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Tuesday, November 27, 2007

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Chair

Mr. Paul Szabo

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Standing Committee on Access to Information, Privacy and Ethics

Tuesday, November 27, 2007

•(1110)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order. Good morning, colleagues.

First of all, I would like to ask the indulgence of everyone in this room to maintain as much silence as possible so that everyone can hear. It's important there be no distractions.

Secondly, I would implore people to please turn off your cellphones now.

Today we start our formal work on the study of the Mulroney Airbus settlement pursuant to the resolution adopted by the committee on November 22, which reads—and this is important for the members to be reminded of—as follows:

That in order to examine whether there were violations of ethical and code of conduct standards by any office holder, the Standing Committee on Access to Information, Privacy and Ethics review matters related to the Mulroney Airbus settlement, including any and all new evidence, testimony and information not available at the time of settlement and including allegations relating to the Right Hon. Brian Mulroney made by Karlheinz Schreiber and, in particular, the handling of allegations by the present and past government including the circulation of relevant correspondence in the Privy Council Office and Prime Ministers Office; That Karlheinz Schreiber be called to be a witness before the committee without delay; and That the committee report to the House its findings, conclusions and recommendations thereon.

The members will also know that a supplementary motion was passed to call Mr. Schreiber to be here on or before November 29, and also that Mr. Mulroney be called on December 4 and/or December 6 and/or December 11.

Let me propose that I first report to the committee on what has been done since the adoption of that order; second, that I deal with motions from members for which I have received proper notice; and third, that I have Mr. Rob Walsh, Law Clerk and Parliamentary Counsel for the House of Commons, advise the committee on certain legal and procedural matters to guide the members in the conduct of our examination of witnesses; and finally, that if the committee concurs, that we move in camera for the last part of the meeting—if there is any time left—to consider matters related to the decorum and productivity of the committee.

In discharging the specific instructions of the committee, I used the resources of the Law Clerk and Parliamentary Counsel, Mr. Walsh; the clerk and his staff; and Mr. Derek Lee, MP, a lawyer who has authored a book, *The Power of Parliamentary Houses to Send for Persons, Papers & Records*. Over the last five days, I have sought their advice as chair, but I take full responsibility for the actions taken on behalf of the committee.

On Thursday, November 22, the day of our last meeting, I had a brief meeting with the Clerk of the House of Commons to advise her of the decision of the committee and to ensure that the resources of the House were available to assist as necessary. I then spoke personally to the justice minister to advise him of our decision and that a formal letter was forthcoming.

Just after question period, I received a letter by fax from Mr. Edward L. Greenspan, counsel for Mr. Karlheinz Schreiber, in which he asked to be consulted about the dates and to be advised about the authority under which we claim to be able to call Mr. Schreiber to attend.

By 6 p.m. of the day we last met, a letter was sent to Mr. Schreiber to formally advise him that the committee had called him to appear before us on the Mulroney Airbus settlement on November 27 or November 29, and that he was to reply promptly.

At the same time, I sent a letter to the justice minister formally advising him of our decision and seeking his cooperation to make Mr. Schreiber appear before the committee.

On Friday, November 23, I faxed to Mr. Greenspan a letter, together with a copy of the letter sent to his client, Mr. Schreiber, and offered to speak with him by phone or to meet with him in his Toronto offices on Friday, Saturday, or Sunday, at his convenience. That afternoon, Mr. Schreiber, as you know, issued a public statement in which he said he was willing to appear before the ethics committee with certain conditions, some of which this committee discussed, including being able to wear a suit before us; access to his papers; and sufficient time to prepare for his appearance. He also asked for bail, which is being sought by his own legal counsel as part of their application for leave to appeal to the Supreme Court on the extradition order on Mr. Schreiber.

•(1115)

I also received a phone call from Mr. Greenspan's office and confirmed an appointment in his office at 1 p.m. on Saturday, November 24.

Finally, at 5 p.m. this past Friday, my office received a letter of reply from the justice minister, in which he writes—I'd like to quote from the letter so that all will know—in the middle of that letter the following:

In your letter, you have sought my cooperation in ensuring that Mr. Schreiber appears before the Committee. I have assured the Court of Appeal of Ontario that Mr. Schreiber will not be surrendered before December 1, 2007, and I continue to stand by that commitment.

It is important to understand that should the Committee seek to enforce the attendance of an individual before it, this will be a matter for the House of Commons and Speaker to consider.

On Saturday, November 24, I met with Mr. Greenspan and his associate, Ms. Vanessa Christie, for two hours to answer their questions about our proceedings and authority under which the committee can compel Mr. Schreiber to appear before us. I left Mr. Greenspan with a copy of our Standing Orders and a copy of Mr. Lee's book for his reference.

Following that meeting, I had numerous telephone conversations with our clerk and with Mr. Lee to consult with them on certain issues I needed advice on to discuss the timing of our next step.

On Sunday, November 25, due to my concern about the shortness of time and the fact that it became apparent it was unlikely Mr. Schreiber would be able to appear today, I contacted the clerk and instructed him to proceed with the drafting of a summons to require Mr. Schreiber to appear on Thursday, November 29.

Following numerous consultations throughout the day, the decision was taken to proceed with that summons and serve it on Mr. Schreiber on Monday morning. I returned to Ottawa that night to ensure I was in my office early Monday morning to sign the necessary documents.

On Monday, yesterday, the summons was signed in the early morning and was delivered to Mr. Schreiber, with copies to all required persons. I respectfully declined all media interviews on the status of our efforts to have Mr. Schreiber appear, because the committee members themselves had not been fully informed. The law clerk and other legal advisers had been reviewing the process we had followed and the necessary steps yet to be taken.

After question period yesterday, I met with Mr. Walsh and his legal staff, the clerk and assistant, as well as with Mr. Lee to resolve contradictory opinions with regard to jurisdictional authority. There were conflicting views between the Ontario Attorney General's office and the federal justice department as to who could vary the Schreiber court order. At one point, it appeared we would have to go before an Ontario court judge to vary a court order so that Mr. Schreiber could be brought to Ottawa and appear.

Some questions were still not clear, so we had a conference call with Ms. Vanessa Christie from Mr. Greenspan's office. Ms. Christie confirmed they had received no answer on their bail request for Mr. Schreiber, nor did they receive an answer from the federal justice department for a stay on extradition pending their application for leave to appeal to the Supreme Court. If there is no stay in the extradition, Mr. Schreiber will not be able to appear before us on Thursday and he could be extradited as early as Saturday, December 1.

Ms. Christie also explained, however, that Mr. Schreiber was initially held under a committal order, which is in provincial jurisdiction. He was in the custody of the province.

However, in 2004—previous government—the committal order moved to the surrender stage, which put Mr. Schreiber effectively in the custody of the federal government. So as of today, Mr. Schreiber is in the custody of the federal government. This ministerial order was signed by the then federal justice minister in 2004, and that responsibility carries on to successor justice ministers until Mr. Schreiber is either extradited or cleared.

We had access to these historic documents to confirm that Mr. Schreiber was, in fact, in the custody of the federal government, and that the current Minister of Justice has the full authority to vary his order so that Mr. Schreiber's extradition would be stayed and he would be able to appear before us on Thursday and for as many additional days as the committee felt was necessary.

• (1120)

As a consequence, it was recommended to me, and I agreed, to send the following letter—this was yesterday—to the Minister of Justice:

Further to my letter dated November 22nd and your response of November 23rd, the Committee has issued a Summons to Karlheinz Schreiber ordering him to appear before the committee before 11 am on Thursday, November 29, 2007. I have attached a copy of that summons to this letter.

Pursuant to the Order of Surrender under the *Extradition Act*, we understand that it is within your authority to delay completion of that Order until other matters are resolved.

The Committee would hope that you would take whatever steps are necessary to ensure that Mr. Schreiber appears before the Committee in compliance with both the Summons and the motion adopted by the Committee....In particular we seek your assurance that Mr. Schreiber will not be extradited to Germany until such time as the Committee no longer requires him.

I thought it was over, but this morning at 10:10 I received a reply from Mr. Nicholson. It's important, and I want to read it into the record also:

Dear Mr. Szabo:

Further to my letter of November 23, 2007, and my assurance to the Ontario Court of Appeal, I confirm that Mr. Schreiber will not be surrendered to Germany prior to December 1, 2007,

—i.e., Saturday—

and consequently, his extradition will not prevent his appearance before the Standing Committee on Access to Information Privacy and Ethics on November 29th.

You have asserted that I have the authority pursuant to the Extradition Act to delay the execution of the order surrendering Mr. Schreiber to Germany until the resolution of "other matters". The Extradition Act provides me with no such authority.

Let me repeat: according to the justice minister, the Extradition Act provides him with no such authority to vary that order.

While surrender may be delayed pending an appeal, judicial review, completion of outstanding criminal proceedings or the service of a Canadian criminal sentence, there is no broad general discretion to delay. I would therefore encourage the Committee to proceed expeditiously.

Finally, with respect to Mr. Schreiber's attendance before the committee in compliance with the summons issued on November 26, 2007, as I emphasized in my letter of November 23, 2007, the enforcement of the attendance of a witness by the Committee is a matter for the House and the Speaker to consider.

The justice minister says it is not our decision. It is a matter for the House and the Speaker to consider.

In our system of government, having regard to the separation of powers between the executive, legislative, and judicial branches of government, it would not be appropriate for the Minister of Justice and Attorney General of Canada to seek to enforce the summons of a Parliamentary Committee.

Section 108(1) of the Standing Orders of the House of Commons empowers all standing committees to call for persons, papers, or records. There is no disagreement by any person with whom I have consulted or who has advised me that we have the full authority of Parliament to summons Mr. Schreiber to appear.

If Mr. Schreiber is able to appear but fails to appear without justification, he could be cited by the House for contempt of Parliament. Furthermore, if the Minister of Justice ignores this order of Parliament and does not vary his surrender order to permit Mr. Schreiber to appear, he may also be cited by the House to be in contempt of Parliament.

In my opinion, I fully expect Mr. Schreiber to appear before us on Thursday, November 29. The ball is now in the minister's court.

I will now ask Mr. Rob Walsh to approach the witness table. He will assist me in responding to any of your questions or comments.

Julia is going to make a speakers list, so please advise me if you have any comments or questions.

Mr. Dhaliwal is first, then Mr. Hiebert, and Mr. Martin.

Yes, Mr. Martin, on a point of order.

• (1125)

Mr. Pat Martin (Winnipeg Centre, NDP): It would be useful to table the letter you are reading to help us in our questioning.

The Chair: I will undertake to provide copies of each and every letter that I and the clerk have in both official languages, but this was just received twenty minutes ago. I am not permitted to circulate documents that are not in both official languages.

Thank you.

Mr. Dhaliwal, please.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair, and thank you, Mr. Walsh, for coming to this committee meeting....

Mr. Chair, do I have the floor?

Okay, thank you.

Quickly, you said that you have sent the summons to Mr. Schreiber. Could you tell us what we are doing? What are the efforts that either Mr. Walsh or you are putting in to make sure that Mr. Schreiber comes here?

The Chair: I'm going to ask Mr. Walsh, as the parliamentary counsel, to respond.

Mr. Rob Walsh (Law Clerk and Parliamentary Counsel, House of Commons): Mr. Chairman, I don't know how much detail one needs to go into about what happened several days ago, as it may not be relevant to what's happening today in light of this recent correspondence, but suffice it to say that my office has been in

discussions with officials of the Ontario government, who have custody of Mr. Schreiber in a provincial institution presently, pursuant to an order of surrender of the Minister of Justice.

I received a copy of this letter, which you just read, Mr. Chairman, about 10 or 15 minutes ago. If it's of interest to committee, I could attempt a deconstruction of it, but perhaps it is the case that other questions are of greater interest to members of the committee.

Mr. Sukh Dhaliwal: Can I have a follow-up question?

The Chair: No, we're just going with one question.

Mr. Hiebert, please.

Mr. David Tilson (Dufferin—Caledon, CPC): You'd better make your questions long.

The Chair: Well, we have other business, as you know.

Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Just to clarify before I ask my question, is Mr. Walsh going to be providing an opening statement subsequent to these questions?

The Chair: Yes. He's just helping me to answer questions on my report of what I have done. We will then deal with motions that propose what we should do. Then Mr. Walsh will give us some guidance with respect to dealing with the witnesses. He will advise you on your legal rights and so on—that's what we started off with at the beginning of the meeting, when we read out the four things we're going to do—and then the in camera.

Right now we're just dealing with my report to the committee.

Mr. Russ Hiebert: Okay.

My first question has to do with the apparent conflict between what the justice minister is saying and what you're saying.

The justice minister, according to the letter that you read, indicates that he does not have the authority under the Extradition Act to vary the committal order. You're declaring that in fact he does. I'm wondering if either you or Mr. Walsh can clarify with us who in fact is correct.

Then I have a subsequent question, but let's start with that one.

An hon. member: Is it one question or is it multiple questions?

The Chair: I think I'm going to leave it to one question per round.

Okay, you may state your other supplementary....

Mr. Russ Hiebert: Let me just state my follow-up question then.

Does, in fact, the Speaker's warrant require concurrence from the House of Commons? That's my question to Mr. Walsh.

The Chair: That's two issues, actually. I know the Speaker's warrant one is something that we want to address very formally, but maybe we could deal with what's the status of the summons and how we enforce it.

Mr. Russ Hiebert: There's a conflict here between your opinion

The Chair: No, no....

If I may, Mr. Walsh, the Extradition Act is probably silent on what the justice minister's responsibilities, authority, and rights and privileges are. However, the real question is this: what is his responsibility as justice minister vis-à-vis an order of Parliament, which we have issued?

Basically we have the authority to ask. He's saying he hasn't got the authority to vary and yet, in fact, the surrender order under which Mr. Schreiber is currently being held is signed by the Minister of Justice and can be only changed by the Minister of Justice. It's prima facie. There's no question he can, in my opinion, vary his order. It has nothing to do with the Extradition Act.

The committee is going to have to instruct me or, in a report to the House, instruct the parliamentary counsel, the law clerk, to give us the layout, but given the velocity of events here....

Now on the Speaker's warrant, could we leave that until we have Mr. Martin—

An hon. member: I'd like his answer on the question.

The Chair: On the conflict, yes, okay.

Mr. Walsh, please.

• (1130)

Mr. Rob Walsh: Mr. Chairman, thank you.

I think I need to respond to the member's question relative to the apparent conflict made evident, it would seem, in the letter of the minister of today's date—I'm losing track of dates myself—and your letter to the minister yesterday.

Your letter yesterday did say, "we understand that it is within your authority to delay completion of that Order until other matters are resolved"—it's a reference to the Extradition Act—to which the minister is saying, correctly enough, the Extradition Act itself expressly does not give that authority.

There's a bit of dancing on words here. Your letter might well have said that is "within your power" to cause a delay. In my view, it is.

If we have to go to the Extradition Act, section 42 says, "The Minister may amend a surrender order at any time before its execution." It's not a long sentence, it's not a complicated section. That's the beginning and the end of it.

Now, one could argue—lawyers can argue about anything, as you know—what that means, but it seems to me at first blush it would suggest there is a capacity on the part of the minister to amend his surrender order.

Mr. Schreiber himself is not, we must remember, in any way guilty, in my view, of any contempt here. He has said he's willing to be here. If there's any contempt going on, it's on the part of the persons who are frustrating his ability to get here.

He's incarcerated in a provincial institution pursuant to an order of surrender. It was an order of committal by the court. We're past that

now. We're now where that's finished, and we're looking at an order of surrender.

The order of surrender by Minister Cotler at that time, dated October 31, 2004, does not have a date in it by which time the extradition is to take place.

I would add to that—not to get too elaborate—a recent decision of the Court of Appeal for Ontario in respect of Mr. Schreiber's judicial review application, where it turned down the appeal of the judicial review application. It said, in paragraph 3, that "The ultimate"—and in my view, "ultimate" is an operative word there—"decision to surrender for extradition following judicial committal for extradition is essentially a political decision."

And then later it says, "A subsequent decision by the Minister to refuse to reconsider a surrender order is subject to at least the same level of deference", that being deference by the courts. They're recognizing this is a political matter; it's not for the courts to interfere with the minister's discretion, which they're saying is of a political nature. By using that expression, the court doesn't mean to deride the nature of the decision; they're just saying it's not a judicial decision, it's not a legal decision, it's a political decision—and it makes reference to a subsequent decision.

In my view, given section 42, where he can amend his order, and given the Court of Appeal of Ontario's recognizing that he can make a subsequent decision, while it may be true that the Extradition Act does not give him the authority to delay—in my view, it's not necessary to find that authority in the act, apart from the ability to amend, which infers the same authority—it ought to be straightforward that the minister can determine when it is he shall extradite and delay, if I may use the word again, the execution of that extradition, pending these proceedings.

Now, that said, the man's in jail. You can't keep someone in jail indefinitely. Obviously, there might be serious arguments if two years from now the man's still in jail and the minister's still pondering whether to extradite. Clearly you can't keep someone in jail indefinitely. That's obviously a concern of the minister's, that he has somebody in jail. So he can't delay this indefinitely. But it's not the case, in my view, in the short time I've had to consider the minister's letter, that it is not within his power to effect a delay in the execution of the surrender order pending completion of these proceedings.

The Chair: Thank you, Mr. Walsh.

I would like to call on Mr. Martin, please.

Mr. Pat Martin: Thank you, Mr. Chairman. I'll try to be brief.

Let me simply start by saying it seems that the plan of action you've chosen to take has a fatal flaw in it. First of all, we've lost valuable days. If you start counting from Thursday, when my motion passed, that's Thursday, Friday, Saturday, Sunday, Monday, Tuesday now, and it'll be Thursday, at the minimum. That's eight days lost, when we're up against a hard deadline.

But there would be a hollow victory at best with the course of action you're recommending in that if, by some miracle, we get Mr. Schreiber here on Thursday at 11 o'clock, it will be for one day under the course of action that you've contemplated, because the extradition order would still stand and the deadline would still be there.

The course of action that I recommended from day one, and have implored you, begged you, to adopt was to go the Speaker's warrant route, with two warrants. One is to—

• (1135)

The Chair: Okay, Mr. Martin, you're getting into your motion now.

Mr. Pat Martin: Well, I do have a question. I won't debate it. The question I have is for Mr. Walsh.

Is it not true that the Speaker's warrants issued—one to release Mr. Schreiber and one to the head of the institution to cooperate and release Mr. Schreiber—would override and have primacy over the extradition date and deadline?

That's my question.

The Chair: Before you answer, I would like to offer to Mr. Martin that I did not choose to do anything.

Mr. Pat Martin: You did, quite unilaterally, Paul.

The Chair: I went—

Mr. Pat Martin: You never consulted me.

The Chair: If we look at the transcripts of our last meeting, we'll see that I was ordered and instructed by the committee to do some things, including the summons.

Mr. Pat Martin: You took the course of action least likely to succeed.

The Chair: Mr. Martin, we can check the transcripts, but I can assure everyone that I made no unilateral decisions; I have no authority; I am the servant of the committee. I believe I discharged my responsibilities precisely in accordance with the motions passed by the committee.

Mr. Walsh, you may address further, if you wish, Mr. Martin's question.

Mr. Rob Walsh: The issue isn't so much a Speaker's warrant as an order of the House. A Speaker's warrant is issued pursuant to an order of the House, and I believe it's sound law to say that an order of the House has the standing of an order of the Superior Court. It would have equal standing with, if not priority over, the order of any court affecting Mr. Schreiber.

Currently, there is no order of a court affecting Mr. Schreiber. We're now under an order of surrender.

I would take the view that, yes, the jailers—if I want to use that term, and it's not a very nice term—or the persons responsible for keeping Mr. Schreiber in custody would be obliged to respect the Speaker's warrant pursuant to a House order. Failing to do so would be potentially, or could be taken as, a contempt of Parliament by those responsible officials.

The Chair: Thank you.

Mr. Del Mastro, please.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chair.

Because we're not actually speaking with respect to his official appearance—I do have some questions on that—my first question relates back to something you said just a moment ago. I think it's very important, and I want to highlight this.

You indicated that should this stay of extradition extend for a prolonged period of time, we could in fact be giving Mr. Schreiber an argument that he's been denied due process in German court, and therefore be giving him an argument whereby he shouldn't face those charges in Germany because he was not delivered before German courts in appropriate time to face those charges.

Is that correct? That's essentially what you just said, that we're giving him a defence in Germany?

Mr. Rob Walsh: Well, no, I think you're taking what I said and putting it into a context that I didn't offer. But that's not to say that what you're saying isn't true. Ultimately it may prove to be the case, but it's speculative in nature.

All I'm saying is that when you keep anyone in jail, the onus is on the jailer, the lawful authorities, to demonstrate justification for that. You can't just go on indefinitely keeping somebody in jail without exercising proper obligations towards that individual.

Yes, at some point, Mr. Schreiber may go to court and say he's been here all this time, and he's not going through the extradition, and he's entitled to have his liberty and get bail or something so he can live a normal life, I suppose. But I didn't mean to suggest that it would necessarily give rise to arguments in Germany. Maybe it would, maybe it wouldn't; I wouldn't know.

Mr. Dean Del Mastro: It might be Mr. Schreiber's strategy.

Mr. Rob Walsh: That's only speculation. I don't know,

The Chair: I'm going to move now to Mr. Thibault, *s'il vous plaît*.

Hon. Robert Thibault (West Nova, Lib.): Thank you, Mr. Chair.

I have a number of questions. I recognize you're taking one question per round, but I hope we'll have an opportunity to ask further questions of you and Mr. Walsh.

First I just want to mention something regarding what Mr. Del Mastro said. There has been a request for Mr. Schreiber's presence in Germany for a long time, which he has been refusing, and he has been taking any measure he possibly can to stay in Canada. So I don't think he could make a speed-of-justice argument in Germany, because it's his refusal to go there that has kept him here.

I would like to ask you a question. You pointed out that the Minister of Justice has the authority and power to make him available. He is under surrender order by the Minister of Justice. The House has duly summoned him to appear at the House. We'd like him to be able to appear at the committee, maybe not just at one meeting, but throughout the process of our study. We are in the uncomfortable situation that as of December 1 the minister is threatening to send him out of the country. We understand that this is the minister's ultimate goal. Is there an authority of process by which we can...?

First of all, does the House supersede the minister, and second, is there a process to ensure that? Can we apply to the court for an injunction for a stay of extradition? Is there a tool the committee should be using at the present time?

• (1140)

Mr. Rob Walsh: Mr. Chair, I would expect that the lawyers for Mr. Schreiber might be exercising the options available to them, perhaps later this week, relative to seeking a stay of any extradition pending the application for leave to appeal being decided, and, if it is allowed, then the appeal that follows. I would expect them to be doing that. I don't think it's the House's place to be seeking a stay of the extradition order in the courts.

Hon. Robert Thibault: But the point I tried to make, Mr. Walsh, is the House has an order for his presence, or the committee does, but there is a chance the minister is refusing to make him available. He could be extradited on December 1 before the House can hear him.

Is there some preventative measures that the House committee could take?

Mr. Rob Walsh: In my respectful view, once again referring to the comment of the Ontario Court of Appeal—which doesn't surprise me, but it's convenient that they had the wherewithal to say this—the ultimate decision is essentially a political decision. So also that's what you have here. You have a situation where the House summons the witness. It wants that witness before it. In my view, it's within the power of the minister to facilitate that witness being here. If that doesn't happen, then it's a difference between the House, on behalf of the committee, and the minister, and it's handled in that context. It's not an issue that goes before the courts. It's for the House to decide and then, on the recommendation of the committee, the House may well decide to call upon the minister for some accounting or take some other measure.

The Chair: I would like to move to Mr. Hubbard, please.

Hon. Charles Hubbard (Miramichi, Lib.): Thank you, Mr. Chair.

First of all, we talk about a summons being delivered.

Mr. Chair, do we in fact know that it has been received? There's a big difference between when it's prepared and when it's received.

Secondly, I seem to understand that what Mr. Walsh is saying is that the future of Mr. Schreiber and Mr. Schreiber's appearance before this committee rests with the Minister of Justice. The courts have said that, his opinion is that, and I guess our minister is one who has to decide whether or not the summons can be fulfilled.

Mr. Rob Walsh: Mr. Chair, that is my view; it's within the power of the minister to put off effecting execution of the extradition

pending completion of these proceedings. It's his call. It's his judgment as to what he thinks is appropriate.

I don't believe it's fully correct to say that since the Extradition Act provides him with no authority to delay, therefore he can't delay. It's true the Extradition Act does not expressly provide that authority, but it does give authority to amend a surrender order and the court has indicated it's a political decision, and the order itself has no date in it. To me, an order that has no date in it is an order that's pending execution at the discretion of the person having the authority to make the order.

The Chair: Thank you kindly.

Mr. Tilson, please.

Mr. David Tilson: I want to be clear on the terminology that's being used. I've heard the word “summons”. I've heard the word—

Hon. Robert Thibault: I think there is a point of order, Mr. Chairman.

Hon. Charles Hubbard: Mr. Chair, on a point of order, what I asked was whether it was received.

Now, we can prepare a summons, and we can ask it to be sent, but has it been received?

That's what I asked the chair.

The Chair: Mr. Tilson, would it be all right if we cleared this point up before we go to you? Would that be okay? I think it might be helpful.

Mr. Walsh, please.

Mr. Rob Walsh: I would think the clerk might be in a position to indicate whether there's confirmation of receipt.

The Clerk of the Committee (Mr. Richard Rumas): Mr. Chair, the summons was in fact faxed to the superintendent of the Toronto West Detention Centre yesterday, because he has to screen all of Mr. Schreiber's incoming mail. The summons was also sent to a lawyer for the Ontario Ministry of the Solicitor General.

The original went overnight to the detention centre. I don't have any word on whether it was hand delivered, but I presume it was by the bailiff this morning.

• (1145)

The Chair: I'll go back now to Mr. Tilson, please.

Mr. David Tilson: Yes, I heard different terms being used. I've heard the words “summons”, “order of surrender”, “order received”, “Speaker's warrant”, “order of the House”. Justice Minister Nicholson talked about “approval of the House”.

So something's been sent—the summons, I assume—to Mr. Schreiber, and you're saying he has to appear based on that document. Maybe you didn't say that, but you can clarify it.

My question is this. With all of these terms, is that enough or is Mr. Nicholson right that this matter has to go to the House before any Speaker's warrant can be issued, that there must be an order from Parliament, from the House of Commons, as opposed to this committee, for...? I gather that what's being said is that it's a separate order, a separate document.

Mr. Rob Walsh: Mr. Nicholson, in his letter of November 27, points out that this process you describe...and I would agree that if there's a Speaker's warrant to be issued for this purpose, it would be done pursuant to an order of the House. But he also goes on to say, "In our system of government, having regard to the separation of powers...."

Well, that's true, but it's not the absolute separation that the Americans have. We have ministers of the crown sitting in the House, so we have a fusion of the executive and the legislative, to an extent, in the House. That's the genius of the parliamentary system of government, and it is meant to enable there to be a working out of the exercise of the respective powers in a way that enables public business to be handled effectively.

Mr. David Tilson: That wasn't my question.

Mr. Rob Walsh: Oh, I'm sorry.

Mr. David Tilson: Could I rephrase it, perhaps?

The Chair: Go ahead.

Mr. David Tilson: My question was, does this matter, before it goes any further—and I don't mean to contradict you—

Mr. Rob Walsh: That's fine.

Mr. David Tilson: —have to go to the House? Does this matter have to go to the House, where Parliament makes an order on a motion directing the Speaker to issue a Speaker's warrant?

Mr. Rob Walsh: In parliamentary terms, Mr. Chairman, the matter from here would go to the House.

Mr. David Tilson: Am I allowed to continue, Mr. Chair?

The Chair: Carry on. I think it's relevant, and I think members will want to hear this.

Mr. David Tilson: So if this committee does something, the next step.... This is all new to me, quite frankly, and I have a feeling it's new to everybody. After this committee makes a decision to do something, as it has already done—well, one side has—then the matter has to go to the House for a debate?

Mr. Rob Walsh: The committee would make a report to the House and the matter would be handled by the House in such a manner as the House considers appropriate.

Mr. David Tilson: So that would be an order directing the Speaker to issue something—namely, a Speaker's warrant. Is that where that term comes in?

Mr. Rob Walsh: Yes.

Mr. David Tilson: Okay.

Thank you.

The Chair: Members, I would like to repeat that with regard to everything I have done and reported to you, you will find the motion and reference and discussion in the transcripts of our last meeting. I

have not done anything beyond what is in those transcripts. That is the order of this committee.

So I want to assure all members that this is the case. I'm the chair. I don't debate, and I don't have a position. I'm here to help the committee facilitate its proceedings.

Mr. Rob Walsh: May I please clarify my answer to the member?

The Chair: Mr. Walsh wants to clarify.

Order, please.

Mr. Walsh would like to clarify his previous answer.

• (1150)

Mr. Rob Walsh: You may recall, Mr. Chairman, my answer to the member was that in parliamentary terms, the process he described is applicable. But this debate today, in view of these letters, is about the extra-parliamentary process, which may be as equally effective in bringing the results. But in parliamentary terms, the member is quite correct, from here the business goes from the committee to the House and the House takes care of it. It might issue a Speaker's warrant.

The Chair: Mr. Walsh, what the committee did, it was authorized to do under the Standing Orders, and they have legal foundation?

Mr. Rob Walsh: That's correct.

The Chair: And the only impediment at this point would be for the Minister of Justice to amend his surrender order.

Mr. Rob Walsh: I don't know if I would call it an impediment, but there's that route by which the minister could facilitate this process, in my view.

The Chair: Thank you.

We'll go to Madam Lavallée now, please.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chairman.

First, could you immediately table the letter that you received from the Minister of Justice, Mr. Nicholson, and that you read to us this morning, even though it has not yet been translated? I'd like you to file it immediately and to distribute it, then send us the translated version as soon as possible.

[*English*]

The Chair: You were asking to circulate what I have now and to provide the committee with a translated version as soon as we get it —

[*Translation*]

Mrs. Carole Lavallée: Exactly.

[*English*]

The Chair: Is that okay with the committee?

Some hon. members: Agreed.

The Chair: I will ask the clerk to arrange that immediately.

[*Translation*]

Mrs. Carole Lavallée: I may need unanimous consent, Mr. Chairman.

The Chair: It's unanimous. Absolutely.

Mrs. Carole Lavallée: Thank you very much.

I'm going to explain, in somewhat simpler words and knowingly, what you've just explained. You said that, starting today, so that we could hear Mr. Schreiber's testimony on Thursday morning, the committee Chair must first ask the Speaker of the House to ask Mr. Schreiber to come and testify. Did I understand correctly? No.

Can you explain it without using the legal jargon, simply? What has to be done for Mr. Schreiber to come and testify here on Thursday morning and for him to stay here long enough to give his testimony? What steps must be taken, one after the other?

Mr. Rob Walsh: There are two options for doing that: either the minister takes action outside of Parliament, or the committee can table a report in the House saying that it needs an order from the House to ask Mr. Schreiber and the responsible persons concerned to attend a committee meeting on November 29. If the House of Commons agrees to issue that order, I imagine the Speaker of the House of Commons, Mr. Milliken, will sign a warrant to go to the detention centre in Toronto, which has the authority to ensure that Mr. Schreiber is here on Thursday morning.

Mrs. Carole Lavallée: And the rest of the extraparliamentary procedures, as you said, will operate normally. If we do what you propose we do, there shouldn't be any problem in having Mr. Schreiber be here on Thursday morning to testify. Did I understand correctly?

Mr. Rob Walsh: In my opinion, since this is a political decision, the minister has the power to say no and to act on the order for extradition to Germany to which Mr. Schreiber is subject.

Mrs. Carole Lavallée: If I understand correctly, you're telling me that the Minister of Justice—

[*English*]

The Chair: Madame Lavallée, order, please.

I have five more people who have indicated that they would like speak. We're almost halfway through our meeting, and we still have, I believe, four motions to deal with.

I'm in the hands of the committee. I can continue to receive questions on this from these five people, or we can move on to the motions. I think that everybody, other than Mr. Wallace, has had one question.

An hon. member: I have a question for you.

The Chair: Yes, that's where we are right now.

I'm going to suggest that I deal with the five people who are on the list right now, and then we will move to the motions. I'm pretty sure that the questions we're asking now and debating now actually will be relevant in the discussion of the motions.

I don't want to frustrate anybody, but I think we should move on, because you could talk about this for another hour. I want the committee to have the opportunity to make specific inquiries related to what I did. We are moving a little forward on what we should do, so as we slowly get there, I think we should move on.

I'm going to take Mr. Dhaliwal, Mr. Thibault, Mr. Martin, Mr. Hiebert, and Mr. Wallace, and then we will move on to the motions.

Is that acceptable?

An hon. member: Yes.

The Chair: Thank you.

Go ahead, Mr. Dhaliwal.

• (1155)

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

Through you to Mr. Walsh, are these summons from this committee paramount to the Extradition Act? You said that the provincial authorities have no say in these summons and that Mr. Nicholson has to make a political decision.

If Minister Nicholson does not make the decision this committee wants, do you think it is appropriate for us to go to the House of Commons to strengthen this committee's position on Mr. Schreiber's extradition before we finalize the whole report on this issue?

Mr. Rob Walsh: Mr. Chairman, that's where the law meets politics. It's not my competence to comment on what political course of action might follow from a certain legal action or from a lack thereof. I'm not ducking the question.

Mr. Sukh Dhaliwal: Going to the House of Commons, that's not political. Could you tell us if it will strengthen our position if we take this issue to the House of Commons?

Mr. Rob Walsh: It would strengthen the position in the sense that the House of Commons as a whole speaks with larger authority than perhaps a committee of the House does, with the greatest respect. In that sense, ostensibly it would strengthen the position vis-à-vis outside authorities, yes.

The Chair: Thank you.

Mr. Thibault, please.

Hon. Robert Thibault: Thank you, Mr. Chair.

I hope that Mr. Walsh will remain present for the rest of the meeting. He's been most informative.

What I'm grappling with along the same line, Mr. Walsh, is the question of what trumps what, and what has more power in order of precedence before the court. Is it simply a political game, or a power struggle, or a power match?

We have a summons by the committee. It's incumbent upon the minister, and he has the authority and power to assist us with that summons; or he can do as he is doing now—refuse to assist and just say that he won't send him out of the country before December 1. If I understand correctly, the only option we'd have under it is that if he does it, we can find him in contempt, or we can seek to find him in contempt, of Parliament.

The we can take this as an order the House. We can make a report of this committee to get an order of the House. That would have more power, as you suggest, because it would speak from a larger group. The House of Commons has more clout than does a single committee. But if I understand everything you've told us, we still remain at the same place: it's still a political decision by Mr. Nicholson, and there's no definite law. If I understand what you're saying, it remains a political question. If he refuses to obey the order of the House, again, we could at best seek to find him in contempt of Parliament if Schreiber would be in Bavaria and not available to the committee.

If you look at an order to surrender under the Extradition Act or under ministerial powers, are you saying there's no defined order of priority, order of precedence, or magnitude of power that sets Parliament above a ministerial order?

Mr. Rob Walsh: The Extradition Act doesn't take into account—as most statutes don't—what legal powers might be exercised by the House of Commons or its committees vis-à-vis the powers discussed under the statute. It's just not dealt with. So in that sense you're bringing into play considerations that simply aren't contemplated by the Extradition Act, and that's not unusual.

I think I'm answering your question in saying that an order of the House has the standing legally of an order of the Superior Court. Officials have to respect an order of the House much as they would respect an order of the court.

By that process, what you'd be doing is you would be serving a legal document on the superintendent of the Toronto West Detention Centre. In our view, he'd be obliged to respect it, notwithstanding the fact that he has an order of surrender from the minister directing him to hold the person in custody until the surrender is executed.

Nonetheless, in the face of this order, in my view, he or she would be obliged to respect that order of the House, deliver the person here, and perhaps maintain custody up to the doors of the precincts. He would then hand the individual over to the Sergeant-at-Arms to provide to the committee. After the committee was finished that day, he would return him to the custody of the superintendent, return him to the custody of the provincial authorities, and perhaps bring him back on another occasion, if the committee wanted him on a second occasion. It depends on the terms of the order.

• (1200)

Hon. Robert Thibault: Could I seek, through you, Mr. Chair, clarification on his answer. You will you make the decision on whether you can put it forward or not.

The Chair: I think we agreed we were going to hear from the five people. I understand there could be a lot of debate here, Mr. Thibault....

Order, please.

All right, go ahead.

Hon. Robert Thibault: I'll suggest to you the clarification I seek, and you can decide whether or not to put it to Mr. Walsh.

Mr. Walsh has indicated that an order of the House would be equivalent to an order of the Superior Court, and this is what I would

ask: is the summons of the committee equal to an order of the Superior Court also?

Mr. Rob Walsh: In the court context, a subpoena is a species of a court order but it's not the equivalent of an order by the court. Failure to respect a subpoena can give rise to a charge of contempt of court. In a similar fashion, a summons by a committee does not have the standing of an order of the House or an order of the court, but is a legal document and gives rise to legal obligations. Failure to comply with a summons could have legal consequences, but in the parliamentary context.

The Chair: Thank you.

I want to go to Mr. Martin, please.

Mr. Pat Martin: In the interest of time, Mr. Chairman, I'm going to pass because I think Mr. Walsh has answered the question I had.

The Chair: Thank you, Mr. Martin. We'll get to your motions very shortly.

Mr. Hiebert.

Mr. Russ Hiebert: Thank you, Mr. Chair.

I think most of my questions have been answered as well.

Just to clarify, the committee does not have the weight of the House of Commons in legal terms—not in political terms—with the summons it can issue. Therefore the authority we gave to the chair last week to proceed with requesting that Mr. Schreiber appear before this committee is insufficient at the present time. Is that what you're stating?

Mr. Rob Walsh: It depends on what you're attempting to do. It's not insufficient in law to create a legal obligation to attend, but it may be insufficient to go out and have someone arrested for not attending. You may need an order of the House, a Speaker's warrant, which in effect directs that the person be forcibly apprehended and brought here. But short of that, the summons is legally effective to cause someone to be legally obliged to attend before the committee.

The Chair: Thank you.

Mr. Walsh, under Standing Order 108(1)(a), the committee is empowered to call for persons, papers, and documents by the House of Commons.

Mr. Rob Walsh: That's correct.

The Chair: Thank you.

Mr. Wallace, to complete.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair. I'm going to direct my question to you, and you can help if need be.

I've gotten a little bit confused in terms of where we've gone on this. I think we've gone further ahead.

The motion that you were working under, as you say you are, said that it would be today “and/or” Thursday that Mr. Schreiber was asked to appear here. We have submitted a summons to him, prior to the December 1 date, which he hopefully received this morning in writing.

So if he arrives here on Thursday and we have our discussion with him, have we not then met the obligations of that previous motion, and all this discussion about whether we need to extend his stay or not is moot, because he is here on the dates that this committee actually passed that he be here? We actually passed that it would be either today or Thursday, and it was “and/or”.

Do we know that he is not showing up on Thursday?

The Chair: Either could happen.

I would like to refer you to the summons, which I signed and which we executed, pursuant to the instruction of the committee....

Order, please.

There's far too much noise in here, Madame Lavallée.

Yes, we dealt with “and/or” the 27th or the 29th. The committee expressed its concern that two hours at a meeting may not be enough

Mr. Mike Wallace: It was not included in any motion, though, Mr. Chair.

•(1205)

The Chair: Excuse me.

—and that more time may be needed. It's not in any motion, but we had also discussed that having Mr. Schreiber have an opportunity to have access to his papers and to do a review would be helpful to all. He would be more able to fulsomely—

Mr. Mike Wallace: That's your interpretation. It wasn't in the motion.

The Chair: Mr. Wallace, I'm going to let you rebut, have a second crack at me, but let me just finish off, because I think it's important.

We discussed that it's the intent of the committee that he should have had some time. It appears that he's not going to have very much time. The committee may decide that we want to keep him more, and it is the decision of the committee whether we want to go further. But I can assure you that the subpoena or the summons that I issued, that he'll appear no later than November 29 at 11 a.m. at a location to be determined, also includes the phrase, “and to remain in attendance until duly discharged”.

It basically means that this committee, under this document, can decide to call him back as long as it feels that it's important to have his testimony. That is still the committee's decision. We have not taken that decision, but it is up to the committee.

Mr. Mike Wallace: Thank you.

So my point, Mr. Chair, which—

An hon member: [*Inaudible—Editor*]

The Chair: It's coming. We indicated that all the documents—

Mr. Mike Wallace: He was interrupting my speaking—

The Chair: Yes, I'm sorry, Mr. Wallace. Please go ahead.

Mr. Mike Wallace: My view is that I think the committee has done the right thing. We've summoned the individual. Let's assume that he'll meet the summons. There was a discussion about whether

he gets to go home and change and look at his documents, but he seemed to have his documents to do his affidavit.

If he's here on Thursday as we requested with the “and/or” piece in the motion, and if two hours is not long enough, I think it's up to the committee's obligation to extend the meeting. We have him out of jail; we have him here. We can extend the meeting all day, if we want to talk to him all day. It has nothing to do, at this particular moment, with the special warrant piece or a motion from the House. I think we can do our job with Mr. Schreiber if he agrees to appear.

If he does not agree to appear on Thursday, then I think this committee has an issue.

The Chair: Thank you, Mr. Wallace.

Of course, the committee is the master of its own destiny. It can, as a consequence of our discussions, decide that it would like to have an opportunity to recall Mr. Schreiber after Mr. Mulroney appears. That is also a possibility, but that decision has not been taken. It is a subsequent decision of this committee.

We have now finished discussions specifically about my report, but if any members have any questions for me for clarification or if they require any information whatsoever, please ask. You can have anything I have. I have no secrets, no notes, that you can't have. It's open.

Now I would like to move to our motions. We're going to have a little difficulty here—

An hon. member: Why?

The Chair: Because I've had some preconsultation, and....

We have received six motions in total. I am advised by the clerk that the final two from Madame Lavallée have not had 24 hours' notice. For us to consider them, the committee would have to give its consent. But as is our practice, I asked the committee for its concurrence. The committee, I believe, agreed that we would deal with the motions in order of the date and time they were received.

So the first motion to be addressed is a motion from Mr. Pat Martin. I think he knows which one it is. This is to deal with the Speaker's warrants.

Is that correct, Mr. Martin? Are you prepared to move that motion?

Mr. Pat Martin: Yes, I am, Mr. Chairman.

•(1210)

The Chair: Thank you. You have the floor.

Mr. Pat Martin: Thank you, Mr. Chairman.

It's my firm belief that as interesting as this academic exercise has been, the plan of action undertaken so far has failed to yield the desired results. As evidence of that, Mr. Schreiber is not here today. I believe there are fatal flaws in the plan of action as it currently stands.

Therefore, I would like us to switch to plan B, which is the motion that I put forward, and then I would like to speak to the motion very briefly.

I move: That this Committee directs the Chair to immediately contact the Speaker of the House and urge him to issue two Speaker's Warrants, one to compel Mr. Schreiber to appear before the Committee, and another to compel the head of the institution where Mr. Schreiber is currently in custody to turn Mr. Schreiber over to the custody of the Speaker. Further, that this Committee directs the Chair to obtain agreement from the Speaker that arrangements will be made so that a) Mr. Schreiber can have continuing access to papers which are in his possession; b) Mr. Schreiber be able to appear before Committee in business dress and without obvious security measures; c) that Mr. Schreiber be brought to the Committee as required by the Committee and for so long as the Committee may require his appearance as a witness. The Committee recommends to the Speaker that guarded house arrest be considered an appropriate arrangement.

Mr. Chairman, I would like to speak to that just briefly to explain four brief points. It is less than one page.

First of all, Mr. Schreiber may want to attend voluntarily, but he is in custody, and he has no control of his movements. So the head of the institution where Mr. Schreiber is confined has no authority to permit him to attend committee meetings or to permit him to attend out of custody, and we believe that only a Speaker's—

Mr. David Tilson: I have a point of order.

The Chair: I apologize, Mr. Martin, but a point of order has to be recognized.

Go ahead, Mr. Tilson, please.

Mr. David Tilson: Mr. Chairman and Mr. Martin, as I understand what has just been said by Mr. Walsh—

The Chair: Mr. Tilson, what is your point of order? If this is debate, I will hear from you.

Mr. David Tilson: I'm trying to make it, if you'll let me speak.

The Chair: Please indicate the nature of the point of order before you—

Mr. David Tilson: It's out of order. What I am trying to say is that the motion is out of order.

The Chair: All right, please speak to the point of order that this motion is out of order.

Thank you. That's in order.

Mr. David Tilson: Mr. Chairman, as I understand what Mr. Walsh has said to the committee, the process that is to follow—

Mr. Gérard Asselin (Manicouagan, BQ): On a point of order—

The Chair: You can't have a point of order on a point of order, Mr. Asselin.

Please, let's deal with these in an orderly fashion.

Mr. Tilson, please, I want you to continue. Finish your comments on your point of order.

Mr. David Tilson: As I understand the process, Mr. Chairman, the committee, through you, brings a motion to the House asking the House to direct the chair to issue a Speaker's warrant. That's what I understood the process to be from Mr. Walsh.

This motion doesn't say that.

That is the appropriate procedure. That is the procedure of this place, of Parliament. The motion says that “this Committee directs the Chair to immediately contact the Speaker of the House and urge him to issue two Speaker's Warrants”. If I am interpreting what Mr.

Walsh says, the Speaker can't do that. The only way the Speaker can do that is on the direction of the House. That isn't what this motion says.

I submit, Mr. Chairman, that the motion is out of order.

The Chair: Thank you.

Mr. Walsh, is there anything you have to offer on this in terms of the process and whether what Mr. Martin's motion prescribes would be entertained?

Mr. Rob Walsh: I couldn't comment as to whether the motion is or is not in order as a procedural matter, but at a more substantive level, to the extent the motion proposes that you, as chair, would simply speak to the Speaker about getting warrants issued, I think that would not be possible, given what the procedure requires. Now, whether that makes the motion out of order or not, I don't know.

The Chair: I have no further speakers on the point of order, so I want to go back to Mr. Martin.

The clerk advises that, in any event, we would probably have to do a report to the House by this committee—hear me out, please—which we could get today. We would have to table it in the House. But routine proceedings are over for today, so we couldn't do it until tomorrow after question period. We would indicate on the tabling that we urged the Speaker to deal with it expeditiously.

It is a process that is well known to you. This motion, as it stands, does not prescribe a process that is in order, therefore I have to rule the motion out of order.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, I have a point of order.

If there were unanimous consent, you could no doubt table your report in the House today. Obviously the Bloc québécois will agree to that filing.

An hon. member: First, there has to be an agreement between the parties.

[*English*]

The Chair: Thank you.

Now I have Mr. Walsh.

●(1215)

Mr. Rob Walsh: On your point, I'd recommend, if I'm reading it correctly, page 130 of Marleau and Montpetit seems to enable an individual member to rise and raise a point of privilege arising out of a report.

This report of the committee was tabled today. Notwithstanding the fact that routine proceedings were not happening, another member might rise and make a point of privilege based on what's set out in that report, if it's tabled. Now, if it's not tabled—

The Chair: [*Inaudible—Editor*]...Mr. Martin to make his request that he had proposed in his motion.

Mr. Rob Walsh: Yes. You'd have to have the report tabled, however, and if—

The Chair: I think the committee will agree that we are going to have to table the report, pursuant to this meeting.

Mr. Rob Walsh: But if you're past routine proceedings, you may not be able to get it tabled until the next morning, as you said.

The Chair: Yes.

Mr. Martin, I'll hear from you.

Mr. Pat Martin: With that information, Mr. Chairman, I would look for friendly amendments that might accommodate your concerns.

I'm not going to enter into a debate about this, but I don't necessarily agree that you couldn't simply approach the Speaker. There's very little precedent dealing with this type of motion, so we don't know that for a fact; we have opinions on both sides.

I would be willing to consider friendly amendments to the effect that would make this possible, and then I'd like to finish my comments in defence of the motion.

The Chair: Order, members.

We can only recognize members who are authorized members of the committee.

I want to respond to Mr. Martin.

I do understand the predicament here, but I have received from the clerk and from our parliamentary counsel and law clerk that the process prescribed in this motion is not a permitted process. It doesn't work. And to pass it would have no effect whatsoever. We need to find an alternative. Of course, the member also knows that there is no reference whatsoever, in the rules of Parliament or the procedures, to a friendly amendment.

So I've ruled it out of order. I'm going to move to motion two....

It's over.

Is someone rising on a valid point of order, not to move a motion, not to debate something, but on a point of order? If so, indicate so right now.

An hon. member: It's a point of clarification, Mr. Chair.

The Chair: You want to ask questions.

I would recommend that if members have questions to please approach the clerk and ask their questions.

Madame Lavallée, are you moving a point of order, and it is, in your view, in order? If you're not going to debate, please....

All honourable members have the right to do this. I will recognize you. I would ask you to please state the nature of the point of order first, and then you can describe the details. Could you do that, please?

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, first I have a question to ask. I thought I understood...

The Chairman: No.

Mrs. Carole Lavallée: But I didn't hear. Mr. Chairman, I want to know...

The Chairman: Ms. Lavallée...

Mrs. Carole Lavallée: But, Mr. Chairman, I didn't hear what you said.

[*English*]

The Chair: Madame Lavallée, I want to help you, I do. I want to help you....

Order, please!

I want to respect the rights and privileges of all members, but if I give latitude to any one member, then I'd lose the confidence of the committee. I'm sorry, I cannot entertain this. We don't have a point of order.

The second motion is also by Mr. Martin.

Do you care to move that motion, Mr. Martin?

Mr. Pat Martin: There are four motions.

The Chair: Could the clerk advise what is the next motion that has been duly received. Is this the televised thing?

Mr. Pat Martin: No, I don't need to move it.

The Chair: You don't want to move that. Thank you.

An hon. member: Did he withdraw it?

The Chair: He did not move it, so he can't withdraw it.

At the last meeting, Mr. Martin....

Order! Order! That means we have to keep decorum here.

Mr. Martin, at the last meeting, the committee passed a motion for the members to submit a preliminary list of witnesses that they were suggesting—preliminary. As a consequence, it is fully contemplated that members will continue, as the process moves forward, to have an opportunity to add more suggested witnesses for the consideration of the committee as long as that order still stands.

I believe this one is moot. Would that be okay? Do you want a final list? This would say you have to have a final list by November 29.

•(1220)

Mr. Pat Martin: No, it says the opposite, actually, Mr. Chairman. I was worried that the motion passed the other day did read that it was a final list, and it's my intention to make—

The Chair: No, it's preliminary. Your point is—

Mr. Pat Martin: Well, as long as it's abundantly clear that information gleaned through testimony may trigger the need for further witnesses....

The Chair: You're absolutely right, Mr. Martin, and let me assure you that it is a preliminary list. We will not close off that list so long as members can make reasonable argument that another witness or a return of a witness would be appropriate for us to discharge our responsibilities under the order. Is that okay?

Mr. Pat Martin: Yes.

The Chair: The final motion by Mr. Martin is with regard to our subcommittee, our steering committee on agenda and procedure.

Are you moving that motion, Mr. Martin?

Mr. Pat Martin: Yes, I'd like to move the motion that the subcommittee meet to develop a plan contemplating extended hours for each hearing each week; that this committee sit when the House is not sitting, so that hearings on the current topic before the committee can be concluded and a report transmitted to the House in a timely manner; and that the subcommittee report back to the committee at the beginning of its hearing on November 29.

The Chair: Okay, that's in order. It's a procedural recommendation and a motion that is in order.

Do you want to speak any further to it, Mr. Martin? I think it's self-evident.

I have Mr. Hiebert, and then Mr. Thibault.

Mr. Russ Hiebert: Thank you, Mr. Chair.

Although I appreciate the concern that Mr. Martin is raising with this motion, I would suggest, in light of the fact that we only have two witnesses scheduled at this point, there's simply not a need to extend the hours of the sitting at this time. I would suggest that we table this motion until it's necessary.

The Chair: Mr. Thibault, please.

Hon. Robert Thibault: I support the intent of the motion, Mr. Chair. I have concerns about extending the hours of sitting of the meetings while the House is in session, because all of us are working very hard to try to balance our schedules and it becomes very difficult.

However, I agree with Mr. Martin's motion, in that while the House is not sitting we could have some special sessions. We did that on the public accounts committee when we were studying the sponsorship program. It proved to be quite valuable because you can have days with six or eight hours of sitting in the day. You can have a lot of witnesses go through. So I think coming in January and doing a couple of weeks, or at least one week or 10 days of sittings, we could go through a lot of witnesses.

While the government side might find that the list is rather short of witnesses, I can assure them that it won't be. I think there are many people who should be heard on this. We intend to put a substantive list forward and I'm sure that the government side will have some members that they would like to have heard. So I would recommend that we do sit.

As for the day and the dates, I'd rather not see it in the motion. I think the steering committee could work towards that, if the intent is understood that we would sit for a seven- to ten-day period during the time Parliament is in recess.

The Chair: Mr. Hiebert.

Mr. Russ Hiebert: Just a point—my motion was to table this.

The Chair: That's out of order.

An hon. member: The motion to table is not out of order.

The Chair: You can make a motion to withdraw or to put the vote and defeat it. You can make a motion to amend. It's properly before us, and if you want to challenge whether or not it's in order, or whatever, that's fine. We're dealing with this matter. It's duly moved. If you insist on having a vote on whether or not we should continue

considering this right now and deal with it at some future date, I'd be happy to have a vote on that. Is that what you're—

● (1225)

Mr. Russ Hiebert: That was the motion I was putting forward, that we table this.

The Chair: Order.

The clerk concurs that the motion was duly put and was in debate already. It was deemed to be in order, and it was under debate. When you are under debate, a motion to table is out of order. I will not put that question. I'm going to move on now. Are there further speakers on this?

Mr. Thibault still has the floor. Thank you.

Hon. Robert Thibault: Therefore I would propose the amendment that we would strike, in the second line, "meeting for two hours twice a week", and strike, in the fourth line, "each hearing, extended hearings each week", so that the full motion would read: That notwithstanding the usual format of the Committee, that the Committee subcommittee on agenda and procedure meet today 27 November to develop a plan for extended hours and sitting when the House is not sitting so that hearings on the current topic before the Committee can be concluded and a Report transmitted to the House in a timely manner, and that the subcommittee report back to the Committee at the beginning of its hearing on 29 November.

The Chair: Thank you.

That amendment is in order. We have further speakers.

Mr. Wallace, go ahead, please, either on the amendment, or generally on the whole motion.

Mr. Mike Wallace: Are you going to let me speak on the whole thing?

The Chair: I'll let you speak on the whole thing. You're a good guy.

Mr. Mike Wallace: Thank you, Mr. Chair.

I don't have a list of other speakers to this, or other witnesses that we're having. I have no idea how long this would last. I'm confused by the part that says "when the House is not sitting". Is that the Christmas week? It doesn't say here. Obviously that's what the subcommittee would deal with.

I think that once we, as a committee, see what the list is like in terms of the number of witnesses, and see how often we need to meet—which I think will happen in the next week or two—then a subcommittee could get together and look at what we would need to do.

Why are we putting this forward today when we have no idea what our witness list is going to look like and how long it's going to be? The government is committed to and in support of all parties in a public inquiry. Are we duplicating a public inquiry by doing this?

We all have our Christmas break coming. I can tell you mine's relatively booked, but one of those weeks.... I would like to see what the witness list is first before we indulge the subcommittee's efforts in finding any extra time needed to make that happen.

Thank you, Mr. Chair.

The Chair: Mr. Dhaliwal, please.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I would like to agree with Mr. Thibault, because this is a very important matter. Over the weekend, I was meeting my constituents. They watched me on TV and they were asking what was happening with this committee. This committee is often of interest to British Columbians and also to Canadians.

The reason I personally support this motion is that it will give us at least a plan for our holiday season, so we know what is coming, and so that we can plan, because we do not want to plan a day at a time. We know that this will take longer than that. I personally will support this motion.

The Chair: Madame Lavallée, *s'il vous plaît*.

[Translation]

Mrs. Carole Lavallée: Thank you very much, Mr. Chairman.

First, I'm quite satisfied with Pat Martin's motion as it is worded. However, there is some urgency. The urgent need to hear from Mr. Schreiber and his eventual departure were important for me.

Second, I thought it would be normal for us to extend our meeting times to allow Mr. Mulroney to respond before the holidays. I don't see the urgent need to do that in January, but, if my colleagues convince me that it is urgent to do so in January, before Parliament returns, that will be fine. Essentially, I have nothing against it, but I would like us to take all the necessary time between now and the holidays to hear the testimony of Mr. Schreiber and Mr. Mulroney.

[English]

The Chair: And finally, Mr. Del Mastro.

This will be the final one. Then we'll deal with the votes on the amendments.

Mr. Dean Del Mastro: Thank you, Mr. Chair.

Mr. Walsh, I have a very specific question. This motion that we're currently debating lends to the understanding that there is urgency that this committee must deal with all of this forthright and get as many people in as possible, that we'd better not do things like seniors clinics, or passport clinics, or tax clinics in our riding, or any kind of constituent support, we'd better be here because this is really important stuff we're dealing with.

But in 2004, before the public accounts committee, you expressed concern with the redundancy of a committee study and a public inquiry going on at the same time....

Hold on, this is important.

I need an opinion on this motion.

• (1230)

The Chair: Order, please.

We're dealing now with Mr. Martin's motion.

Mr. Dean Del Mastro: No, with due respect, Mr. Chair, I have the floor, and I have the right to raise my concern.

The Chair: Please understand that Mr. Walsh is here to assist in terms of answering the questions. You're moving too close to debating with Mr. Walsh.

Mr. Dean Del Mastro: I am not debating with Mr. Walsh, I'm asking Mr. Walsh for an opinion.

The Chair: But the motion does not involve Mr. Walsh, it involves Mr. Martin.

Mr. Dean Del Mastro: I'm not suggesting it does, nor did I.

The Chair: It's Mr. Martin's motion that the steering committee effectively consider a plan to have, if we need them, extended hours. It's not necessarily that you must have extended hours, but the steering committee would consider a plan, probably consult with all of the members, to find out what's possible and come back with a recommendation. As you know, what the steering committee reports back to this committee is not binding, it has to be adopted, or any part of it adopted, by the committee—it's just rather than us taking up all our time here.

So I would ask you respectfully, please let's deal with the intent of the motion. I'll give you some latitude—

Mr. Dean Del Mastro: I am dealing with the intent of the motion, because the motion is putting forward that there is urgency. It proposes that we extend hours, that we extend dates, that we come back over Christmas break. That's what the motion is, that there is urgency. Absolutely that's what the motion is saying.

In my personal opinion, all of the parties screamed for a public inquiry. There is a public inquiry and that is going to commence. The outlines for that public inquiry are going to be tabled prior to us returning. We'll know what that is and certainly once that is set this committee can proceed in an organized fashion and might, who knows, actually produce a report that has some value.

I just cannot understand the urgency that's being put forward. If this isn't a witch hunt, and this motion isn't trying to support the ongoing commencement of a witch hunt, then I don't understand what the motion's brought forward for.

I will be voting against the motion.

The Chair: Okay. Thank you kindly.

I believe the motion is self-evident. I think what we're going to do, first of all, because we did have an amendment, is ask the clerk to clearly advise the committee members what the amendment is and exactly where it goes in this motion, just so that you are clear what we are voting on. Is that acceptable?

Mr. Clerk, would you please do that.

The Clerk: Thank you, Mr. Chair.

Monsieur Thibault moved—this is subject to his correcting me—that in the second line we delete the words “meeting for two hours twice a week”, and in the end of the third line delete “for”, and on the fourth line “each hearing, extended hearings each week, and”.

I believe we have that correct, Mr. Thibault? Those are deletions.

The Chair: Yes, they're all deletions. There are no insertions.

Does everyone understand the amendment?

Mr. Mike Wallace: I've scratched out what you told me. Could you read it now, as scratched out?

The Chair: You want to know, if the amendment passes, how it would read. That's fair enough.

Mr. Clerk.

The Clerk: The full motion, with the amendment included, is that it is moved by Pat Martin from Winnipeg Centre:

That notwithstanding the usual format of the Committee, that the Committee subcommittee on agenda and procedure meet today 27 November to develop a plan for extended hours and sitting when the House is not sitting so that hearings on the current topic before the Committee can be concluded and a Report transmitted to the House on a timely manner, and that the subcommittee report back to the Committee at the beginning of its hearing on 29 November.

The Chair: Order, please.

I want to take a moment, please.

Members have heard what the motion would say if the amendment carries, so I will now call the question on the amendment of Mr. Thibault, as explained to you.

(Amendment agreed to)

• (1235)

The Chair: So that is unanimous.

Now the motion as amended; I think we've had enough here.

(Motion as amended agreed to)

The Chair: First of all, I want to thank the committee very much for giving me the latitude to make my report and to have a round table of questions. Equitably, it shows good faith on behalf of all members. I think it was productive, and nobody was worried about equity. Everyone was given a fair opportunity. So I thank you for that consideration.

As I indicated in my opening remarks, what I care to do now is to have Mr. Walsh—because I fully expect Mr. Schreiber to be here on Thursday—to provide us with some words of wisdom, which he in fact provided to the Standing Committee on Government Operations and Estimates when we were considering the case of George Radwanski, former privacy commissioner. We were in the in camera hearings dealing with matters of privilege, which ultimately led to Mr. Radwanski leaving that post.

It was extremely helpful to the committee members then, and I think his advice to us, his thoughts to us, would be helpful, so that we understand what the boundaries are of our questions, given the mandate of the committee and the order, and also some of the legal rights and privileges of us and others appearing before us, etc. I think the knowledge of that is going to be extremely important.

At this time, I'm going to move to Mr. Walsh to give us some advice. After he gives a brief presentation, then maybe there'll be some questions for him as well.

Mr. Walsh, how long do you need? Five minutes?

Okay, please proceed.

Mr. Rob Walsh: I'm very flattered by what you just said, Mr. Chairman, but I don't know how much of it would stand the test of time.

However, much of the advice that I might offer from time to time is a function of the particular situation that the committee is in, so it's hard for me to speak now without having a particular situation that's emerged.

Let me just offer these general guidelines. When—and I won't say “if”—Mr. Schreiber is here Thursday morning and speaks to the committee, there might be some *sub judice* consideration for committee members. In other words, I expect he still will be awaiting a response to his application for leave to appeal in the Supreme Court of Canada, and that matter itself should not be the subject of comment by committee members.

Also, in the course of his testimony it may be that he makes allegations or provides testimony that reflects on third parties who are not yet heard by the committee. I would recommend that committee members be mindful of the fact that these third parties to whom he might refer would not have had an opportunity to say anything yet, and what he may say about third parties should not be used in a manner that's detrimental to the good reputation of third parties, beyond what is necessary for the purposes of hearing Mr. Schreiber's testimony. It's a sense of fairness. That's all I'm saying.

Sometimes, as happened with Radwanski, if my memory serves, it can happen that there are some issues emerging of a kind where third parties are coming up, private citizens. The committee went in camera to hear the testimony, at least initially, to see that nobody was unnecessarily injured or offended by what the testimony might say. I seem to recall on many occasions when the committee came back out of camera that the same testimony was led, because it turned out there was nothing there that was injurious to any third party.

It's a matter of exercising some care about the interests of third parties who may come up in the course of his testimony. You can't predict this; it just may happen. But if it does happen, one should be cautious and not pursue that recklessly, because it may well prove to be untrue, or there may well be an answer by the person that would put a serious qualification on what he's saying. It's a question of fairness, that's all.

Apart from that, the *sub judice* rule is something to consider.

I don't know, Mr. Chairman, whether I can offer much more than that at this time. We just await the unfolding of events and deal with situations as they emerge.

• (1240)

The Chair: We have a couple of people who wanted to ask you some questions.

Mr. Hiebert, followed by Madame Lavallée.

Mr. Russ Hiebert: Thank you, Mr. Chair.

I have a number of questions, and I'd like to start by asking Mr. Walsh to clarify for this committee what the *sub judice* principle actually is in terms of its application to this committee.

Mr. Rob Walsh: The *sub judice* principle is a convention in a parliamentary context where members of Parliament are asked not to make direct comment on a matter that's before the courts. It's not a legal rule in the sense that there are no legal consequences following from any failure to respect it. If I'm correct, it's not in the Standing Orders of the House, either. It's just a convention and a practice that members will respect the judicial function and not make what's going on there the subject of debate in the House.

You can interpret that narrowly and say we're going to talk about the Airbus affair, but that doesn't mean we're going to talk about any particular litigation that's going on that may have a connection with it. The *sub judice* rule is about the litigation itself, the case that's before the court. It's not about the subject matter writ large. It's about what's before the court, and you don't talk about that case. You don't talk about what may be going on in that case.

That's what *sub judice* is about, Mr. Chairman.

Mr. Russ Hiebert: My second question has to do with a comment that you made before the public accounts committee in 2004. At that point you expressed concern about the redundancy of the committee's study while a public inquiry was under way as well.

Do you still agree with the statement that you made at that time, that it would be redundant to have a committee study what a public inquiry is studying?

Mr. Rob Walsh: I'd like to see that statement that I made. Having said that, I'm not saying I never made any such statement. I may well have made a statement that talked about redundancy, because there clearly is a potential for redundancy where a judicial inquiry that's under way is seeking to get to the bottom of a situation while a House committee is doing the same thing. Obviously, there is redundancy.

Is that a reason for the committee not to do it? Not necessarily, in my view, because the committee's objectives are quite different from what a judicial inquiry's objectives are. The committee's objectives are ones of seeking out a certain amount of knowledge about the facts with a view to looking at what the broader public policy issues should be in dealing with that situation, whereas a judicial inquiry may have a narrower focus.

But yes, there is, understandably, a certain process redundancy when you have two bodies doing the same thing. But that doesn't mean necessarily that they shouldn't go forward.

Mr. Russ Hiebert: With regard to testimony, you also stated before the public accounts committee, and I quote: It cannot be referred to and used in other proceedings for any purpose whatsoever. It is fundamental that legal proceedings elsewhere cannot rely on, refer to, or cite testimony provided in the course of a parliamentary proceeding, and a committee proceeding is one of those.

Is it therefore the case that this committee study could evolve into a partisan political witch hunt with no particular purpose? Can you expand on your statement about not using the testimony before this committee for any other purpose, including a public inquiry?

Mr. Rob Walsh: That was attempted actually during the course of the Justice Gomery inquiry. There were lawyers who wanted to take testimony before the public accounts committee and use it in those proceedings. We appeared before Mr. Justice Gomery. He was a bit surprised and ultimately ceded to the fact that it could not be

allowed. The testimony given before the committee cannot be used in those proceedings. That was upheld later, when it was taken to court.

I don't know about the partisan witch hunt you referred to; I don't know what the connection is there. But the idea is that witnesses before this committee, or any other House committee, have the assurance that they can speak fully and frankly without concern that they're going to be somehow challenged in a legal proceeding elsewhere based on what they said.

I might further add that in my view it includes the police. They can't use testimony here as a basis to conduct an investigation. If they take testimony from here and find evidence that's helpful for some criminal prosecution purpose, they may be denied the opportunity to use that evidence because it's tainted; it has its genesis in an unlawful use of testimony.

The Chair: Madame Lavallée, s'il vous plaît.

[*Translation*]

Mrs. Carole Lavallée: Thank you.

Mr. Chairman, now that we know that we need a report in order for a warrant to be issued, how do you intend to proceed? The meeting should normally take 10 minutes, although, as you know, we can extend it at any time. I would like to know how we are going to proceed: where? when? how? Couldn't we start immediately so that it's done as quickly as possible?

• (1245)

[*English*]

The Chair: Congratulations, Madame Lavallée, you are absolutely right.

The clerk and I have discussed this. I understand that Mr. Thibault, after discussion with Mr. Martin, has a motion that may be appropriate. I'd ask him to read the motion to see if the committee is prepared to entertain it.

We're going to continue with this, but in the event that time runs out, I want to be absolutely sure we have some authority of this committee to report to the House. We have to report to the House. That was the point.

Mr. Thibault, please go ahead.

Hon. Robert Thibault: The motion is as follows: That the Committee report to the House recommending that the Speaker issue any necessary warrants for the appearance of Karlheinz Schreiber before the Standing Committee on Access to Information, Privacy and Ethics, as soon as possible and that he be available until discharged by the Committee.

The Chair: That was, I believe, the intent of Mr. Martin: let's make sure that we don't get caught without having something to the House.

We've had this fulsome discussion. The intent is to report to the House. I am going to ask the members whether they would consider putting the question now....

All right.

Can you please read it again?

Hon. Robert Thibault: That the Committee report to the House recommending that the Speaker issue any necessary warrants for the appearance of Karlheinz Schreiber before the Standing Committee on Access to Information, Privacy, and Ethics, as soon as possible and that he be available until discharged by the Committee.

The Chair: That motion is in order. I am going to call the question now—

An hon. member: We need to have a discussion.

The Chair: Well, we read it, and there was no indication....

Yes, Mr. Del Mastro.

Mr. Dean Del Mastro: Just for clarification, Mr. Chair, this committee does have a requirement for notice. This motion is being tabled without notice.

The Chair: It is pursuant to the motion that was proposed here and ruled out of order. I believe it was the intent of the committee to report to Parliament so that Parliament will have the benefit of knowing what we've done and what is appropriate. We don't know that.

Mr. Dean Del Mastro: Okay, that's fine. No problem.

The Chair: I'll call the question.

(Motion agreed to)

The Chair: I appreciate your indulgence. We now have the basis to report to the House.

I apologize for interrupting. Mr. Wallace was on questions to Mr. Walsh.

Mr. Mike Wallace: I just have two points of clarification. If we have witnesses before the committee who testify, and then there's a public inquiry—which we know is coming—is it true that what they say here cannot be used at the public inquiry?

Mr. Rob Walsh: That's correct.

Mr. Mike Wallace: So they could say anything they want at committee and have no accountability for that when it comes to the public inquiry. They can be asked the same questions, I'm assuming, and give different answers; and the answers they've given here have no relevance.

Is that what you're telling me?

Mr. Rob Walsh: Mr. Chairman, the short answer is that the witness is as accountable as any member of this committee—public accountability...or contempt by the House, if the House found that they were misleading the House, which may be the case in the business of another committee. If they were found to have misled the committee, there might be accountability of the witness to the House, if the House finds they were in contempt.

Mr. Mike Wallace: So if we find there's been different testimony in this committee from that at the public inquiry, this committee could move to find that individual in contempt of this committee?

Mr. Rob Walsh: Presuming the committee calls the witness back and says "Explain yourself."

The problem, Mr. Chairman, that you have when you have two different versions and someone says to them, you said *x* here and you said *y* here, which is the truth? This is a serious problem in the whole area of perjury. Logically they both can't be true. The critical thing is

not that one of them is untrue, but that the testimony given here was untrue.

Now, how are you going to prove the testimony over there was true and untrue here, except by saying, it was given at a judicial inquiry; therefore, it must be true. If you're prepared to say that, then you win; but I don't know that you can necessarily say that. And that's the problem with perjury: where is the truth?

• (1250)

Mr. Mike Wallace: *Where* is the truth?

My issue with our doing this—and I would like your opinion on this—is that even with today's testimony or today's two letters and two different legal interpretations of the legislation, which I've never actually read.... I'm not a lawyer, but a guy with relatively good common sense, and my concern is that we are going to be dealing on the edge of many legal issues with these witnesses. They have lawsuits against each other. One's in jail, and one's looking at extradition.

Are we not on very dangerous ground here as a committee looking at this without the expertise to be able to do it?

Mr. Rob Walsh: Well, Mr. Chairman, I welcome that question, because it goes to the heart of what a parliamentary committee is about. Never mind legal proceedings or legal issues. You're a parliamentary committee: ask your questions, get your answers. The only thing you have to think about is not to comment on a case that's before the court; that's the court's business, and you shouldn't be commenting on that case.

What they say here stays here, in that sense. So the witness does not have to worry about what he is saying here, relative to some other proceedings somewhere else, because it doesn't go there. And the parliamentary committee members must be mindful of the fact that while they act responsibly throughout, and not be needless or reckless about what they say, it is still a proceeding of its own purpose, and its integrity rests with itself.

It's not the case that you have to be concerned about what may be said here impacting on legal rights or interests arising elsewhere.

Mr. Mike Wallace: Okay.

Thank you.

The Chair: Mr. Del Mastro, please.

Mr. Dean Del Mastro: Thank you.

Mr. Walsh, I want to go back to an area that my colleague was just questioning you about. I find this really quite interesting. Specifically, just for clarification, you said that a witness can testify fully and completely, and not be concerned that testimony could be used elsewhere.

Just to take it a step further, can they can testify fully, completely, and falsely, and it not be used elsewhere—

Mr. Rob Walsh: Not true. Parliamentary privilege and the protection it affords is not a licence to lie. You don't have that protection if it's shown that what you gave was false. You have that privilege and protection when you're speaking the truth.

Mr. Dean Del Mastro: But in this case, where we're dealing with an individual who faces extradition for very serious charges in Germany, and who is clearly working to stay his extradition orders, there is no reason for him to be forthright or honest, unless he suddenly had an epiphany and decided that the several versions of the story he has given are no longer valid, and he finally wants to give us the real one. There's no reason for him to be forthright or honest, if what he's really seeking to do is to create a furor, and thus, by that means, avoid extradition.

My point is that he doesn't—

The Chair: Order, order.

I can't hear Mr. Del Mastro. There are a number of conversations going on. We'll be finished in just a couple of minutes. Please bear with us. Thank you.

Mr. Del Mastro, please.

Mr. Dean Del Mastro: Thank you, Mr. Chair.

My point is that the very least of his concerns is quite likely that of misleading a parliamentary committee. The charges that would extend from that are nowhere near as significant as the charges he would face should he be extradited to Germany.

Mr. Rob Walsh: I can't comment on what may be the thoughts of any witness prior to coming here, or the intentions a witness may have in speaking to the committee.

Mr. Dean Del Mastro: What charges could he face for perjuring himself at a parliamentary committee, if we could prove it, which is really difficult? But what possible charges would he face?

Mr. Rob Walsh: Contempt of Parliament, and the House could imprison him—

Mr. Dean Del Mastro: Like at the Toronto Detention Centre.

Mr. Rob Walsh: Yes, back to where he came from, but under the order of the House. The limitation is, and some might have an ability to affect this, that the imprisonment could not last beyond the end of the session.

An hon. member: Oh, oh!

Mr. Dean Del Mastro: We might also give him a very stern letter, Mr. Szabo, and really scare him.

I have nothing further.

The Chair: We have one final member on the list who's been duly signed in.

Mr. Mulcair, *s'il vous plaît*.

[*Translation*]

Mr. Thomas Mulcair (Outremont, NDP): Thank you, Mr. Chairman.

Mr. Chairman, a little earlier today—at 11:42 a.m., to be specific for those people who will want to find the quotation—Mr. Walsh

told us that, in the event of a refusal or dilatory tactics by the minister, and I quote:

• (1255)

[*English*]

“The House may take some other action against the minister.”

[*Translation*]

Would Mr. Walsh be so kind as to tell us exactly what that action might be?

Mr. Rob Walsh: I used words in a general way to say that we could take other measures against the minister, but they are measures in a parliamentary context.

Mr. Thomas Mulcair: Privilege?

Mr. Rob Walsh: That's it. Or contempt.

Mr. Thomas Mulcair: Thank you.

[*English*]

The Chair: First of all, colleagues, it appears that we're not going to have reasonable time to go in camera. I apologize. But I think I will have conversations with the steering committee members—Madame Lavallée, Mr. Martin, Mr. Hiebert, and me—and we will see if there's some consensus on matters of decorum and productivity, suggestions we may have, and share it among ourselves.

I do have one more aspect. Mr. Greenspan had raised with me the issue of the possibility of going in camera for certain matters about which he has some concern. That would be for certain things, not the whole thing, but if there were matters to which Mr. Schreiber would have been advised not to respond, but would be prepared to go in camera on so there was no public record of it, what would happen in that case?

Mr. Rob Walsh: With great respect to Mr. Greenspan, a very capable lawyer, like a lot of lawyers he's perhaps having difficulty getting his mind out of the legal context and into the parliamentary one. A witness does not have the option of not answering a question. But it is the case, and you've seen it yourself in the past, Mr. Chair, that a witness will have a lawyer who may seek to negotiate to go in camera because of whatever number of reasons, and the committee could do that. However, if the committee chose to not do that, the obligation rests with Mr. Schreiber to answer the questions that are put to him.

It is not the case, for the reasons I gave earlier...and which perhaps lawyers like Mr. Greenspan have a hard time believing, that the testimony given here would not be used elsewhere.

The Chair: Finally, if Mr. Schreiber appears but does not have his papers, and has not had any opportunity to prepare even an opening statement, or anything, he may not be as fulsome as he could be to this committee, simply because he doesn't have access. It wouldn't give us an opportunity to ask for records to be provided, or to call for records and papers.

What advice would you have for the committee with regard to dealing with that case in terms of asking him to come back, or to actually allow him an opportunity? Could he in fact come and simply make a brief opening statement and then have the opportunity to go and maybe come back at another time?

We have to decide that, but I'm a little concerned that this may happen in a way that frustrates the effectiveness of having him as a witness.

Mr. Rob Walsh: Mr. Chairman, that's really at the call of the committee as to whether it wants to proceed with the witness, without the witness having the benefit of those documents. It certainly could, if it wished to do so, and then afford an opportunity for the witness to come back later. It's really a matter of how the committee wants to manage its business.

The Chair: Thank you.

I would ask, therefore, all honourable members to consider coming to the meeting prepared with plan B or C or D. What do we do if Mr. Schreiber does not have his papers, has not prepared an opening statement, has not had a chance to consult with...? Then we need to have a recommendation and motion. I'm going to consider those motions to address that discussion at the committee, should that occur.

First of all, I'd like to hear from Mr. Walsh on this.

Mr. Rob Walsh: Not having papers is not a licence to not answer a question.

The Chair: Of course, but we need to discuss it. I want members to please consider that, because it is a possibility.

Mr. Martin, do you have a point on this issue?

Mr. Pat Martin: With the motion we just passed to make a report to the House and up the clout we have as a committee to the House itself—Parliament having him here—I don't think we need to worry too much about keeping him here past the extradition order.

If we go through the steps in my motion, which just passed in amended form, we'll be making a report to the House that the

Speaker will have the authority to intervene with all the weight of a House order and a Speaker's warrant. So if Mr. Schreiber is not quite fully prepared on Thursday, we'll see him again on Friday, Saturday, and Sunday if we have to, and past December 1.

• (1300)

The Chair: Thank you.

Mr. Walsh, please.

Mr. Rob Walsh: There's a very important point here that may be slipping by members. I don't mean to dance on the words of Mr. Martin, but it's frequently said—including by the minister in his two letters—that there will be no extradition before December 1. Don't let that language cause you to think that on December 1 some guillotine will fall and he'll be on Lufthansa and gone. It may well be some time later. The minister has never said, as I recall, that it will happen on December 1; he has just said it won't happen before December 1.

I appreciate your caution and your concern.

Mr. Pat Martin: He has led us to believe that it will be December 1.

Mr. Rob Walsh: He may want you to believe that, but the fact is he said it won't happen before that date. So don't think this whole thing will end for you on December 1. It may not.

The Chair: Thank you.

Colleagues, before I bang the gavel to end this meeting, I want everyone to know that I am very grateful for the excellent work that was done by Mr. Walsh and his staff, Mr. Lee, our clerk and the assistants; and for the support we received from other persons as needed. It's much appreciated. Thank you kindly.

The steering committee will be at 3:30 this afternoon in room 208, West Block.

The meeting is adjourned.

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