughout all
19 of this, there is no question of your independence or in
20 goodwill and intentions, but I feel I must bring these
21 things to your attention, uncomfortable though they may be,
22 and lacking in substance that they be maybe because it
23 gives you the opportunity apart from anything elseto so say
24 what you have just said.

25 COMMISSIONER HICKINBOTTOM: Thank you very much,

1 Sir Geoffrey.

2 Mr Rawat, anything else from you?

3 MR RAWAT: Nothing, sir.

4 COMMISSIONER HICKINBOTTOM: Sir Geoffrey?

5 SIR GEOFFREY: No. Thank you.

6 COMMISSIONER HICKINBOTTOM: Good. Well, I'll
7 leave because we have to reconstitute the room for the
8 witness. Good. Thank you very much.

9 (Ends of Session 1.)

Session 2

COMMISSIONER HICKINBOTTOM: Now, Mr Rowe, you weren't here for the applications--you weren't here for the applications that the four Ministers no longer be represented by Silk Legal but will be represented by the Attorney General?

MR ROWE: It's a little more than that, Commissioner.

COMMISSIONER HICKINBOTTOM: Sorry?

MR ROWE: The four Ministers and two new Ministers as well.

COMMISSIONER HICKINBOTTOM: I'm sorry, the application concerned two Ministers and two junior Ministers, so four Ministers.

MR ROWE: Indeed.

COMMISSIONER HICKINBOTTOM: I'm not asking to make any submissions because they have been dealt with.

MR ROWE: Oh, just to say, sir, happily I think representatives only know seven.

COMMISSIONER HICKINBOTTOM: With respect, sir, we don't know. What I directed is firstly that, in respect of the four Ministers who are now represented by the Attorney General, both the Attorney General and Silk Legal write to the Commission of Inquiry, I suggest, by the end of Monday explaining how this has come about, that four individuals

1 expressed full confidence in the Attorney last Tuesday. On
2 Sunday, they said that she couldn't act for them because of
3 a clear conflict of interest, and an order was made on that
4 basis, and now today they've got full confidence in the
5 Attorney again. That's very unhappy, particularly as it's,
6 amongst other things, wasted time of the Commission of
7 Inquiry, and time and expense on behalf of participants.

8 MR ROWE: Indeed.

9 COMMISSIONER HICKINBOTTOM: Secondly, I've
10 directed, because I understand--I didn't see it--I didn't
11 ask to see it, but I was told by Sir Geoffrey Cox, Queen's
12 Counsel on behalf of the Attorney, the Attorney received an
13 e-mail, as I understand it, from the Speaker saying that he
14 was confirming who, if anyone, Silk Legal would represent
15 going forward, and so I've ordered--I've directed that, by
16 4:00 p.m. today, I'm informed by the Speaker who you are
17 representing, if anybody.

18 MR ROWE: Indeed.

19 If I may, Commissioner, we have the Permanent
20 Secretary letters from several parties.

21 COMMISSIONER HICKINBOTTOM: Yes, I have seen
22 those.

23 MR ROWE: Which confirms that.

24 COMMISSIONER HICKINBOTTOM: We had a declaration
25 from the Ministers themselves--

1 MR ROWE: Indeed.

2 COMMISSIONER HICKINBOTTOM: --confirming that.
3 That wasn't an issue.

4 MR ROWE: Yes.

5 COMMISSIONER HICKINBOTTOM: Good. Are we ready,
6 then, to proceed with Mr Bevis's evidence--Mr Sylvester's
7 evidence?

8 Mr Sylvester, first of all, can I just check
9 that--I'm sure this has been done--that everybody can see
10 and hear me. Mr Sylvester, can you say something so that
11 we know we can hear you?

12 THE WITNESS: Commissioner, good morning.

13 COMMISSIONER HICKINBOTTOM: Good morning. We can
14 hear and see you. Thank you, Mr Sylvester.

15 And there is also someone--I'm afraid I don't know
16 your name--from his legal representatives.

17 MS ST JEAN: Nelcia St Jean.

18 COMMISSIONER HICKINBOTTOM: Yes, thank you very
19 much. We can hear and see you.

20 MR ROWE: May I ask a question before you put your
21 questions?

22 COMMISSIONER HICKINBOTTOM: Yes.

23 MR ROWE: I had not had notice of the application
24 time. And given your requirements, Mr Daniel Davies will
25 be sitting for this session, so if I may be excused from

1 this session.

2 COMMISSIONER HICKINBOTTOM: Yes, thank you very
3 much, Mr Rowe.

4 Mr Sylvester, because you're remote--and I know
5 you have been told this before, but I'm just underlining
6 it--at the moment the hearing is a private hearing. That's
7 because the Attorney's reserved the rights and obligations
8 of the Ministers, et cetera, in terms of confidentiality
9 and privilege. What would be the usual course--although I
10 will hear submissions on this at the end of the Hearing--is
11 that the Transcript will be made public s subject to any
12 particular matters in the Transcript that the Attorney
13 objects to, if I agree that those parts should be redacted,
14 but it is a private hearing.

15 And so no recordings of this--an official
16 recording has been taken. Can you just confirm that you're
17 on your own in that room, Mr Sylvester?

18 We can't hear you.

19 THE WITNESS: Yes, yes, thank you.

20 COMMISSIONER HICKINBOTTOM: Thank you,
21 Mr Sylvester. Good.

22 And I think the first matter is the application
23 for representation.

24 Now, this is representation under Section 12, not
25 representation as a witness.

1 MS ST JEAN: Correct.

2 COMMISSIONER HICKINBOTTOM: Is that right?

3 MS ST JEAN: Correct.

4 COMMISSIONER HICKINBOTTOM: And why is
5 Mr Sylvester in any different position from Ms Patsy Lake
6 (overlapping speakers) from your application last week?

7 MS ST JEAN: Commissioner, of course, I am not
8 aware of what Ms Patsy Lake consisted. Mr Sylvester
9 believes that, having been summoned to give evidence, no
10 reason provided to us as to why he's being--giving
11 evidence, and it is prudent that he has somebody there with
12 him, and that is to object (unclear) even it's an issue of
13 self-incrimination that may arise that he needs to consult
14 with his representation on.

15 COMMISSIONER HICKINBOTTOM: Well, those appear to
16 me to be pretty identical arguments to the ones Mr Neale
17 used last week in respect of Ms Lake.

18 What I indicated then was I referred to the
19 provision in the COI Rules that enable a witness to be--to
20 appear with counsel of his or her choice, and I would be
21 minded to allow you to appear with him on that basis.

22 But is there anything different from this
23 case--different in this case from Ms Lake's case in respect
24 of section 12? I think the answer is probably "no."

25 MS ST JEAN: Probably no. There is no confusion.

1 COMMISSIONER HICKINBOTTOM: Mr Rawat, unless you
2 have any comment, I propose to make the same order.

3 MR RAWAT: No observations from me, sir. Thank
4 you.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 Excellent, Ms St Jean. Your name has come up,
7 which makes it much easier for me.

8 Well, I'll order that section 12 application
9 refused, but that you can appear with Mr Sylvester and give
10 any advice on those matters that he needs and you wish to
11 give.

12 MS ST JEAN: Grateful, Commissioner.

13 COMMISSIONER HICKINBOTTOM: Thank you.

14 Now, Mr Rawat, is there anything else before you
15 ask Mr Sylvester some questions?

16 MR RAWAT: I think I may have missed it, but
17 Mr Sylvester may need to be sworn in.

18 COMMISSIONER HICKINBOTTOM: Oh, yes. Thank you,
19 Mr Rawat.

20 Now, I think arrangements have been made for you
21 to be sworn in, Mr Sylvester, remotely.

22 COMMISSION SECRETARY: That's right.

23 COMMISSIONER HICKINBOTTOM: Good.

24 COMMISSION SECRETARY: Mr Sylvester, Steven
25 Chandler here again. Can you tell us whether you would

1 like to swear an oath or make an affirmation this morning?

2 COMMISSIONER HICKINBOTTOM: You're mute,
3 Mr Sylvester.

4 THE WITNESS: Sorry.

5 Yes, I was looking for a Bible this morning. I
6 couldn't find one. Could somebody (unclear) so I have to
7 affirm.

8 COMMISSION SECRETARY: Okay.

9 COMMISSIONER HICKINBOTTOM: Mr Sylvester, I heard
10 the end of that, so I know you're going to affirm, but your
11 voice is intermittent.

12 THE WITNESS: Sorry. I said I was looking for a
13 Bible this morning in my home. I couldn't find one, so I
14 have to affirm.

15 COMMISSIONER HICKINBOTTOM: Very good. Thank you,
16 Mr Sylvester.

17 COMMISSION SECRETARY: Thank you, sir. Would you
18 like to repeat after me.

19 I do solemnly, sincerely and truly declare
20 affirm--

21 THE WITNESS: I do solemnly, sincerely, and truly
22 affirm--

23 COMMISSIONER HICKINBOTTOM: --declare and affirm--

24 THE WITNESS: --declare and affirm--

25 COMMISSION SECRETARY: --that the evidence I shall

1 give--

2 THE WITNESS: --that the evidence I shall give--

3 COMMISSION SECRETARY: --shall be the truth, the
4 whole truth, and nothing but the truth.

5 THE WITNESS: --shall be the truth, the whole
6 truth, and nothing but the truth.

7 COMMISSION SECRETARY: Thank you.

8 THE WITNESS: Thank you.

9 COMMISSIONER HICKINBOTTOM: Thank you,
10 Mr Sylvester.

11 Just before Mr Rawat asks you any questions, just
12 to say that if at any point you wish to speak to Ms St Jean
13 about any matter relating to legal advice, just let us know
14 in some way.

15 And similarly, Ms St Jean, if you want to give
16 legal advice, just let us know. Good thank you.

17 Mr Rawat.

18 BY MR RAWAT:

19 Q. Good morning, Mr Sylvester.

20 A. Good morning.

21 Q. Can you give the Commissioner your full name,
22 please.

23 A. Bevis Sylvester.

24 Q. And your professional address?

25 A. Number--fourth floor, Rodney B--I just (unclear).

1 Q. Is that in the Virgin Islands or is that in
2 St Kitts?

3 A. It's in St Lucia. I live in three "areas"
4 (phonetic).

5 Q. Now, obviously I'm going to ask you a series of
6 questions today. They are intended to be short and simple.
7 If at any time you have a difficulty understanding the
8 question or you would like me to repeat it or rephrase it,
9 please ask me to do so.

10 I hope you've received some documents that we may
11 have to go through. Do you have those with you?

12 A. They're on the system that I'm using, the iPad.

13 Q. I see. Okay.

14 Now, one other matter is that you're quite softly
15 spoken.

16 A. No, I'm not. I'm not at all.

17 Q. All right.

18 A. It's probably on your end on your speaker. I'm
19 very, very, very vocal.

20 Q. I'm grateful that you're very, very--

21 A. Are you hearing me now better?

22 Q. I am.

23 A. Okay.

24 Q. And I want you to keep your voice up.

25 A. Okay.

1 Q. Speak slowly.

2 A. Yes.

3 Q. The reason I'm asking you to do that,
4 Mr Sylvester, is so that your answers can be accurately and
5 clearly recorded on the Transcript of this hearing.

6 A. Thank you.

7 Q. I would like to start off by explaining why we've
8 asked you to attend today. There are a number of matters
9 on which we believe you may be able to help the Commission.
10 As the Commissioner has just ruled, you are attending as a
11 witness. As with any witness or indeed any lawyer that
12 appears before this Commission, you are under an obligation
13 to assist the Commissioner's investigation. You have legal
14 representation, but I want to make clear at the outset that
15 I don't intend through my questions today to put to you a
16 criticism or an allegation that you have to answer. All
17 right?

18 Now, can we start by just establishing some
19 background, and we'll start with your working history. We
20 heard a few days ago from Mr Wade Smith, who is the Customs
21 Commissioner, and he said that at one time you were a
22 Budget Coordinator in the Ministry of Finance; is that
23 right?

24 A. Yes.

25 Q. And just help us with this: Is there just one

1 Budget Coordinator, or is it a role where there is more
2 than one?

3 A. At the time only one.

4 Q. And what did the role involve at the time?

5 A. The role involves, if I remember--it was a long
6 time ago--the operation of the budget, looking at the
7 expenses versus revenue, and reports to the Premier then on
8 fiscal policies, et cetera.

9 Q. In total, how long did you work in the Ministry of
10 Finance?

11 A. I can't recall at this time. I can get that to
12 you after.

13 Q. You've said in the letter that you sent to the
14 Commission that you have been an employee of Delta
15 Petroleum for the last 15 years; is that right?

16 A. 15-16 years, yes.

17 Q. And so, did you go from the public sector--that is
18 the Ministry of Finance--into the private sector?

19 A. No. I went in two years after.

20 Q. Right.

21 A. A year-and-a-half.

22 Q. And what did you do in that year-and-a-half?

23 A. I was (unclear) by the Government.

24 Q. I'm sorry, I didn't catch what you said. You said
25 something by the Government.

1 A. I was (unclear).

2 Q. And what does that mean?

3 A. I was put on leave pending a matter.

4 Q. I see. Okay. All right. So, you were on--you
5 were on leave for a year-and-a-half, and then you moved to
6 working for Delta Petroleum; is that right?

7

8

9 Q. All right. Okay. Now, your role at Delta, is
10 that a full-time position?

11 A. Yes.

12 Q. And it clearly involves you working outside the
13 Virgin Islands?

14 A. It's a regional position, and I work in all
15 islands, five islands, six islands now.

16 Q. But you've also been appointed to be chair of the
17 BVI Airports Authority, haven't you?

18 A. Yes.

19 Q. When were you appointed to that position?

20 A. I can't remember the exact date. I think it was
21 in 2019, yes. Exact date I didn't have. I think you can
22 get that from the Board Secretary if you have to know.

23 Q. Give me one moment.

24 (Pause.)

25 Q. I just want to look at some of the Letters of

1 Request that the Commission has sent to you. If you look
2 at the first one, that's at A5 in the bundle.

3 A. I have to come off to look at that.

4 Q. Sorry, what do you mean you have to "come off"?

5 A. I have to close to go to my e-mails on this
6 system.

7 Q. Do you actually have the bundle in front of you on
8 a separate device?

9 A. No, it's on this device.

10 Q. So, does that mean in order to look at pages of
11 that bundle you will have to break the Zoom link?

12 A. Not break. I just have to push it up and go to
13 the e-mail.

14 Q. Okay. You do that, then.

15 A. Okay. You direct me to which one?

16 Q. We're going to have to be able to see you,
17 Mr Sylvester.

18 A. Okay.

19 Q. Perhaps if you come back on screen for a moment,
20 the Commission needs to be able not only to hear your
21 evidence but to see it.

22 A. Okay.

23 Q. We do need to look at some of the documents that
24 are in that bundle. I appreciate you have it
25 electronically, but is there any way you can put it on

1 another device so that we can see you, hear you, and you
2 can read the bundle at the same time?

3 A. Let me go to my other device quickly.

4 MR RAWAT: Sir, I wonder if we can give
5 Mr Sylvester five minutes to sort himself out.

6 COMMISSIONER HICKINBOTTOM: Yes. It would be very
7 helpful if you have the documents on one device and the
8 Zoom link on another device.

9 We'll just wait to see whether...

10 (Pause.)

11 THE WITNESS: Okay.

12 COMMISSIONER HICKINBOTTOM: Thank you,
13 Mr Sylvester.

14 (Overlapping speakers.)

15 MR RAWAT: Thank you.

16 BY MR RAWAT:

17 Q. Mr Sylvester, if you could go, please, to Page A5.

18 A. Yes.

19 Q. That's the Letter of Request that was sent to you
20 as an individual?

21 A. Yes.

22 Q. I don't--I won't read this out to you, but if you
23 could look at the second paragraph, that's the information
24 that was sought. Do you have that?

25 A. Um-hmm.

1 Q. If you go now, I think, to Page 1 in that bundle,
2 I think if you're using a PDF, perhaps you could put in the
3 PDF numbering, if you put in 41, that might take you to the
4 right page, but it's marked Page 1.

5 A. It's now Page 1.

6 Q. It should be the letter from you, May the 10th,
7 2021. It should have the number 1 in the bottom corner,
8 bottom right-hand corner. It's 37 pages in.

9 A. Okay.

10 Q. The preceding page should be labeled A37, and then
11 the numbering starts with a 1.

12 A. On my letter addressed to--

13 Q. The Commission.

14 A. --the Commission?

15 Q. Yes, May 10, 2021. Do you have it now?

16 A. Yes.

17 Q. Thank you.

18 Again, I'm not going to read it out, but you see
19 the heading "Details of any Personal Contracts with the
20 Government"?

21 A. Yes.

22 Q. That's your answer to that Letter of Request, and
23 what you say is: "With respect to your first query, I
24 advise that I do not have and have not had in the last
25 three years any contractual business arrangements with the

1 Government of the British Virgin Islands or any statutory
2 or Government body or entity, save and except for the
3 matters set out below."

4 The matter that you refer to is your employment
5 with Delta Petroleum, isn't it?

6 A. Yes.

7 Q. Right.

8 But just to be clear, there are no companies or
9 businesses that you have advised, even in an unpaid
10 capacity, about possible contracts with the Government in
11 the last three years?

12 A. Can you repeat that? I don't get--got it.

13 Q. Have you at any time in the last three years acted
14 as an unpaid advisor to a company interested in contracting
15 with the Government?

16 A. (Unclear).

17 Q. Have you acted at any time in the last three years
18 as a paid advisor to a company or business interested in
19 contracting with the Government?

20 A. As Delta Petroleum, yes.

21 Q. Leave Delta Petroleum to one side. That's
22 different. Outside Delta Petroleum, have you either in
23 unpaid or paid capacity advised a company or business
24 interested in contracting with the Government?

25 A. No.

1 Q. Have you either in an unpaid or paid capacity
2 acted as an advisor to a company or business that has
3 contracted with the Government in the last three years?

4 A. No.

5 Q. And you, yourself, have no kind of association
6 with any company or business that has contracted with the
7 Government in the last three years?

8 A. No, no.

9 Q. Thank you for that.

10 Now, can I--give me a moment, please.

11 (Pause.)

12 Q. Do you have belonger status?

13 A. From the British Virgin Islands?

14 Q. Yes.

15 A. No.

16 Q. You don't. Does that prevent you--does that lack
17 of belonger status prevent you from buying Crown Land in
18 the British Virgin Islands?

19 A. No.

20 Q. Have you, as an individual, purchased any Crown
21 Land in the last three years?

22 A. No. I leased a parcel. I leased.

23 Q. All right. Well, let's break it down in stages,
24 and I'll ask--I'll come to leasing in a moment.

25 Have you tried, as an individual, to purchase any

1 Crown Land?

2 A. No.

3 Q. In the last three years?

4 A. No.

5 Q. Have you purchased in the last three years any
6 Crown Land through a company or business?

7 A. No.

8 Q. Have you in the last three years tried to purchase
9 any Crown Land through a company or business?

10 A. No.

11 Q. Now, you mentioned that you leased land, so in the
12 last three years, have you, as an individual, leased any
13 Crown Land?

14 A. Yes.

15 Q. Which site was that?

16 A. In "pressiya" (phonetic).

17 Q. Would you be willing to provide the Commission
18 with the details of that plot of land that you leased?

19 A. I can send you a copy of the lease.

20 Q. Other than that plot of land that you leased, have
21 you tried--have you leased any other plots of Crown Land?

22 A. No.

23 Q. Have you tried to lease any other plot of Crown
24 Land?

25 A. No.

1 Q. Have you leased any Crown Land through a company?

2 A. No.

3 Q. Have you tried to lease any Crown Land through a
4 company?

5 A. No.

6 Q. And that is--so, just to be clear, when I refer to
7 a company, it's a company with which either you're directly
8 or indirectly involved.

9 A. So you're talking about the BVI Airport Authority?

10 Q. Well, can I come through to the Airports Authority
11 later.

12 (Overlapping speakers.)

13 Q. I want to deal with your position as an individual
14 and then look at your involvement as chair of the BVIAA.

15 A. Okay.

16 Q. As an individual, have you, directly or
17 indirectly, through a company tried to lease or buy any
18 Crown Land?

19 A. No.

20 Q. Now, going back just briefly to the leased land
21 that you did get, from the time that you expressed an
22 interest to Government about that plot of land to the time
23 that the lease was granted to you, how long did it take?

24 A. I can't recall because it was a very old matter
25 from 2008 coming forward, so I will have to go and pull the

1 file on that. It's a matter that we had a judicial--we
2 went through a judicial review on, and the Crown did not
3 transfer the land yet, so we couldn't succeed, so it's a
4 very old matter we could probably and try and find the file
5 and send it to you.

6 Q. What I suggest we will do, Mr Sylvester, is that
7 we will write to you about these matters--if you're happy
8 to go and try to find out more information for the
9 Commissioner, we will write to you setting out what
10 information it is we are seeking, and that may help you so
11 that you can be more focused in your search.

12 A. Okay.

13 Q. Now, the--and just so we're clear, when you're
14 leasing it, were you leasing it for a commercial purpose?

15 A. Yes.

16 Q. Okay. Let's turn to the second part of your
17 response. You should, I hope, still have the letter of the
18 10th of May in front of you, and again I don't think we
19 need to read this out, but you set out that you are the
20 regional General Manager of Delta Petroleum, and you
21 explained that they're a wholesale and retail distributor
22 of fuel in the British Virgin Islands and the Caribbean,
23 and you've identified one contract that Delta Oil have.

24 (Overlapping speakers.)

25 A. The second one I have to send to you, my office

1 (unclear) .

2 Q. That's the one with the Public Works Department?

3 A. Yes.

4 Q. Thank you.

5 Just to ask you a couple of questions about Delta
6 Oil, if I've understood what you've provided to us
7 correctly, Delta Oil is registered in the Virgin Islands?

8 A. Yes.

9 Q. How long has the Company been operating in the
10 British Virgin Islands?

11 A. Since 1984.

12 Q. And is it right that the founder of that company,
13 or one of the founders, was Vernon Lake?

14 A. Is Vernon Lake.

15 Q. Is Vernon Lake.

16 A. (Witness nods.)

17 Q. And what position does Mr Lake currently hold in
18 the Company?

19 A. Managing Director, part owner.

20 Q. Sorry, I didn't catch your last word.

21 A. Managing Director and part owner.

22 Q. Thank you.

23 And who else owns Delta Petroleum?

24 A. Bruce "Willmus" (phonetic).

25 Q. Again, your voice dropped a little.

1 A. Bruce "Willmus" (phonetic).

2 Q. Thank you.

3 Mr Lake--correct me if I'm wrong--is he the
4 ex-husband of Patsy Lake?

5 A. Yes.

6 Q. Now--

7 A. I'm told.

8 Q. You've produced one contract from Delta Petroleum,
9 which is a contract that starts in December 2020. Has
10 Delta held previous contracts with the Electricity
11 Corporation?

12 A. Yes.

13 Q. And was that for the same purpose, to bring fuel
14 into the Virgin Islands so that the Corporation could use
15 it?

16 A. Yes.

17 Q. And so, that's--that's--in terms of the Virgin
18 Islands, that's a key function of Delta in that they will
19 import fuel into the Virgin Islands for the Corporation?

20 A. The Corporation and retail and wholesale business.

21 Q. And is that--is that the type of operation that
22 Delta undertakes across the Caribbean, that it imports fuel
23 into different countries in the Caribbean?

24 A. Of the region, yes.

25 Q. Now, you said that they will import fuel in for

1 wholesale and retail and also the Corporation. Which
2 aspects of that importation, if any, are exempt from
3 customs duty?

4 A. Actually, the Government and to power plants and
5 other government agencies.

6 Q. Again, sorry--

7 A. Product to the Government and to the BVIEC.

8 Q. That's the Electricity Corporation?

9 A. Yes.

10 Q. Right.

11 And are those exemptions set out in writing, the
12 extent of them and how long they apply? Is that set in
13 writing?

14 A. It's part of the Act for BVIEC, and it's part of
15 the Acts to the Government also, as far as I can recall.

16 Q. The Commissioner heard, as I told you, from Wade
17 Smith, and he explained that the Customs Commissioner had
18 been in a legal dispute with Delta overpaying fuel duty,
19 and you were involved in that case, I understand?

20 A. The one that's been to the Privy Council?

21 Q. Yes.

22 A. Yes.

23 Q. I think you gave affidavit evidence in that case;
24 is that right?

25 A. Yes.

1 Q. How long have you known Mr Smith?

2 A. I cannot say for a fact how long I knew him, but
3 he came to Government when I was there, if I remember
4 correctly.

5 Q. And so, can you just tell us, then, in what
6 capacity you would say you know him?

7 A. I don't know him in a capacity. I know him as a
8 person of BVI, if we meet and sit here in the room, that's
9 it.

10 Q. So, you met him through work. It's not a personal
11 relationship?

12 A. No, it isn't a personal relationship in the
13 circumstances. If I need something, I will contact him in
14 the streaming business as a Comptroller of Customs, and
15 that's about it.

16 Q. And so, do you have--in your role as Regional
17 Manager, do you have ongoing dialogue with the Customs
18 Department?

19 A. When I was in BVI, yes. Now, it's more strictly
20 local country manager, and I'm in charge of everyone. So,
21 very seldom that I will have to reach out to Mr Smith. The
22 local on-line person does it.

23 I see e-mails going back and forth between them
24 for operations reasons, but I don't converse with him quite
25 regular at all. There is no need to.

1 Q. Thank you.

2 Can we now go to the request that was sent to you
3 as chair of the BVI Airports Authority?

4 A. Yes.

5 Q. This is, in fact, back to A1, so back to the top
6 of the electronic bundle that you have.

7 A. Yes. I'm going there.

8 Q. You're there, are you?

9 A. Not yet.

10 I'm there now.

11 Q. Great.

12 What you have there set out at A1, and it goes
13 over into A2, Mr Sylvester, was a number of requests,
14 specific requests, that were made of you as chair of the
15 BVIAA--

16 A. Yes.

17 Q. --about certain contractual arrangements.

18 Now, can I ask, why did you choose to ignore this
19 Letter of Request?

20 A. Because I didn't know exactly what you were asking
21 for. It confused me. If there was a particular contract
22 you wanted, you could have asked, but I don't know all the
23 contracts, and then I saw the same request to the
24 Organisation, so I thought that you would sent that, and
25 they would have sent that to you.

1 Q. I didn't quite understand your answer. You said
2 you didn't--

3 (Overlapping speakers.)

4 A. I did not--it was quite wide, it said any and all
5 contracts, but the Organisation is last, and I couldn't put
6 my hand in one that you would have wanted. I thought you
7 wanted me to disclose any contract I was a part of.

8 Q. Well, it wasn't the contract that you were a part
9 of. It was a contract that the BVIAA was a part of.

10 A. Okay.

11 Q. Why didn't it occur to you, Mr Sylvester, if there
12 was any confusion over the Letter of Request, to come back
13 to the Commission and ask for clarification?

14 A. Yeah, because--yeah, I did see the letter, and
15 someone asked why I couldn't put my hand exactly on what
16 you wanted.

17 Q. But why didn't you then come and ask?

18 A. Because I then came back in my private capacity
19 and addressed it privately, and I thought that the
20 Commission would have--and it did send to the Organisation
21 and Administrator for information.

22 Q. Well, I'm sorry, you had a letter in your
23 individual capacity on the 7th of April, which you only
24 chose to respond to on the 10th of May having received a
25 summons.

1 A. Yes.

2 Q. This is addressed to you on the 6th of April as
3 the chair of BVIAA.

4 A. No.

5 Q. You did not respond to it in any way. You don't
6 appear to have forwarded it to the Administrator. You did
7 absolutely nothing, didn't you?

8 A. Yes--no, no. No, sir. I did send it to the
9 Administrator, and I asked the Administrator to forward it
10 to the--my response to the ROI through the Premier's
11 Office, and then they come back to me and said, "Listen,
12 they're asking for information in your personal capacity,"
13 and that's why I responded in my personal capacity. But I
14 have an e-mail from Dawn Smith, saying this cannot not go
15 through ROI because it's my personal capacity, so that's
16 when I responded in my personal capacity.

17 Q. Right, so--

18 (Overlapping speakers.)

19 A. That one aspect in it.

20 Q. Can I--

21 (Overlapping speakers.)

22 Q. All right. You finish your point, and I will
23 ask--

24 A. I would have thought if that was the case, then
25 they would have said to me, "Listen, personal capacity is

1 one but you (drop in audio)," and I sent that to the
2 Organisation.

3 Q. So, just so that we understand your evidence
4 clearly, the letter on the 6th of April addressed to you as
5 chairman of the BVI Airports Authority Board was a letter
6 that you sent to the--I think you're saying it's the RIU?

7 A. Yes--

8 (Overlapping speakers.)

9 Q. Let me finish, please.

10 A. Right.

11 Q. Let me finish.

12 A. Right. Go ahead.

13 Q. That letter was forwarded to them, and the advice
14 you were given was that it was information being sought
15 from you in your personal capacity?

16 A. Coming back on the 28th of April, I think, yes.

17 (Overlapping speakers.)

18 Q. No. I'm asking you about the letter of the 6th of
19 April, the letter that is at A1 addressed to you as chair
20 of the BVI Airports Authority. Is it your evidence that
21 you were advised that this letter was addressed to you in
22 your personal capacity?

23 A. It is my evidence that I submitted a response
24 through the R--ROI or IRO?

25 Q. I think you mean the IRU, do you?

1 A. Yes, the IRU, sorry.

2 I sent that to the PS. The PS came back to me and
3 said, "Hey, this message from the Attorney General that you
4 have to respond to this in your personal capacity." I
5 asked in that letter, I asked if you could be more specific
6 in what you would like me to furnish, and I would be happy
7 to furnish that information.

8 However, on Saturday of last week, I was out, and
9 I saw--plain on my phone, I saw e-mail came in with a
10 summons, but that it came from before. I never did see it.
11 I don't understand that. So then I responded in my
12 personal capacity to that because the Organisation would
13 have received the request that I sent to them from you with
14 respect to my capacity as chair.

15 Q. So, have you taken any steps to monitor the extent
16 to which the Organisation has responded to that request?

17 A. I asked the Board Secretary--the Board
18 Administrator.

19 Q. When did you ask the Board Administrator?
20 Yesterday?

21 A. Yes. I asked yesterday about it, and she said
22 that her deadline to respond to you was today.

23 Q. Let's cut through this, Mr Sylvester.

24 A. Yes.

25 Q. As chair of the BVI Airports Authority, are you

1 willing to comply with this request?

2 A. Of course, yes, once I know what you want, yes.

3 Q. Well, the request, with respect, I think, is clear
4 about what the Commission wants, but are you willing to
5 make sure that steps are taken that there is compliance
6 with this request and quickly?

7 A. Yes.

8 Q. All right.

9 A. Yes.

10 Q. So, I'm going to leave it there and just move on
11 to a different topic.

12 COMMISSIONER HICKINBOTTOM: Can I just--thank you,
13 Mr Rawat. Can I just ask one question?

14 Thank you for confirming that, Mr Sylvester, and I
15 will make a direction as part of the--as part of my order
16 arising out of today's hearing that you do produce these
17 documents. I think Mr Rawat said "quickly."

18 How quickly, Mr Sylvester? You already had six
19 weeks.

20 THE WITNESS: The deadline is today, so you should
21 have everything today.

22 COMMISSIONER HICKINBOTTOM: We should have
23 everything today?

24 THE WITNESS: Yeah, because the same--the same
25 request was sent to the Administrator also.

1 COMMISSIONER HICKINBOTTOM: Okay. So, if I direct
2 that all of these documents are lodged with the Commission
3 of Inquiry by 4:00 p.m. tomorrow, that's sufficient time?

4 THE WITNESS: Yeah, because they're already
5 working on the bundle for you.

6 COMMISSIONER HICKINBOTTOM: All right. So that's
7 the direction I will make. Thank you.

8 Mr Rawat.

9 THE WITNESS: Thank you.

10 BY MR RAWAT:

11 Q. Could I move on to a different topic, again to ask
12 for your help as chair of the BVIAA.

13 There had been press reports that a consultant
14 had, at public expense, prepared a report assessing the
15 future of air transportation in the Virgin Islands, and you
16 are quoted by the press as saying that that report would
17 not be released to the public. Is that press report
18 accurate?

19 A. At the time it was--it could not be released
20 because we didn't get it to Cabinet as yet, to the
21 Minister, and if the (unclear) were done, to the Minister
22 to Cabinet, so that's why that was said.

23 The information is there, and we are working on it
24 as the Organisation and looking at its recommendations.
25 It's a pretty sensitive document, so that's why it did not

1 make--being made public at that time. And they're still
2 working at ASI on it to get the organisation structure
3 correctly.

4 Q. Would you be prepared to provide a report--a copy
5 of that report to the Commissioner?

6 A. Sure.

7 Q. Thank you.

8 A. It would be good reading.

9 Q. The same press report speculated--and I stress,
10 Mr Sylvester, that it was speculation--that land was being
11 bought up in anticipation that there would be a
12 recommendation of runway expansion, so the aim was,
13 according to the press report, was that people would buy up
14 land. If the runway was going to be expanded, they would
15 be in a position to sell it back and make a profit. Were
16 you aware that there was that speculation in the press?

17 A. No, no.

18 What--what--that report is not that report that
19 you're talking about.

20 Q. Is there another report?

21 A. The report that we were referring to in that press
22 report, as I recall, was a report that dealt with the
23 Organisation itself, staffing and how it's run. That's
24 what they were talking about at that time, that report. It
25 was not to be released.

1 Q. The reason I link the two was because they are
2 linked--it's the same press report that said this.

3 A. They are two different things.

4 (Overlapping speakers.)

5 Q. Is there--go on, please go ahead.

6 A. There is no other report. The only report we met
7 on was the report from the previous administration giving
8 the runway expansion, and then in our discussion came up
9 that we should look at another area to put the runway that
10 would allow us to keep this one functioning while we do the
11 other one, and that came across the Hong land negotiations,
12 and we were negotiating--we wanted to negotiate to buy--for
13 the Government to get that land back for us to put the
14 runway.

15 Q. I see. Again, break it down for me, please.

16 So, the report that you believed this press report
17 is referring to is one about the structure of the
18 Organisation--

19 (Overlapping speakers.)

20 A. Yes.

21 Q. And that's the report that you're happy to just
22 provide to the Commissioner?

23 A. Yes.

24 Q. Who had inherited the report, if you like, from
25 the previous administration about runway expansion?

1 A. Yes.

2 Q. Again, are you happy to provide that report to the
3 Commissioner?

4 A. Yeah. I have to make notes because I don't want
5 to forget.

6 Q. Please don't feel the need to make notes. We will
7 write to you and set out all the things that--

8 (Overlapping speakers.)

9 A. Thank you, thank you.

10 Q. --you agreed to disclose.

11 And what you just said is that there was then, if
12 you like, you took over the Board, there was then
13 discussion about that earlier report.

14 A. Yes, for continuity--

15 (Overlapping speakers.)

16 A. And we found out--

17 Q. --to buy Crown Land?

18 A. Pardon?

19 Q. And then you found out that if you took the step
20 of setting up a second runway so that it could be operating
21 whilst the new one was built, you would need to purchase
22 Crown Land?

23 A. Not Crown Land. You would have to look at the
24 area where it was going and see how we can buy it, and the
25 majority of that land was owned by Hong who defaulted in

1 the development.

2 Q. Tell us again the name of the company--of the
3 entity that owns the majority of that? Hong?

4 A. I know it as Hong land, and that's what we--

5 Q. How do you spell Hong?

6 A. You know better than me. I think it's
7 H-O-N--H-O-N-G. Hong.

8 Q. I see.

9 A. Am I correct, Mr Rawat? How do you spell that?
10 You (unclear) it.

11 MS ST JEAN: My apologies. I don't recall how it
12 is spelled. I think it's A-U-N-D, but it's owned by a
13 company.

14 THE WITNESS: Yes.

15 MR RAWAT: Thank you, Ms St Jean.

16 BY MR RAWAT:

17 Q. Well, just to tie this off, then, please,
18 Mr Sylvester, obviously the press speculation is of people
19 buying up land in order ultimately to benefit if there was
20 a runway expansion. You could describe it as runway
21 expansion or the need to have a second runway, whichever,
22 but to benefit from this excise.

23 Let me finish my question, please. Let me finish
24 my question.

25 That's the inference that comes from the press

1 report.

2 Now, can I just put this to you, please. Do you,
3 yourself, have any actual knowledge of anyone either
4 directly or indirectly purchasing land for that purpose?
5 And by "directly" I would mean buying it in their own name
6 and "indirectly" by buying it in a way that hides their
7 name, so perhaps through a company or a subsidiary company.
8 Do you have any knowledge of people doing that?

9 A. No, no.

10 And if I may say also, sir, the first time I made
11 the speculation is now. I don't read social media, so I
12 wouldn't know. The only thing I would like to add to bring
13 clarity is the land that the airport was interested in is
14 the Hong property that's 654 acres because that is where
15 when we approached the Ministry, we were given the full
16 developmental plan that they defaulted on, so we asked the
17 Government--we told the Government we will negotiate and
18 started negotiation with the Hong through the Ministry of
19 Natural Resource and Legal and through the Attorney General
20 Chambers.

21 Q. Are those negotiations still ongoing?

22 A. They're in arbitrate--they're in arbitration now.

23 Q. I see. Okay. I think we can leave it there. I
24 think what we may--as I said, we will write to you, so I
25 think the best way of dealing with it is to set out what

1 information we might need about that aspect of it because
2 you have clarified that, insofar as the press report is
3 referring to the consultant advice, it's referring to--it's
4 not linked to runways, so we'll write to you.

5 Can I now just (overlapping speakers) a little
6 more as your chair of the BVIAA. You said--and this is one
7 of the things we will write to you about, is that you will
8 be able to confirm your date of appointment to that
9 position.

10 Did you become chair at the same time as Patsy
11 Lake was appointed to the Board?

12 A. That can be verified by the appointments. I don't
13 know. I know my first meeting that I called she was
14 present.

15 Q. I see. And is the chairmanship a salaried
16 position?

17 A. It's a stipend.

18 Q. Is it a role that's advertised, or were you simply
19 appointed to the role?

20 A. I don't really know if it was advertised. I was
21 called by the Financial Secretary as the sole director of
22 the airport and asked if I would be willing to serve, and I
23 accepted it.

24 Q. Could you give me the name of the Financial
25 Secretary, please?

1 A. Glenroy Forbes.

2 Q. And so Mr Forbes simply telephoned up and said
3 would you be willing to act as chair?

4 A. No. He said, would you be willing to be a board
5 member, I think, if I remember correctly.

6 Q. And did you spend any period, then, just as a
7 simple board member before becoming chair?

8 A. No. When I got the appointment, it said "Chair."

9 Q. I see. So, you hadn't even been approached to say
10 do you want to be chair--it was just you want to be a board
11 member--and presumably it's a piece of paper that's sent to
12 you--

13 A. That's correct.

14 Q. --it told you you were chair; is that right?

15 (Overlapping speakers.)

16 Q. Do you actually have your Letter--

17 (Overlapping speakers.)

18 A. --yes.

19 Q. Do you have your Letter of Appointment?

20 A. Not here with me, no.

21 Q. But again, it's something you can produce to the
22 Commissioner if he wishes to see it?

23 A. It's going to be in one of my offices somewhere.
24 I have to find it.

25 Q. When--

1 A. Copy at the office at the airport.

2 Q. I'm sure a copy will suffice.

3 When you were approached as to whether you wanted
4 to take up the role of a board member, were you told what
5 qualifications might be necessary for that role?

6 A. No, I wasn't told about the position, but I felt
7 myself qualified--overqualified, if you ask me.

8 Q. Had you run an Airport Authority before?

9 A. No, but I have run businesses before.

10 Q. Had you had any involvement with the management of
11 an airport before?

12 A. I have business, and I think I'm there because of
13 my business and regional presence.

14 Q. When you were appointed, were you given any
15 guidance about declaring interests?

16 A. To be honest with you, sir, when I got appointed,
17 I was very taken back, the BVI Company Act. When I read it
18 that, as a company, if we have interests, you can just
19 declare it in a board meeting and still vote it. And I
20 wrote the Attorneys and I said how can this be, and they
21 told me that is how the Companies Act is structured. That
22 has been a concern of mine from day one, but that's what
23 the Companies Act says.

24 Q. And you wrote to the Attorney about this, did you?

25 A. I think we--the board administrator had a letter

1 that we were discussing it at the board, it's in the
2 minutes, I think in the minutes that is coming come to you,
3 you can read it there.

4 Q. So again, that's another thing I think we will put
5 on the list to make sure it doesn't get missed, and that is
6 your correspondence with the Attorney General about--

7 A. Not the Attorney General, no, no.

8 Q. Who was it with?

9 A. The board's attorney.

10 Q. The board's attorney who is the board's attorney?

11 A. Mr "Tom Seal" (phonetic).

12 Q. So again, you are approached to be a board member.
13 When your Letter of Appointment comes through, you're
14 actually the chair. Do you know who recommended you to be
15 a board member?

16 A. No. I wasn't told. I was asked if I would serve
17 as a board member (unclear).

18 Q. Did Mr Forbes tell you anything about why you had
19 come to be approached?

20 A. No.

21 Q. Did he tell you anything about on whose behalf he
22 was making the approach?

23 A. I cannot recall him saying who, on whose behalf,
24 no.

25 Q. Do you know how it came about that having been

1 approached to be a board member, you were suddenly the
2 chair of the BVIAA?

3 A. No.

4 Q. Did you ever ask anyone why they thought you
5 should be the chair as opposed to just an ordinary board
6 member?

7 A. No. I think it's because of my qualifications and
8 my business acumen.

9 Q. Were you surprised to be approached by Mr Forbes?

10 A. Yes and no. Yes, from the standpoint that I
11 wasn't expecting it, and no because I'm native to the
12 region for building and keeping businesses running
13 accountable and very transparent.

14 Q. And prior to the appointment to the BVIAA, had you
15 served on any kind of board or government body in the
16 British Virgin Islands?

17 A. No.

18 Q. Are you related to any member of the current
19 Cabinet?

20 A. No.

21 Q. Do you have any personal relationship with a
22 member of the current Cabinet?

23 A. What do you mean by "personal relationship"?

24 Q. A long-standing friendship, for example.

25 A. I know all the persons in the Cabinet. I know

1 them very well.

2 Q. Well, define "very well."

3 A. Well, if I see them, they know me by name.

4 Q. Are there any that you call a close friend?

5 A. No. I don't have friends.

6 Q. You don't have any friends at all?

7 A. No. I don't have friends. Friends is something
8 very --I have associates, I have colleagues. I don't have
9 any friends. I trust no one.

10 Q. Have you ever at any time had any business
11 dealings with a member of the current Cabinet?

12 A. No, that cannot be business dealing, no.

13 Q. Any kind of business dealing at any time--not in
14 the last three years--at any time, have you undertaken any
15 kind of business transaction with someone who is now a
16 member of the current Cabinet?

17 A. Not to my knowledge, no. I can't recall.

18 Q. Why do you say you can't recall?

19 A. No, I don't--I can't put--I can't think any of
20 anything anyone would be (unclear) at this time.

21 Q. So, at any time in your working life, you haven't
22 done any kind of deal, any kind of business that involves
23 someone who has subsequently become a member of the current
24 Cabinet?

25 A. No.

1 Q. Okay. You may--this may link to the advice that
2 you got from Mr Neale, but in some jurisdictions,
3 appointees--for example, the chair of an Airport
4 Authority--will go through a vetting procedure
5 being--before being appointed, and the point is to make
6 sure that they are a fit and proper person to take up the
7 role.

8 Were you asked to go through such a procedure
9 before being appointed?

10 A. No.

11 Q. Were you asked at any point to give any
12 information that might make you unsuitable for the role?

13 A. No.

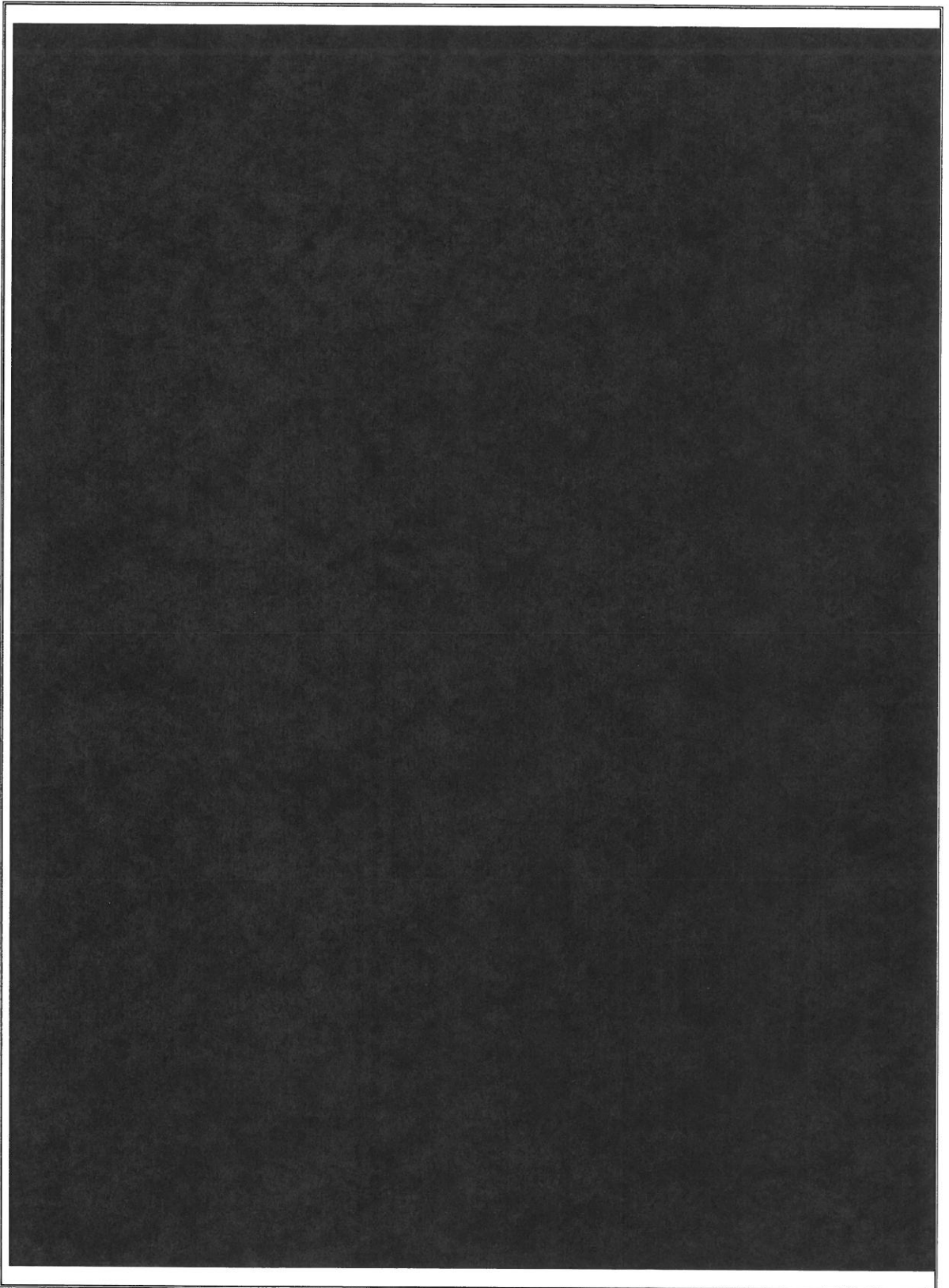
14 Q. You've said that you believed that one of the
15 reasons you were appointed not only to be a board member
16 but to be chair was your business experience. Were you
17 asked to give details of that business experience?

18 A. No. No, I think.

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2 Q. Did anybody ask whether you had any referees, for
3 example, who could speak to your character?

4 A. No.

5 Q. Did anybody ask if you had any referees who could
6 speak to your business ability?

7 A. No.

8 Q. And you said, yourself, that prior to that
9 appointment you hadn't--you hadn't served on any kind of
10 government body at all, had you?

11 A. No.

12 Q. So, you didn't effect for some years in private
13 business?

14 A. Could you repeat that, please?

15 Q. In effect, at the time you were appointed, your
16 background was a number of years working in the private
17 sector?

18 A. Yes.

19 MR RAWAT: Sir, I think I've got to the end of my
20 questions, but may I ask for five minutes so I can just
21 consult with other members of the team to be sure I've
22 covered all matters?

23 COMMISSIONER HICKINBOTTOM: Certainly, Mr Rawat.
24 Yes.

25 (Pause.)

1 MR RAWAT: I don't think we do have any more
2 matters for Mr Sylvester, so all that remains is just for
3 me to thank him for coming today on-line and for giving his
4 evidence.

5 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

6 Yes, Mr Sylvester, I reiterate (drop in audio)
7 that giving evidence. It has been remote, but it worked
8 very well mechanically, and it's been very helpful. Thank
9 you.

10 Now, in respect of the various documents and
11 information Mr Rawat has referred to and you have agreed to
12 give, it's a bit more than the list that you had when you
13 said it would all be ready by 4:00 tomorrow. Do you want
14 any more time than that to get all of that information
15 together?

16 THE WITNESS: First of all, I would like to see
17 the list because it was various stuff--

18 COMMISSIONER HICKINBOTTOM: And we will send you
19 that list, Mr Sylvester. Don't worry about that.

20 THE WITNESS: How soon will I get it?

21 COMMISSIONER HICKINBOTTOM: Sorry?

22 THE WITNESS: How soon will I be able to get it?

23 COMMISSIONER HICKINBOTTOM: The letter hopefully
24 later today, possibly tomorrow morning. Certainly by
25 tomorrow morning.

1 THE WITNESS: Give us until Monday, then.

2 COMMISSIONER HICKINBOTTOM: Monday at 4:00,
3 Mr Sylvester?

4 THE WITNESS: Yes. That will be fine.

5 COMMISSIONER HICKINBOTTOM: I will make that
6 direction to cover all the information so that you have one
7 time to focus on it.

8 THE WITNESS: Okay.

9 COMMISSIONER HICKINBOTTOM: Okay. Good. Thank
10 you very much, Mr Sylvester.

11 Now just dealing with one or two--I think only one
12 other matter. Solicitor General, publicity of the
13 Transcript.

14 SOLICITOR GENERAL: I have no obligation on this
15 one.

16 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
17 much.

18 SOLICITOR GENERAL: Sorry, I have no objection to
19 this one.

20 COMMISSIONER HICKINBOTTOM: No, I understood.
21 Don't worry.

22 Ms St Jean, unless you have any objections to any
23 (drop in audio) Transcript available, it takes a few days,
24 it will simply be uploaded on to our website.

25 MS ST JEAN: No objection.

1 COMMISSIONER HICKINBOTTOM: Very good. So, that's
2 what will happen.

3 Good, if there is nothing else, Mr Sylvester,
4 thank you very much.

5 I'm sorry, there is one other thing. You answered
6 all of the questions Mr Rawat had today. We don't know
7 what is going to happen in the future. We may have some
8 other questions for you. The summons that has been served
9 extends throughout the period of the hearing. We do
10 require you to come back and give further evidence. Then,
11 of course, we will give you proper notice, and Ms St Jean
12 as well, proper notice as to when that might be. Do you
13 understand?

14 THE WITNESS: Yes.

15 MS ST JEAN: Yes.

16 COMMISSIONER HICKINBOTTOM: The summons is, as it
17 were, exhaustive, but there are no more questions for you
18 at the moment. Good. Thank you very much.

19 THE WITNESS: Thank you.

20 (End of Session 2.)

Session 3

COMMISSIONER HICKINBOTTOM: Good afternoon,
Mr Penn.

THE WITNESS: Good afternoon.

COMMISSIONER HICKINBOTTOM: Let me just make sure
that particularly Mr Rawat who is remote can hear us and
see us and we can hear and see him.

MR RAWAT: Sir, I can hear and see everyone in the
room.

COMMISSIONER HICKINBOTTOM: And we can hear and
see you, Mr Rawat. Thank you very much.

Could Sir Penn be sworn. Thank you.

COMMISSION SECRETARY: Mr. Penn, would you like to
swear an oath this afternoon or make an affirmation?

THE WITNESS: Affirm.

COMMISSION SECRETARY: Sir, if you'd like to take
a sheet, just to your left-hand side, and turn it over and
read the words on it.

THE WITNESS: I do solemnly, sincerely and truly
declare and affirm that the evidence I shall give shall be
the truth, the whole truth, and nothing but the truth.

COMMISSION SECRETARY: Thank you very much.

COMMISSIONER HICKINBOTTOM: Good. Thank you,
Mr Penn.

Now, Mr Penn, do sit down.

1 We have some questions for you. Most of them will
2 be put by Mr Rawat, who is on screen, and so you will both
3 see and hear him, either, on the screen in front of you.
4 He'll be at the bottom. He's also on the big screen at the
5 back, and he may refer to the bundle of documents there on
6 your left.

7 If you could just keep your voice up because all
8 of this is being recorded and transcribed, so it's just
9 important that we can hear what you say.

10 Mr Rawat.

11 I'm sorry.

12 MR. DAVIES: (Unclear.)

13 MR RAWAT: Thank you.

14 MR. DAVIES: Something has come up and so I'm,
15 I'll have to withdraw for today.

16 COMMISSIONER HICKINBOTTOM: That's fine.

17 MR. DAVIES: All right.

18 COMMISSIONER HICKINBOTTOM: Now is a good time.

19 MR. DAVIES: Yes.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 MR. DAVIES: Thank you.

22 COMMISSIONER HICKINBOTTOM: Just one second,
23 Mr Rawat. Mr Davies is going, but we'll just wait for him
24 to go.

25 MR. DAVIES: Thank you.

1 COMMISSIONER HICKINBOTTOM: Yes, thank you.

2 (Pause.)

3 COMMISSIONER HICKINBOTTOM: Mr Rawat.

4 MR RAWAT: Thank you, sir.

5 BY MR RAWAT:

6 Q. Good afternoon, Mr Penn. Could you give the
7 Commissioner your full name, please.

8 A. Good afternoon. My name is Ian Penn.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. And your professional address?

12 A. My address is (Unclear) Hill, West End Tortola.

13 Oh, sorry, professional.

14 Road Town, Tortola.

15 Q. Thank you.

16 And thank you also for coming to give evidence
17 today. Your willingness to assist the Commissioner is much
18 appreciated.

19 I have, as the Commissioner has indicated, a
20 number of questions to put to you. I hope that I'll keep
21 them short and simple, but if at any time you have
22 difficulty understanding a question or you would like me to
23 repeat it or rephrase it, please do ask me to do so.

24 The Commissioner has confirmed that you have the
25 bundle of documents, and also I would reiterate what

1 Commissioner has just said, which is that it is important
2 to keep your voice up and speak slowly.

3 The reason you've been asked to attend today,
4 Mr Penn, is just to assist further on a number of matters,
5 which the Commission is interested in. You are, I should
6 make clear, attending as a witness. In that role, you have
7 an obligation to assist the investigation, as indeed does
8 every lawyer here.

9 And what I should also make clear is I don't
10 intend through my questions today to put to you a criticism
11 or an allegation that you have to answer.

12 Could we begin just briefly by getting an
13 understanding of your professional history. Could you
14 confirm if the following is accurate.

15 Did you join the Immigration Department in 1987?

16 A. Confirm.

17 Q. And I understand you then were promoted through
18 the ranks as your career progressed; is that right?

19 A. Yes, it is.

20 Q. And you, in fact, were accredited as an
21 international civil commercial mediator in 2017.

22 A. Yes, I was.

23 Q. And you also have a postgraduate diploma in legal
24 practice, and legal practice at the Bar from Manchester
25 Metropolitan University, and that was in 2019; is that

1 right?

2 A. Affirmative.

3 Q. And you have a Certificate of Good Standing from
4 the Honourable Society of Lincoln's Inn?

5 A. Yes, I do.

6 Q. And is it right, finally, that you were appointed
7 acting Chief Immigration Officer in February 2018?

8 A. Yes, I was.

9 Q. When you were appointed to that role in 2018, was
10 that an internal appointment?

11 A. Yes, it was.

12 Q. So, it wasn't something that was advertised as a
13 post so others could apply.

14 A. No, because it was an acting--acting appointment
15 at the time.

16 Q. I see. And when were you confirmed as Chief
17 Immigration Officer?

18 A. I was confirmed late last year.

19 Q. When you say "late," would you--was it about
20 September of last year?

21 A. Yes, September-October.

22 Q. And again, was that an internal process, or was
23 the post advertised?

24 A. It was also an internal process.

25 Q. So, in effect, were you the only candidate for

1 that role?

2 A. It was not adver--the role was not advertised;
3 however, the fact that I was acting in that role for so
4 many years, and prior to--just give a history--prior to
5 2018, I was acting in that role in 2014 until 2016, and
6 that's when I went off to do my Bar course at Manchester.
7 And then when I came back and, in 2018, was again appointed
8 to act until I was confirmed late last year, September or
9 October.

10 Q. So, in effect, you were just confirmed in a role
11 that you had been undertaking for a number of years.

12 A. Yes.

13 Q. When you were given the role of acting Chief
14 Immigration Officer or when it was confirmed as permanent,
15 were you asked to declare any interests that might affect
16 your ability to carry out the role?

17 A. To my recollection, no.

18 Q. Obviously, the role involves your working with
19 other agencies and sitting on joint bodies. Have you ever
20 received any guidance about when you should declare a
21 conflict of interest?

22 A. I haven't received anything in writing, but what I
23 would say is that Declaration of Conflict of Interest is
24 something that--that's on the books and that all public
25 officers should declare any, you know, private interests to

1 the Government so that it could be determined, you know,
2 whether it would be a conflict of interest to their--you
3 know, to their jobs that they're currently doing.

4 So, it is something--it is something that you
5 know, every public officer should know or be told to by
6 their supervisors or heads of departments, you know, that
7 this is something that has to be done or put in place.

8 Q. You say it's "on the books." What did you mean by
9 "on the books"?

10 A. It's--it can be found--it can be found in General
11 Orders. We--the Government has General Orders, and they're
12 guided by in terms of, you know, behavior and, you know,
13 the way they should act once they're appointed to a
14 government job; and, therefore, they're guided by General
15 Orders in terms of, you know, how they should behave, how
16 they should act, and what they must know and what should be
17 put in place for them to do their jobs accordingly.

18 Q. Is there a sort of time period after which
19 civil--public officers must renew their Declaration of
20 Interests or, I mean, is it something they just do at the
21 beginning of their careers and never have to do again, or
22 are they asked to do it more than once?

23 A. Given the current climate, I do not believe--I do
24 not believe--it is not spelt out in General Orders as to
25 how many times it should be done. But given the current

1 climate, my opinion is that's--should be--should be done on
2 a regular basis or followed up on a regular basis, whether
3 every quarterly or biannually, to make sure that, you know,
4 persons adhering to, you know, what they already signed on
5 to.

6 Q. When you say the "current climate," what do you
7 mean by that?

8 A. Current climate in terms of, you know, we are now
9 a major financial jurisdiction here in the territory; and,
10 therefore, from time to time, you know, we as a territory,
11 you know, have to be--have to be scrutinised and, you
12 know--you know, with a number of large transaction that is
13 going on in the territory because of financial services.
14 You know, we--persons have to make sure that, you know,
15 that they keep up--that they keep up with, you know,
16 any--any--any post-note interest, you know, that would
17 compromise--comprise their, you know, their jobs or where
18 they're working and therefore, you know, become a conflict
19 of interest, you know, in their, you know, in their
20 Government jobs or wherever they are.

21 So, in light of that, it is more prevalent now to
22 make sure that, you know, that this is in place and more
23 checks and balances, you know, in place to make sure that,
24 you know, this is--this is done properly.

25 Q. In the time that you've been either Acting Chief

1 Immigration Officer or now the permanent post-holder, have
2 you issued any guidance to your staff in your department
3 about declaring interests?

4 A. I would say "yes". And as recently--and as
5 recently as two to three weeks ago, I've reiterated and
6 sent out a letter to all my staff, you know, making sure
7 that if any of them has any--anything that they would like
8 to declare or declare any conflict of interest that they
9 may have, do so. And I've received upwards--upwards of ten
10 applications, you know, that came in, and I would--I would
11 not stop until, you know--you know, all persons have done
12 so who may have, whether another job or--or business--or
13 business and make sure that they comply not only--not only
14 to be--to be dealt with and put on their file, but to
15 follow up on a--on a biannual or quarterly basis, you know,
16 to make sure, you know, what they have submitted remains
17 the same or if there is any changes, you know, then it
18 would be updated.

19 Q. Now, in terms of your role as Chief Immigration
20 Officer, could you explain to the Commissioner what that
21 involves?

22 A. Well, my role involves on a number of things. You
23 know, I'm the Chief Immigration Officer and, therefore,
24 the--this provision of the entire department is--is under
25 my purview. I have to--you know, some of my functions

1 include making sure that, you know, the annual budget is
2 done on time, making sure that, you know, whatever the
3 department needs, you know, then it is put--put in the
4 annual budget to make sure that, you know, we can, you
5 know, try to, you know, get what it needs in order for it
6 to continue to function, you know.

7 Also look at--at, you know, making sure
8 hiring--hiring staff, discipline--I'm also responsible for
9 discipline, you know, hiring, you know, making sure that
10 the morale of the staff is good and putting things in place
11 to make sure that, you know, they--they do their job.

12 Training. I have to make sure the staff is
13 properly trained--trained and, you know, the list goes on
14 and on.

15 Q. How many staff in total are there in your
16 department?

17 A. Presently--at presently, I have 50 staff members,
18 and those would be officers, and I also have some clerical
19 staff as well. So...

20 Q. On Tuesday, the Commissioner heard from Wade
21 Smith, who is the Customs Commissioner, and he explained
22 that his department was the lead agency in terms of border
23 security. I'll come on in a moment to how your department
24 works with other agencies, but is there any activity for
25 which your department takes the lead role?

1 A. It was--my department would take the lead role if
2 it's--if it's an immigration-led operation, and that has
3 been established with, you know, all three, all law
4 enforcement agencies.

5 Q. If you could turn to the bundle that should be
6 with you, if you could find page A-2, please.

7 A. Could you repeat that page?

8 Q. A-2.

9 COMMISSIONER HICKINBOTTOM: A-2.

10 THE WITNESS: Okay.

11 BY MR RAWAT:

12 Q. If we're on the same page, Mr Penn, it should be
13 the letter dated 13th of April 2021, which is Request for
14 Information Documents No. 1 addressed to you.

15 A. Okay.

16 Q. Do you have that?

17 A. Yes.

18 Q. Before we go into the detail, could you explain
19 how you went about responding to this request?

20 A. This request, I--when I got the request, we--I
21 went through the--the medium that was set up for government
22 offices, which is through the Attorney General Chambers,
23 and then I got the information, which is the IRU, I got the
24 information, and then I--and then I submitted it to--to the
25 IRU, and then they were the ones who submitted the

1 information on my behalf.

2 Q. So, was it down to you to make sure that there was
3 compliance with the request and that every question had
4 been answered?

5 A. Yes, it was.

6 Q. And then you just--the documents that you had
7 identified, you passed on to the IRU.

8 A. Yes, I did.

9 Q. In terms of the response, you've obviously given
10 the Commission a number of documents, but could I start off
11 just by asking you: There's reference in the papers to the
12 Joint Task Force. What was or is the Joint Task Force?

13 A. The Joint Task Force comprises of Police, Customs,
14 and Immigration. This was formed just right--COVID-19,
15 after COVID-19 took roots here in the territory, and there
16 was some lockdowns in the territory, 24-hour lockdown, and
17 it was decided that--that the law enforcement agencies
18 should work together to provide security on land and sea to
19 protect the people of the territory.

20 Q. So, was the formation of the JTF a response to the
21 pandemic?

22 A. Yes, it was.

23 Q. And though there are three agencies in it, is
24 there a lead agency?

25 A. The lead agency--the lead agency is Customs.

1 Q. And can you remember precisely when the JTF was
2 set up?

3 A. It was set up privy only, could say, if memory
4 serves me right, privy only say around April, April-ish,
5 from April, yeah, come back, yes.

6 Q. So that's April 2020.

7 A. Yes.

8 Q. Was also Mr Smith's evidence that the JTF is the
9 same as the Border Control Task Force which is also
10 referred to in some of the documents that has been provided
11 to the Commission. Do you agree with that?

12 A. Could you repeat that?

13 Q. Mr Smith told us--I'll start again.

14 Some of the documents provided to the Commission
15 referred to an entity called the "Border Control Task
16 Force," and Mr Smith told us well that's the same as the
17 Joint Task Force, and I wanted to just confirm that you
18 agree with him.

19 A. Yes.

20 Q. If you go, then, in the bundle to page 667--sorry,
21 677, I'm sorry. It should be a e-mail headed "Joint Task
22 Force Plan (3)" at the top.

23 A. Yes.

24 Q. Now, we will come back and look at the detail of
25 this e-mail in a while, but could you just tell the

1 Commissioner what does the reference to "Joint Task Force
2 Plan" mean?

3 A. The Joint Task Force Plan meant that the three
4 agencies got in together to propose or put forward--or put
5 forward plans to better secure the borders and trying to
6 procure equipment, manpower--manpower, and, you know, any
7 other equipment to be used--to be used--to be used in that
8 aspect, to help carry out the mandate of whatever plan we
9 put together to help mitigate any security breach within
10 the borders or on the land.

11 Q. We've heard of a Comprehensive Border Security
12 Plan. Is it the same as that?

13 A. This--this plan--this plan--this plan would have
14 been a scaled back--a scaled back version of the
15 Comprehensive Border Security Plan because the
16 Comprehensive Border Security Plan would have--would
17 have--probably have sections in terms of
18 immediate--medium- and long-term--and long-term, you know,
19 expectation--expectation of what is needed and what--and
20 what needed to, you know, to be acquired in terms of
21 carrying out the--the plan.

22 So, at one point we had to make sure that we
23 produced the immediate, medium- and long-term, and
24 what--and what we were looking at is make sure that, you
25 know, that we deal with something now, you know, that we

1 could have--that we could have to use to help mitigate any
2 security breach at our borders on sea and land.

3 Q. So, just to understand it, the Comprehensive
4 Border Security Plan, is that something that you--you would
5 input to--into as Chief Immigration Officer?

6 A. Sorry, could you repeat?

7 Q. Do you have input into the Comprehensive Border
8 Security Plan?

9 A. Yes, yes. There were several meetings, and all
10 agencies--and all agencies--and all the agencies were
11 there.

12 Q. And that's something that was ongoing irrespective
13 of the pandemic. But the Joint Task Force Plan is a
14 separate plan that was intended to focus on responding,
15 from a security perspective, to the pandemic; is that
16 right?

17 A. Yes, sir.

18 Q. So, you see the reference on that page to the
19 Joint Task Force Plan No. 3. I'm suggesting it's No. 3.
20 Leaving aside the Comprehensive Border Security Plan, how
21 long had the Joint Task Force Plan been in preparation?

22 A. Well, I don't have a definitive answer for that,
23 but I can say, you know, that we had--we have--we had a
24 number of meetings, you know, and to--and to--to agree on
25 what exactly, you know, we, you know, we want--we want to

1 have, how we're going to get it, and how soon--how soon
2 we'll be able to stand--and how soon we'll be able to
3 stand, you know, to put it in--in action.

4 Q. Well, the--I think your evidence was that the JTF
5 was set up about April 2020. So, did the three agencies
6 then start work on the Joint Task Force Plan?

7 A. No, no, it was not immediate from--from that point
8 in time because when we set up--when we set up in April, we
9 were--we had--we had persons on--on land, and we had
10 operations on sea and, therefore, we had to
11 regroup--regroup to try and do things, you know, a little
12 more comprehensively or try to do things in the best
13 interests--in the best interests--or to work smart in the
14 best interests of, you know, detecting any person trying to
15 reach our borders. So, what--what I can say is that--is
16 that, when we started out, we started out with some--with
17 some smaller boats, you know, that the officers would go
18 in. Sometime the weather would, you know, would not be so
19 accommodating. It would be, you know, roughs--some rough
20 seas and, you know, it would make it a little ineffective
21 sometimes, you know. The water is very rough, you know,
22 for officers to, you know, to go out there, so, and do any
23 patrols.

24 And so--so we had to regroup and look at what--and
25 look at what can be, you know, can be done better, you

1 know, what would be needed and, you know, try to acquire
2 those things and then--and then continue.

3 Q. And so, as it progressed, you got to the point,
4 did you, where you had identified what additional equipment
5 you would need and what--how much that would cost.

6 A. Yes.

7 Q. Can I just check, sir, if you can still hear me.

8 COMMISSIONER HICKINBOTTOM: We can, Mr Rawat, yes.

9 BY MR RAWAT:

10 Q. Can you help with the answer at all, Mr Penn?

11 A. Did you ask a question?

12 Q. Yes. As the plan progressed, did you get to a
13 point where, as a Joint Task Force, you had identified what
14 equipment you needed and how much that equipment would
15 cost?

16 COMMISSIONER HICKINBOTTOM: Mr Penn answered that
17 question. You may not have heard him, Mr Rawat.

18 MR RAWAT: That's--that's what it was. I think
19 my--my internet went a little bit, so I didn't catch his
20 answer.

21 COMMISSIONER HICKINBOTTOM: And the answer was
22 briefly "yes."

23 BY MR RAWAT:

24 Q. Thank you, Mr Penn.

25 Could you look, please, at page 663. This is a

1 document that was in the material that you provided to the
2 Commission, and it's dated 6 of May 2020, and it's an
3 EZ Shipping Barge Service Proposal. I think if you--if you
4 want to know where it ends, I think it goes through to
5 page 668. And if you go to 666, you should see a page
6 headed "UNSOLICITED PROPOSAL FOR BORDER CONTROL."

7 Do you have that?

8 A. Yes.

9 Q. When--this is dated 6 of May 2020, if we go back
10 to page 663, you're not on the address list. When did you
11 first become aware of this document?

12 A. Are you referring to the document on 663?

13 Q. Yes, which I'm--I'm suggesting that 663 to 668 are
14 all part of the same document.

15 A. No, this document was not addressed to myself.

16 Q. No, but it's part of the material that your
17 de--you have provided in Response of the Request. So my
18 question is: When did you first become aware of the
19 document and the proposal?

20 A. Okay, on the--I wouldn't be able to provide an
21 exact date and time, but I can--what I can say that
22 this--that this document--that this document was
23 shared--was shared--was shared with the JT--the JTF, you
24 know, during our discussions as to, you know, discussion as
25 to the use--as to the use of (unclear) for static

1 platforms.

2 Q. Could I come to static platforms in a moment. But
3 just before we leave the document, could I just ask you to
4 look at page 649, please. 649 through to page 662 concerns
5 two ships which appear to be owned by Midnight Marine
6 Holdings Limited. The first one we see on page 649 is
7 called "Midnight Chief." And if you go to 661, there is a
8 ship named "Midnight Stone," and you can also see that the
9 owner is Midnight Marine Holdings Ltd.

10 I just wanted to, because the pages seemed a
11 little out of order, can you confirm that these pages 649
12 to 662 are part of that proposal that we were just looking
13 at?

14 A. That's affirmative.

15 Q. And the last page, if we look at 662, has costings
16 for the two boats per day, which I think, if my math is
17 right, comes to \$17,000 a day.

18 A. (Unclear).

19 Q. Now, let's--let's try and see when you first
20 became aware of this proposal and when you may have
21 received it. If you go to page 671, please.

22 MR RAWAT: Sir, may I just have a moment, please,
23 sir.

24 (Pause.)

25 BY MR RAWAT:

1 Q. At the bottom of the page and going over onto page
2 672, Mr Penn, you'll find an e-mail, and it's obviously
3 part of an e-mail chain that ended up being sent to you,
4 but it's e-mail dated the 6th of the 2nd 2020--or I think
5 it's the 2nd of June 2020; it's the American way of
6 presenting dates. If you go over to the next page, there's
7 reference to an expedited extract referring to the Border
8 Security Plan for the BVI. Do you have that?

9 COMMISSIONER HICKINBOTTOM: No, fourth line on
10 page 672. 672, fourth line down, Mr Penn. No, further up
11 from that, right at the top, fourth line down, Subject:
12 NSC Expedited Extract.

13 THE WITNESS: Right, yes.

14 BY MR RAWAT:

15 Q. So there's--this--if we go back to 671, there's
16 this e-mail of the 2nd of June which then seems to be
17 forwarded by Glenroy Forbes, the Financial Secretary, on
18 the 17th of June, and you see at the top of the page there
19 is a response balance on the same day from the Police
20 Commissioner, and you're copied in to that response.

21 Before we--we can identify most of the people on
22 that circulation list, but could you just assist us with
23 who Rosemary Callwood is?

24 A. Rosemary Callwood is one of my assistant chiefs in
25 Immigration Officers.

1 Q. And Ronald Emanuel?

2 A. I know that he worked in finance, in the Ministry
3 of Finance. I'm not sure what his exact role is.

4 Q. And there's an iansmith77. Do you know who that
5 is?

6 A. I know--I know an Ian Smith that--that works
7 for--that is a Chairman of the Social Security Board. From
8 time to time, persons have mistaken both Ian Penn and Ian
9 Smith, and you know, sometimes, we, you know, we get in
10 trouble for each other, so I don't know if it's--it could
11 be a typo, maybe it was meant to be Ian Penn, but sometimes
12 people will put Ian Smith instead of Ian Penn. I get it
13 all the time.

14 Q. I see. So he was perhaps wrongly copied into this
15 circulation list.

16 A. Most likely could be, yes.

17 Q. Now, you--we can see again that at the top it says
18 that--it refers again to the COVID-19 Border Security Plan
19 for the BVI, Memo No. 008/2020. Did you actually receive
20 that expedited extract?

21 A. If--if my name is not--is not in the--in the--in
22 the--in the list, then I haven't received it.

23 Q. It's just before Rosemary Callwood. We can see
24 Ian Penn just before Rosemary Callwood, the last line of
25 the circulation list.

1 A. I must be blind. I'm sorry, I'm sorry. But
2 where--but where are you referring to?

3 Q. At the top of the page, you can see Michael
4 Matthews.

5 A. 672?

6 Q. 671, please.

7 A. Yes--yes, so--yes, my name is there correctly.
8 So, yes, I would have received--I would have received the
9 e-mail.

10 Q. And would you have received the attachment which
11 was the expedited extract?

12 A. Yes, I would have.

13 Q. And is that something that you could provide to
14 the Commissioner?

15 A. Well, then let me--let me check--let me check my
16 e-mails when--when I get back to work and--and see
17 because--because, in terms of my disclosure, if--if that
18 information was there, I'm sure would have provided it,
19 but...

20 Q. It's not amongst the material you provided,
21 Mr Penn, so all we can ask you to do is just to check your
22 disclosure and check your e-mails. If you did get the
23 expedited extract, it would be helpful if you could provide
24 it. And can we leave it there and you have a look?

25 A. Yes, yes, I will have a look and--

1 Q. Thank you.

2 A. --if it's in my e-mail, I will.

3 Q. If you turn to 669 now. And these are parts of
4 e-mails that you disclosed to the Commission. At the very
5 bottom, there is an e-mail from the Cabinet Secretary dated
6 3rd of July 2020. Do you have that?

7 A. Yes, it's here, here at the bottom of 669?

8 Q. Yeah. And you're on that circulation list.

9 A. Yes.

10 Q. Now, if you read over to 670, you'll see that it's
11 addressed to the Members of the Border Control Task Force
12 and has an Action Item, which if you could read to
13 yourself, please.

14 (Witness reviews document.)

15 Q. Have you read it, Mr Penn?

16 A. Yes, I have.

17 Q. Thank you. Can you clarify, what does "re"--or
18 what did you understand by the term "revisit the proposal
19 received from private vessel owners"?

20 A. This would have meant--this would have meant
21 that--that other vessels--other vessels to--to be used as
22 platforms on--on the sea from--from private vessel owners,
23 which, you know, would have been, you know, smaller
24 boats--smaller boats as to--as opposed to--as opposed to
25 barges, like we--I--we were given the--we were given the

1 orders to, you know, to revisit the proposal and see--and
2 see--and see whether--and see whether it would have
3 been--it would have been in the best interests--in the best
4 interests to, you know, to take, you know, to take up any
5 offers from, you know, from private vessel owners at that
6 time.

7 Q. Now, the use of the word "revisit" suggests that
8 it is--it was a proposal that had previously been
9 considered but rejected. Would that be an interpretation
10 that you can agree with?

11 A. Yes, it was a proposal at the time, but the
12 proposal was not feasible.

13 Q. And in what way wasn't it feasible?

14 A. Because we were--private vessels, we were--we were
15 told about maybe some yachts--maybe some yachts that we
16 could have used, you know, to go out and position at
17 different areas and, you know, have them use their radars
18 as well, but we thought it would not have been feasible
19 considering, you know, the risk to the officers at point
20 because with smaller boats--with smaller boats and perhaps,
21 you know, bad sea or bad weather, I don't think that
22 the--that the situation would have been
23 conducive--conducive. And if you had, you know--if you put
24 officers out there, you know, on a smaller boat and it's
25 continually moving or rocking from side to side, officers

1 can tend to get sick, you know, which would make them very
2 ineffective in--in their mission of what--of what they set
3 out to do. So, therefore, that option--that option was
4 not--was not in the best interest.

5 Q. If you go back to page 669 and now go to the top
6 part of the page, the e-mail chain continues with an e-mail
7 dated the 5th of July from the Police Commissioner, and
8 it's addressed to Leslie Lettsome, who I think was at that
9 time the Acting Commissioner of Customs, and yourself. And
10 if you could take a moment, please, just to read the
11 content, again to yourself, of Mr Matthews's e-mail to you
12 and Mr Lettsome.

13 (Witness reviews document.)

14 Q. Let me know when you've read it.

15 A. I've read it.

16 Q. Thank you. Looking at that response, do you agree
17 that, as the Commissioner says in his e-mail that
18 previously where boats had been used as platforms, they
19 "had been provided free with just costs for fuel and
20 provisions"?

21 A. I cannot agree to that because I was not--I was
22 not a party to--I was not a party to that, so I can't agree
23 to something--I can't agree to what you're asking me.

24 Q. But you told us that you had or with breaks for
25 study, been acting Chief Immigration Officer since 2014.

1 A. Right.

2 Q. So, between 2014 and 2020, you don't have any
3 experience of boats being used as platforms and those boats
4 being provided free with just costs for fuel and provision?

5 A. Commissioner, as a Chief Immigration Officer, the
6 Immigration Department, we do not have a marine section, so
7 we depend on Customs and Police, so our officers would go
8 out with them.

9 Now, whatever decision or deals that Police or
10 Customs may have with other private vessels, owners in the
11 territory or whatever, I am not read in on those--on those
12 deals or anything like that, so I cannot answer to that.

13 So, if platforms--if private platforms were out,
14 so before, in the future or anything like that, I would not
15 have known how they were acquired.

16 COMMISSIONER HICKINBOTTOM: Are you (unclear)
17 commercial--any commercial deal--

18 THE WITNESS: No.

19 COMMISSIONER HICKINBOTTOM: --(unclear) required?

20 THE WITNESS: No, no. But--but--but--but if my
21 officers--if my officers are going on patrol with Customs
22 or Police, then, you know--then, you know, then they go,
23 but then I don't know how--how smaller platforms were
24 acquired. I would not be--I would not be a part of that.

25 BY MR RAWAT:

1 Q. If we then look at the paragraph that begins "Of
2 course you must," do you have that?

3 A. Could you repeat that?

4 Q. If you look at the paragraph in the Police
5 Commissioner's e-mail which begins "Of course, you must
6 make up your own mind"--

7 A. Right.

8 Q. He then in brackets--he re--he mentions costs
9 involved, and he says in brackets "if such funding is being
10 made available." Now, that suggests that the plan at this
11 stage did not include funding for static platforms. Is it
12 right--is that right? Would you agree with that?

13 A. We were--we were acquiring information, we were
14 acquiring information at the time and therefore--and
15 therefore--and therefore to put forward--to put forward
16 this information to Cabinet or the National Security
17 Council to then decide--to then decide in terms of
18 costing--of costing or--or--or--or anything else, you know,
19 that they would have had us to, you know, to do.

20 Q. You said that you were acquiring information. Was
21 that information in relation to static platforms and the
22 use of static platforms?

23 A. Right, yes, and cost.

24 Q. Right. But did you start doing that before the
25 expedited extract came out in--as of the 3rd of July 2020?

1 A. Yes, yes, yes, yes, we were. I--

2 (Overlapping speakers.)

3 Q. Do you have correspondence that shows that and the
4 information that was obtained?

5 A. I know that we had conversations--conversation
6 concerning--because we--we met--we met weekly, and we had
7 conversation concerning--concerning this. At that point in
8 time, we had no--no copious notes taken, so, therefore, you
9 know--it's not that we can go back to, you know, some--you
10 know, some minutes--some minutes that were taken at the
11 time, so--so I cannot--you know, I cannot get you that
12 information as to what was said. It's--it's, you know,
13 been a long time back, last year and so, you know, I
14 wouldn't have that information.

15 Q. Were there minutes generated of Joint Task Force
16 meetings?

17 A. Yes, but recently, since--since Mr Wade
18 Smith--Commissioner Smith took over, then minutes, you
19 know, minutes started to be generated.

20 Q. So, at the time of--that we are speaking of, which
21 is July 2020, your recollection is that the Joint Task
22 Force meetings were not being recorded and minuted?

23 A. No.

24 Q. And to the best of your recollection, is it your
25 evidence that there was a discussion about static platforms

1 that had started before the 3rd of July 2020?

2 A. Yes.

3 Q. And that was with the aim of looking to use static
4 platforms.

5 A. Yes. The aim--aim of looking to use something
6 viable, you know, that--you know, that the officers--that
7 the officers, you know, you know, can--can use and to--and
8 to strategically place within our borders--within our sea
9 borders.

10 Q. If you look, please, at the last paragraph in that
11 e-mail, which begins "Should we face pressure make use of
12 private" vehicles (sic), "my view is that for such high
13 sums of money we should go out to tender and let others
14 bid." Do you have that?

15 A. Yes.

16 Q. Doesn't that suggest that, certainly from the view
17 of Mr Matthews, who was a member of the Joint Task Force,
18 there was no ongoing discussion to use private vessels as
19 of July 2020?

20 A. When we are speaking here of private
21 vessels--private vessels, I think you may have probably
22 misunderstood me, so let me back up a little.

23 So, private vessels--private vessels would also
24 include the static platforms--right?--because, you know,
25 they are owned by private individuals or company.

1 There--there were also conversation of using other vessels,
2 private vessels from charter companies like catamarans,
3 yachts and so forth. There was that conversation, okay?

4 So, when I spoke earlier, I was speaking about the
5 smaller boats like, you know, catamarans from, you know,
6 from one--from these yachting companies, you know, that
7 could go out of there so to be used. And no, we did
8 not--we did not have much discussion about those because we
9 said those smaller boats--those smaller boats or vessels or
10 yachts--let me put it that way--would not be conducive to
11 the best interests of the officers.

12 But in terms of the static platform, the barges
13 from the companies that we've looked over all year, yes,
14 there was ongoing discussions about those.

15 Q. I'm sorry to labour the point, but if we--in the
16 paragraph, the third paragraph down which begins "My
17 response," Mr Matthews says--makes reference to the use of
18 boats as platforms. When we go to the last paragraph, he
19 then says: "Should we face pressure to make such use of
20 private vessels".

21 Now, I suggest to you that if you take that
22 together, what that contemporaneous record is saying that,
23 as of early July 2020, it was not in the contemplation of
24 the Joint Task Force to use private vessels as static
25 platforms. It wasn't part of the Joint Task Force Plan.

1 Would you agree with that?

2 A. Mr Matthews had--Mr Matthews had his concerns, and
3 I won't go into what I think his concerns were. But I know
4 from the Joint Task Force--from the Joint Task Force, from
5 other members, Customs--Customs/Immigration was that--was
6 that we had--we had the static platforms--we had the static
7 platforms; yes, those platforms would still have to
8 be--would still have to--would still have to have a captain
9 and a residual crew. However--however, the--what we--what
10 we came up with--what we came up with is that the static
11 platforms will be--we will place officers on that static
12 platforms--on the static platforms, you know, at intervals,
13 and the officers would--you know, would look at the radar
14 on the boats and everything like that. The crew was not
15 involved in any--in any--in any action that were taken on
16 the boat with respect to--with respect to, you know,
17 sighting boats, you know, boats coming in, boats trying to
18 breach the border.

19 All that was done by officers who were working on
20 those boats daily, so the crew members and the captain had
21 not--had nothing to do with the operations. All they did
22 was to make sure that the boats were in place--the boats
23 were in place, the engines and everything working, and all
24 people (unclear) those boats took over as to the operations
25 of what we were placed there to do.

1 Q. Let's go to page 673.

2 The bottom half of the page is an e-mail from
3 Mr Romney of the Customs Department, dated July 16, 2020,
4 and what he says is: "As discussed in our meeting, the
5 proposal by EZ Shipping is sent for all to review." You
6 may not be able to help with this, but can you remember
7 what meeting Mr Romney's referring to there?

8 A. Well, this was--this was July of last year. It
9 would be very hard to, you know, recollect. So, you know,
10 I really can't say. We had several meetings. So I really
11 can't pinpoint exactly, you know, which meeting too
12 specifically.

13 Q. What it does refer to is the proposal by
14 EZ Shipping is sent for all to review. So that would seem
15 to be a reference to the proposal that we looked at a short
16 while ago, wouldn't it?

17 A. Right. It would have been a proposal--it would
18 have been a proposal that he would have gotten from
19 EZ Shipping and then sent it to--sent it to all the
20 members, you know, for their review and--

21 Q. Does it seem likely to you that this may have been
22 the time at which you first saw this--this proposal from
23 EZ Shipping?

24 A. It may have been. I can't say for sure.

25 Q. Now, it was sent to members of the Joint Task

1 Force for review. Did you at any time after this date find
2 out what had prompted EZ Shipping to submit this
3 unsolicited proposal at this time?

4 A. I wouldn't be able to answer that, sir.

5 Q. You can see what Mr Matthews says about it at the
6 top in an e-mail dated the 17th of July.

7 Once you had reviewed the proposal from
8 EZ Shipping, did you reach the same view as Mr Matthews
9 appears to have done in his earlier e-mail that we were
10 looking at that, where there is a high cost to the public
11 purse, then it should go out to tender?

12 A. No, I didn't--I didn't come to the same conclusion
13 as Mr Matthews, but it was always my--but it was always
14 mine--my undertaking that we should make sure that we--you
15 know, that we get the best--the best deal possible, the
16 best deal possible, and--and that we--and that we--and
17 that, you know--and that we are comfortable with that so
18 that--so that it would not be a high--a high cost on the
19 public purse.

20 Q. Was there any reason why you did not see a benefit
21 of a tender process?

22 A. No, I didn't have any specific reason. I didn't
23 have a specific reason--

24 (Overlapping speakers.)

25 Q. Do you think in principle that tender processes

1 are a good idea?

2 A. Yes, in some cases, but in emergencies--in
3 emergencies--in emergencies like--you know, like that,
4 sometimes--sometimes I can see where--where the tender
5 process, you know, can be waived.

6 Q. It appears that there was an invitation for the
7 Joint Task Force to revisit the question of static
8 platforms and to look at the EZ Shipping proposal. We've
9 seen Mr Matthews's view on that proposal.

10 To your recollection did anyone else speak against
11 it?

12 A. No, not to my recollection.

13 Q. If you go, then, to 677.

14 You should have an e-mail from Mr Romney on that
15 page. It's the one that we looked at a moment ago.

16 Is that--do you have that page, Mr Penn?

17 A. 677, yes.

18 Q. I'll invite you to read the detail of the e-mail
19 in a moment, but it refers to there being two attachments.

20 If you go to the next page, 678, is that--it's a
21 document headed "3 Month Comprehensive Border Security
22 Plan". Is that a document that was attached to this e-mail?

23 A. Yes.

24 Q. Would it be possible for you to provide both
25 attachments? You only seem to have provided one.

1 A. I provided one, okay. No problem. Let me--let me
2 take a note of that.

3 COMMISSIONER HICKINBOTTOM: We'll send you a list
4 as well, Mr Penn, because there are one or two documents
5 now we've referred to.

6 THE WITNESS: Sure, okay.

7 BY MR RAWAT:

8 Q. Just take a moment and read the text of
9 Mr Romney's e-mail, again to yourself, and tell me when
10 you've done so.

11 A. I already did.

12 Q. Thank you. What appears to have been suggested
13 there is that now that there was a proposal to use static
14 platforms, the plan had to change because he refers to the
15 whole dynamics of this operation moving forward.

16 Do you agree that that proposal had changed the
17 Joint Task Force Plan?

18 A. I don't understand the question.

19 Q. All right. I'll read out what Mr Romney says: "I
20 know this will reach many with a hard heart as this is
21 something we didn't expect and it will change the whole
22 dynamics of this operation moving forward if we are to use
23 the proposed platforms. Be that as it may, we have
24 proceeded to put the figures (rental of radar platforms)
25 upfront instead of an appendix as the Commissioner has

1 suggested so [that] this will remain in the minds of the
2 NSC members."

3 What I'm suggesting to you is that, when one reads
4 that e-mail, the inference is that, up until this point, it
5 was not anticipated or costed that there would be a use of
6 static platforms. Would you accept that?

7 A. No, no I won't.

8 Q. So, it's your evidence that, even before these
9 e-mails that we were--we've been looking at, there was
10 discussion about using vessels as static platforms.

11 A. If when you said "vessels," you're talking about
12 barges, yes.

13 COMMISSIONER HICKINBOTTOM: This may or may not be
14 relevant, but the page 677 that you're looking at, that's
15 headed "Joint Task Force Plan 3". When it comes to the
16 attachments--so they're half a dozen lines further
17 down--it's got copy of Joint Revision 4. You may have
18 answered--you may be able to answer it now, but it looks as
19 though there was a further revision of the Task Force Plan.

20 THE WITNESS: I would have to get--I would have to
21 get those--those documents.

22 COMMISSIONER HICKINBOTTOM: No, exactly, no,
23 exactly. You can't answer the question without the
24 documents.

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: But there seems to be
2 some change, but we don't know what--what that change might
3 have been, but if you could get those documents, that would
4 be very helpful, I think.

5 THE WITNESS: Yes.

6 BY MR RAWAT:

7 Q. Would you be able to help this far, Mr Penn. We
8 see that the Commissioner has pointed out to you what the
9 heading is and then the names of the two attachments. If
10 you go overleaf to 678, can you tell us which one those two
11 attachments that document is?

12 A. No, no, I wouldn't be able to tell you that,
13 sorry.

14 Q. Do you remember having input into this plan in
15 July 2020 or was it--

16 A. Yes, I--

17 Q. --just down to Mr Romney?

18 A. No, it--no, it was a Joint Task Force effort.

19 Q. So, was this a--if we look at 678, was this a
20 document that your--you had worked on or your team had
21 worked on?

22 A. Yes, that is correct.

23 Q. Well, if you go to 678, item d, there's a
24 reference there to "Rental Radar Platforms for"--it says it
25 must be a typo, but it says "for one month", and then it

1 goes on to refer to "Purchase of 5 Radar Platforms", and
2 then there's constant commentary at the other end.

3 Do you--can you help at all with when that
4 reference to rental of radar platforms for one month was
5 introduce into the Comprehensive Plan?

6 A. The rental--the rental of radar platforms was--was
7 always--to my recollection, was always there--was always
8 there. If anything we were--we were negotiating or looking
9 at the cost, and if any--if any other final draft or final
10 plans, you know, we was looking--we were looking more--more
11 at the cost, and we were looking at how--we were looking at
12 how, you know, other cost of other equipments and saw that
13 we needed, you know, would have--would have added--would
14 have added to the overall--to the overall figure at the
15 end.

16 Q. You say "we were looking into." You've--the--"we
17 were looking into rental of barges." Who is the "we" that
18 you're referring to?

19 A. The Joint Task Force.

20 Q. Now, that's three organisations, was any
21 particular organisation leading on this?

22 A. Yes, Customs was leading on this.

23 Q. Well, what--what role did your department play?

24 A. Customs always had the lead with this. However,
25 all of us were given a role to--to go through--to go

1 through and look and see if we could contact anyone who may
2 have had barges or platforms and to see how much they were
3 willing to, you know, let us have them at a cost, and then
4 we come back and report.

5 Q. So, did your department make inquiries then?

6 A. We were tasked with inquiries. I'm not sure--I'm
7 not sure if--if any of my officers were able to--were able
8 to get--were able to get on to anyone, but I know
9 Customs--Customs was able to make contact with a number of
10 barge owners and get some--and get some prices from them so
11 that we could--so that we could compare and look at.

12 Q. The documents that you disclosed to the
13 Commissioner do not include any correspondence that the
14 Immigration Department had with barge owners. Did you, in
15 trying to comply with this request, look to see whether
16 there was any such correspondence?

17 A. There is no such correspondence.

18 Q. Well, a few moments ago, you said that your
19 officers were tasked with it, and you appeared to say that
20 you weren't sure what the outcome of that was.

21 Just to be clear, when you were seeking to comply
22 with this request, did you ask your officers or did you--if
23 inquiries had been made of barge owners?

24 A. We were tasked with it verbally. There was
25 nothing in writing, and there is only a limited amount of

1 barge owners in the territory. So, whether at the
2 time--whether myself or any officers were able to--were
3 able to reach any--Customs--Customs had already contacted
4 all of them. Customs would have a list of all the barge
5 owners because they do business back and forth, and
6 therefore, it was easier for them to find all of them and
7 contacted them and get whatever information.

8 Q. So, did you feed back the outcome of your
9 inquiries to the JTF?

10 A. Well, when we met the next--when we met the next
11 time, you know, Customs gave their report. There was no
12 report from--from--from--from immigration team because we
13 were not able to--we were not able to get any information.

14 Q. And there's no record is it--

15 A. No.

16 Q. --your evidence that there is no record of the
17 inquiries that the Immigration Department made on this
18 matter?

19 A. No.

20 Q. Before we leave this plan, could you just turn to
21 page 679, please.

22 COMMISSIONER HICKINBOTTOM: Just before we do
23 that, can I just make sure that I've understood this--the
24 schedule on 678, Mr Penn.

25 My understanding is that, of the columns, we've

1 got the recommended action to be taken, and then there's a
2 "Cost Description", a "3 Month Estimate" and then another
3 column which is not headed, but that's also cost
4 description, the "6 Month Estimate", and then "Equipment &
5 Action Points".

6 Now, my understanding is that the first few--the
7 first few columns headed "3 Month Estimate", that's the
8 estimate over the first 3 months, and the next couple of
9 columns over months 4 to 6; is that right? So, for
10 example, just fuel cost, which is the second line down;
11 57,000-pound, 3 month estimate; 57,000-pound, 6 month
12 estimate, am I right in thinking that that's the estimate
13 for months 1 to 3 and months 4 to 6, or is that--or have I
14 not got that right?

15 THE WITNESS: Well, yes, because it's--it's up
16 there in the column, so it's a 3 months' estimate.

17 COMMISSIONER HICKINBOTTOM: Exactly.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: So that's a 3-month
20 estimate.

21 And the second line of figures is also an estimate
22 for a 3-month period, but months 4, 5 and 6. And so right
23 down at the bottom on page 682, which is the very bottom
24 682, which is the very bottom line of the (unclear)
25 schedule, it's got the 3-month projection, the 6-month

1 projection, and added together comes to the figure of
2 1.7 million dollars.

3 So, it looks to me as the first columns are
4 months 1 to 3.

5 THE WITNESS: Uh-huh.

6 COMMISSIONER HICKINBOTTOM: And the second column
7 is months 4 to 6. Or have I misunderstood it?

8 THE WITNESS: Oh, okay, okay. Okay. I see what
9 you're saying.

10 COMMISSIONER HICKINBOTTOM: And so, if you get the
11 6 month--the estimate over the 6-month period, you add the
12 two together.

13 THE WITNESS: Oh, okay. I see what you're saying.

14 COMMISSIONER HICKINBOTTOM: Just holding that, but
15 I know you're still thinking about it, I know you haven't
16 accepted that proposition, but just looking down at line d
17 on page 678.

18 THE WITNESS: Uh-huh.

19 COMMISSIONER HICKINBOTTOM: It's got for the first
20 3 months, if I'm right, Rental Radar Platforms, it's got
21 for "on month" and although that looks like 1 month, I'm
22 not convinced it's not for 3 months, but--and it's got
23 \$510,000 for those 3 months.

24 THE WITNESS: Right.

25 COMMISSIONER HICKINBOTTOM: And then it's got

1 "Purchase of Five Radar Platforms"; this is for the second
2 3 months if I'm right, 150,000.

3 THE WITNESS: Okay, so--okay so--

4 COMMISSIONER HICKINBOTTOM: I'm sorry, just before
5 you comment on it, because I would like your comment,
6 moving down to page 680, moving to cover pages on 680, 4e,
7 "Installation of CCTV camera". It's got nothing in the
8 first 3 months and 350,000 in the second 3 months.

9 THE WITNESS: Where are you?

10 COMMISSIONER HICKINBOTTOM: This is on page 680.
11 Not easy to see because it's--the numbers are over the
12 shaded area, but it's the third page of the--

13 THE WITNESS: Oh, okay, 4e?

14 COMMISSIONER HICKINBOTTOM: 4e, "Installation of
15 CCTV cameras". Yes?

16 THE WITNESS: Right.

17 COMMISSIONER HICKINBOTTOM: For the--in the first
18 column, no dollars at all. Second column 350,000 dollars.

19 THE WITNESS: Right.

20 COMMISSIONER HICKINBOTTOM: If I'm right--I want
21 to hear your comments--that would then fall in months 4 to
22 6?

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: That just
25 suggests--there may be a good reason for this--but that

1 just suggests that purchasing the radar system that is in
2 the estimate for months 4 to 6 is pretty good value
3 compared with renting radar platforms, or have I
4 sim--because for 3 months' rental of radar platforms, it's
5 a bit less than purchasing an entire system. Or have I
6 simply misunderstood this?

7 THE WITNESS: Well, okay, let me--let me try to
8 put it in perspective.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: Please, Commissioner.

11 We had COVID lockdown. The whole world was locked
12 down. A number of airports were closed. So it would not
13 have been likely that, yes, they--yes, the stationary
14 platforms--

15 COMMISSIONER HICKINBOTTOM: Just take it in stages
16 because I want to hear what you say about the--as it were,
17 the justification for it, but is my understanding of the
18 figures right? There may be a good reason for renting
19 barges, and you'll tell me if there was, but am I right in
20 my understanding that renting barges 3 months or 1 month or
21 three months for 110,000, purchasing five radar platforms
22 150,000 plus the CCTV camera, so it's about half a million
23 dollars, is that understanding right of the figures?

24 THE WITNESS: Yes, that is the estimate that we've
25 gotten at the time--at that time, yes.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, I then
2 broke into what you were saying as to why this was so.

3 THE WITNESS: Okay. Yes. So, I was saying to you
4 that COVID-19, we had to use whatever resources that we had
5 at the time because even though--you know, even though we
6 researched this, it may have been difficult to get--to
7 get--to get this built or done for us because we would
8 have--we would have needed, you know, technicians, highly
9 skilled technicians, equipment and so to come into the
10 territory at that time.

11 And at that time, our borders were closed, and our
12 borders are very porous. We, in the BVI is--is in a
13 strategic point where we have sometimes smuggling, drug
14 trafficking, you know, coming through the BVI, you know,
15 just to go into the U.S.--into the U.S. and onto the U.S.
16 mainland. And therefore, we knew--we knew and it happened
17 that the borders are closed and persons would have taken
18 advantage of this, okay? Smuggling persons back and forth
19 from the BVI to the U.S.V.I., St. Maarten--St. Maarten and
20 elsewhere, so we had to act quickly and fast and with what
21 we have. So, therefore--so therefore, yes, we used the
22 barges. Yes, if you look at it on paper, you know, it
23 would be cheaper to have these things, okay? Because it
24 was not practical at the time.

25 COMMISSIONER HICKINBOTTOM: I understand, Mr Penn.

1 I was primarily concerned that I had understood the table,
2 but thank you for that explanation.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: Sorry, Mr Rawat.

5 MR RAWAT: Sorry, sir. Thank you.

6 BY MR RAWAT:

7 Q. Before we leave the table, could I just ask you,
8 Mr Penn, about page 679, please. And if you go to item 3
9 on the--on that page which is headed "Mitigation of
10 Corruption and the Pending Risks", 3a is to "Request
11 thorough background checks of current staff/workers prior
12 to employment." Has that--and you say it's the background
13 check system. When was that put in place?

14 A. It was not put in place, but it was--but it is
15 something--it was--it is something that we--you know, that
16 we envision that, you know, something that we want to--we
17 want to do.

18 Q. Well, let's take it again in stages. What was it
19 that prompted this--this as an objective?

20 A. Well, actually, as I read--as I read the--is it 3a
21 we're speaking about; right?

22 Q. Yes, "Request thorough background checks of
23 current staff/workers prior to employment."

24 A. Okay, yeah, right. Yeah, sorry. As I read to the
25 bottom of it where I saw ASI and that is the organisation

1 that controls the airport, this actually happens right now.
2 This is taking place as we speak. All employees working at
3 the airport, at the Terrance B. Lettsome Airport, has to go
4 through background checks as part of their employment on
5 the compound.

6 Q. When did that program begin of undertaking
7 background checks?

8 A. I won't be able to give you the exact date, but
9 it--but it is something that--it is something that
10 the--that the security officers at the--at the airport
11 would have implemented or put in place. It is not--it is
12 not something that the agencies--the agencies would do, but
13 if we are--if officers are rotated to the airport, it means
14 that they would have to go through background checks in
15 order to get a pass to work--to work at the airport.

16 Q. You say security officers who undertake that.
17 What do you mean by "security officers"?

18 A. The head of security at the airport, they are the
19 ones that would--you know, that would issue--issue to the
20 officers a form or application form or whatever the process
21 is for them to undertake, you know, getting this background
22 check. They probably work--I don't know how the system
23 works. I'm sure that they--I'm sure that they work with
24 Police on this, but it is something that is undertaken from
25 the airport, from the security personnel at the airport.

1 Q. Do you know who the head of security of the
2 airport is, by any chance?

3 A. Yes. He's a retired police officer, Duncan
4 Williams.

5 Q. So, it's Mr. Williams's team that undertakes
6 background checks, and that's even if--if you rotate one of
7 your officers, an Immigration Officer to work at the
8 airport, Mr. Williams's team will undertake a background
9 check? Is that how it works?

10 A. Well, his team would initiate it. I'm not--I'm
11 not certain if he--if he does it alone by himself or
12 whether it is done in conjunction with the Royal Virgin
13 Islands Police force.

14 Q. Thank you. Do you, yourself, as a department,
15 undertake background checks of your own staff?

16 A. Not--not as vigorously as we would--as we should.

17 Q. And why don't you take it--undertake it as
18 vigorously as you should?

19 A. Well, when we employ persons--when we employ
20 persons we would, you know, we would inquire or ask--or
21 ask, you know, you know, have they been arrested or have
22 there been any problems with the law. We will probably ask
23 them to bring a police--a police certificate to show that,
24 you know, that there is, you know, nothing labeled against
25 them in the territory. But in terms of background into

1 their--into their--into their character and, you know, the,
2 you know--you know, you go deep into the background as to
3 who their friends are and different things, no. No, we
4 don't go--we don't go that far.

5 Q. Is it something that you'd like to develop?

6 A. Yes. It is something that is being contemplated
7 that--that we would develop going forward in the future,
8 yes.

9 Q. Now, we know, Mr Penn that, EZ Shipping began
10 supplying radar barges as from the 23rd of August 2020.
11 Did you, as Chief Immigration Officer, have any involvement
12 in the negotiations with EZ Shipping prior to that date?

13 A. No.

14 Q. Did you, before August 2020, meet at any time with
15 any representative of EZ Shipping, including the owner?

16 A. No.

17 Q. Do you know the owner of EZ Shipping?

18 A. Yes, I do.

19 Q. And how do you know Mr Chalwell?

20 A. I've met with him on a couple of occasions with
21 immigration matters. I know the family. So, the territory
22 is small. Everybody knows everybody or most of everybody,
23 so I know of him.

24 Q. Could you turn to 690 in the bundle.

25 A. 690 or 619?

1 Q. 690. It should be an EZ Shipping letter addressed
2 to the Commissioner of Customs, and it's dated the 12th of
3 August 2020.

4 A. Okay.

5 Q. I won't read it out, but if you see, at the third
6 paragraph down, there's a proposal to use two vessels from
7 EZ Shipping, and if you look at point 2, it gives the
8 price.

9 If you could go over to 691, please, this is a
10 second letter, again EZ Shipping, 21st of August 2020.
11 It's very similar in its language. But if I draw your
12 attention again to the third paragraph, it's now proposing
13 the use of three vessels, and you'll see the price has
14 changed if you look at 2. Do you have that?

15 A. Yes.

16 Q. At any time before EZ Shipping started supplying
17 this service, did you become aware of changes in the
18 contract in terms of costs or number of vessels that would
19 be engaged?

20 A. No. These negotiations--or these letters were
21 written to the Commissioner of Customs--the Commissioner of
22 Customs, and I was not privy to these letters. However, I
23 would--I would say that I am certain that--that they may
24 have been discussed--I can't say for sure--during our
25 weekly--during our weekly meetings.

1 Q. And is that how you would have been updated on
2 the--on the negotiations?

3 A. Yes.

4 Q. You didn't have input into these negotiations
5 yourself.

6 A. No.

7 Q. Now, we understand that EZ Shipping provided this
8 service up to January 2021. That's what Mr Smith told us.
9 That's Wade Smith. Whilst they were providing this
10 service, were any immigration personnel deployed to the
11 EZ Shipping vessels?

12 A. Yes. Yes, they were.

13 Q. And was that deployment throughout the time that
14 you--that these vessels were available to the BVI
15 Government?

16 A. Yes.

17 Q. What about personnel from other agencies? Were
18 they deployed as well?

19 A. I know of Immigration Officers on deploy to--to
20 this. It's--it was supposed to be a joint something
21 between Immigration, Customs and, well--well--well
22 Police--Police were not involved, but I know that Customs
23 and Immigration, you know, took part in being deployed on
24 these vessels.

25 Q. Now, the vessels--and we're talking here of the

1 radar barges--were in use over a number of months, so
2 August 2020 through to January 2021 at least. Do you know
3 how the effectiveness of the use of those barges was
4 measured?

5 A. Well, it was measured--it was measured by--by, you
6 know, all the--all the daily interceptions and--all the
7 daily interceptions that they were, you know, that they
8 were done. So on a--on a scale, on a weekly scale, you
9 know, you could--you could--you could see how many
10 interceptions were--were done. I--I don't have those
11 figures, but I know that we got a lot of interception from
12 these barges because, as I said, they were positioned
13 strategically, the radar turned on, and, therefore, we
14 could pick up any vessels coming through our borders and,
15 you know, radio to, you know, to the mobile--mobile unit
16 where they would go and intercept--intercept, whether
17 arrest or turn persons away from entering our borders.

18 Q. Who was carrying out this measuring? Did your
19 department collate these figures?

20 A. No, but I would--I would think that--I would think
21 that Customs--Customs has a real good statistics on terms
22 of--in terms of--in terms of the, you know, the
23 interceptions and so forth.

24 Q. Well, were reports sent to you about the
25 effectiveness of the radar barges?

1 A. I may not have gotten anything in--in writing, on
2 paper, but it was--but it was a discussion that we would
3 have--would have in our meetings.

4 Q. Thank you. So, again, measuring the
5 effectiveness, was that led by Customs?

6 A. Yes, because Customs--Customs had--Customs had the
7 assets in terms of their, you know, their speedboats, their
8 Customs boat. So, if a boat was spotted, then the Customs
9 boat were called out to go and intercept.

10 Q. Thank you.

11 MR RAWAT: Sir, I believe I've reached the end of
12 my questions, but again, could I just have a brief moment
13 just to check with other members of the team if there's any
14 other matter which I've missed?

15 COMMISSIONER HICKINBOTTOM: Certainly, Mr Rawat.
16 Yes.

17 MR RAWAT: Thank you.

18 (Pause.)

19 MR RAWAT: Sir, there's no further questions, but
20 perhaps if I could--we will write to Mr Penn, but if I
21 could just for the record set out those things that we are
22 going to ask him to supply.

23 At page 671, there is an expedited extract, and
24 he's--Mr Penn has agreed to look at his e-mails and see if
25 he can find that attachment and provide it to us.

1 And then at page 677, we've got the two
2 attachments, copy of Joint Revision 4 and Joint Task Force
3 Revision 1. Could I ask that Mr Penn provide both of
4 those, please, in their native form, that is, as if they
5 were--one seems to be an Excel spreadsheet and one seems to
6 be a document. The reason for that is it (drop in audio)
7 because if you turn these into a PDF, then it may be that
8 you cut off some of the detail on the Excel spreadsheet,
9 and it's important that we see it all.

10 I think the other thing that Mr Penn was going to
11 check for us is the date at which they began undertaking
12 background checks within his department (drop in audio).

13 Finally, what I would do is just ask Mr Penn to,
14 when he has a moment, just review the Letter of Request
15 that we sent him, again, and just confirm there are no
16 other documents relevant to that--no other documents or
17 information relevant to that request.

18 COMMISSIONER HICKINBOTTOM: Well, thank you,
19 Mr Rawat.

20 We will write to you, Mr Penn, so you'll have a
21 proper list. How long do you think it will take you to
22 look for these documents? I think it's probably looking in
23 your e-mails.

24 THE WITNESS: Not long at all.

25 COMMISSIONER HICKINBOTTOM: End of business on

1 Monday? Is that long enough?

2 THE WITNESS: Monday? Sure.

3 COMMISSIONER HICKINBOTTOM: Good.

4 THE WITNESS: Monday is normally a busy day for
5 myself, but I should make time to do that.

6 COMMISSIONER HICKINBOTTOM: That's excellent.

7 Thank you very much, Mr Penn. So, we will write to you
8 tomorrow. If we can have those documents by--well, let's
9 say 4:00 p.m. on Tuesday if you're busy on Monday.

10 4:00 p.m. on Tuesday, that would be very good. And I'll
11 make a direction in an order to that effect.

12 Solicitor General, anything that's been raised
13 today?

14 SOLICITOR GENERAL: No, Commissioner.

15 COMMISSIONER HICKINBOTTOM: Oh, okay. That means
16 that, Mr Penn, once the Transcript comes--it takes a few
17 days and is--when that comes, it will be put onto the
18 website of the COI, okay? Good.

19 Anything else, Mr Rawat?

20 MR RAWAT: Nothing from me say to thank Mr Penn
21 once again for coming to give evidence.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 Thank you very much for coming and giving your
24 evidence so clearly, Mr Penn. Thank you.

25 (End of Session 3.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is positioned above a solid horizontal line.

DAVID A. KASDAN