



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 063 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, May 10, 2017

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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

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• (1530)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): Welcome friends. I'm calling to order the Standing Committee on Public Safety and National Security, our 63rd meeting in the 42nd Parliament.

Pursuant to the order of reference on March 6, 2017, this is a consideration of Bill C-23, An Act respecting the preclearance of persons and goods in Canada and the United States.

This is our second meeting on Bill C-23. On Monday, as you remember, we had the minister introduce the bill, as well as officials here to ask questions. We are now continuing with witnesses for three meetings.

Welcome, Mr. Arnold, to your first time at public safety committee. We are sure you'll enjoy the experience.

Because there is a strong possibility of bells ringing at about a quarter to four for a 30-minute bell, until 4:15, and because our witnesses from the BC Civil Liberties Association have a plane to catch at 6:10, I'm going to suggest we do a couple of different things today. We'll hear from them first for their 10-minute presentation, and then we'll have questions for them. I'm hoping you'll give me five extra minutes into the 30-minute bell so we have time for questions. Then we will suspend the meeting for the vote.

I apologize to our other guests. We will be back immediately following the vote, which should be about 4:25. We'll be gone for about 35 or 40 minutes in that time. You're welcome to come and watch us vote. It's pretty exciting.

We begin with Josh Paterson and Meghan McDermott, as well as Andrea van Vugt.

Thank you for coming and joining us.

Mr. Joshua Paterson (Executive Director, British Columbia Civil Liberties Association): Thank you, Mr. Chair, and thank you to the committee for inviting us.

I think we're all agreed that customs pre-clearance is a huge benefit to Canadians, and its expansion would make those benefits available to even more Canadians and, of course, to enterprises. Nevertheless, as the BC Civil Liberties Association, we have significant reservations about the bill. Governments have the authority to conclude international agreements, but it is up to Parliament to implement them into law and, in doing so, Parliament

has a duty to ensure as best as possible the constitutionality of its enactments.

We know that every year millions of people move across the border with very little incident on the whole, but laws tend to be tested and rights infringed in the unusual cases, the few cases. That the system might work most of the time is not actually an answer to whether or not a law might have negative or even unconstitutional consequences.

The first overarching matter of concern for us is that while it's often been repeated that U.S. officers will exercise these new powers under the umbrella of Canadian law, including the charter and the Canadian Human Rights Act—and all of this is a good thing—the bill's protection, to us, is unacceptably weak. This is because, in most cases, it will be impossible to obtain a remedy against the United States for violations of these human rights guarantees.

Subclause 39(3) states that U.S. officers are not crown servants under the Crown Liability and Proceedings Act, which means that Canada can't be held civilly liable under the charter or under the Canadian Human Rights Act for the actions of pre-clearance officers, even though those officers are exercising powers delegated to them by this Parliament.

The Chair: I'm afraid I need to interrupt you for a moment, as the bells have rung even earlier than expected.

Do I have agreement to have the 10 minutes to have this presentation? That will give us 20 minutes to get to the vote.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Agreed.

Mr. Joshua Paterson: We would be happy to return for questioning, if you like, by video or something. We would rather not fly back for the questions.

The law also insulates the United States from most claims. You can't sue Canada. What about the U.S.? Subclause 39(1) states that civil proceedings can be brought against the United States except if the U.S. is immune from such actions under the State Immunity Act.

The State Immunity Act tells us that the U.S. is immune from practically all civil litigation and any remedies in the Canadian court or tribunal unless someone has been killed or injured. In a case where someone's rights were violated by being detained unreasonably, in an instance of discrimination, or in being searched or strip-searched unreasonably, if that person is not injured or killed, there is no legal remedy under the charter, no remedy under the Canadian Human Rights Act, no tort remedy.

It's fine to say they will be bound by the charter and by human rights laws. Of course, we earnestly hope that these officers would do their utmost to respect those laws, presuming they are adequately trained to do so, which is another issue. However, saying that a government agency or a government-delegated agency is bound is never enough. It has to be backed up by a remedy to be effective, and the only power Canada has to ensure compliance is persuasion... the positive relationship. That isn't meaningless, but neither is it adequate as a mechanism to protect the fundamental rights of Canadians. It is very problematic for the crown, in short, to delegate coercive power to any third party, including foreign agents, while shielding both itself and the foreign government from liability for the exercise of that power.

We have a lot of concerns with this bill. That's an overarching one. We're not going to take them all up with you. I want to talk a little bit about strip searches before my colleague addresses you.

Strip searches are an area in which charter violations often occur in Canadian policing. According to this bill, strip searches can be conducted if there are reasonable grounds to suspect that the search is necessary in order to conduct pre-clearance, or that the traveller is concealing anything that's a danger to life and safety.

The minister stated that the changes with regard to strip searches are small changes. He said to you the other day that U.S. officers can conduct such searches only if a Canadian counterpart were not available, and that, generally, Canadians would conduct them. It would be exceedingly rare, I think he said, for a Canadian not to be available.

With great respect to the minister, that isn't the full picture. The bill gives U.S. officers the brand new power to conduct a strip search if no Canadian officer is available within a reasonable time. We don't take issue with the term "reasonable" here today. However, we are deeply opposed to these provisions: if no officer is available within a reasonable time, or if the Canadian officer doesn't arrive within a specified period.

Given that the pre-clearance officers can detain people, can restrain them if necessary to protect themselves, can use force if necessary to protect life and limb, we can imagine no justification for the U.S. being able to perform the search rather than simply waiting.

The fact that a Canadian officer may be waylaid on the way to the search, that the officer may be busy doing something else, that the officer may make an appointment and not be able to make it because something else comes up, should not be a reason for this Parliament to give U.S. officers the state power to performing strip searches.

In addition—and, incredibly, from our perspective—the U.S. officer also has the authority to conduct the search if a Canadian officer declines to conduct it. This gives us a situation where

Canada, having been called and having shown up, says, "You know what? I don't think there are grounds." Why on earth does this bill give American agents the power to conduct that search anyway, and then to do so in a framework where there is no remedy against them?

We know that Canadian police officers with the best of intentions and the best of training mess up strip searches frequently. There's a lot of case law on that. The courts have said that this is one of the most intimate violations that the state can perform. We confer the power on the state to do that in very limited circumstances. Our argument is that there is no circumstance under which Canada, the crown, ought to give this power to someone else. It is just too much of an imposition, and there's nothing to justify it. There's no reason why these American officers, in our view, could not wait.

I'll pass it over now to my friend.

● (1535)

Ms. Meghan McDermott (Policy Officer, British Columbia Civil Liberties Association): Thank you.

I am going to speak about our opposition to the changes about the right to withdraw. We don't believe that the changes in the new bill would allow a traveller in Canada to meaningfully withdraw. Right now, the worst that can happen if somebody doesn't answer questions is that they can be ordered to leave the area. They can withdraw at any time, and there is also a presumption in the act against suspicion if they're not answering questions. If they do answer questions, there is a requirement to answer them truthfully.

With the changes to the bill, travellers wishing to withdraw are now going to face a new set of questions about why they want to leave. While it's true that there is a limit that they cannot be unreasonably delayed, we do not believe that this is a sufficient limit. It is imprecise. Furthermore, our position is that if somebody is not free to go because they're being asked questions, they are being arbitrarily detained, even if the bill itself doesn't say that.

Section 9 of the charter guarantees the right not to be arbitrarily detained, and under Canadian law, investigative detention is permitted only when there is a reasonable suspicion that a particular individual is implicated in a criminal activity under investigation, and then only if absolutely necessary, for the minimal time possible.

This bill already provides grounds to detain somebody if there is suspicion of an offence. We have some concerns about that, which we speak about in our written submission. However, we believe that this power, in and of itself, is enough to protect border security. We are unaware of any evidence that would necessitate these changes and make people possibly be arbitrarily detained and coerced to give a statement in Canada.

We do have a number of recommendations about how to uphold the right to withdraw in the bill. One is to add a provision that reflects the current presumption against suspicion. That's in subsection 16(3) of the existing act. We'd like to see that in the bill. We'd also like to see a removal of the travellers' obligations to answer questions and to follow directions if they chose to withdraw.

We'd like to have the language adjusted in proposed section 32 so that U.S. pre-clearance officers are able to interfere with a traveller's right to withdraw from a pre-clearance area only if they suspect, on reasonable grounds, that the traveller has provided false or deceptive information or has obstructed an officer—which are the current powers they have—or has committed an offence under an act of Parliament in relation to their presence in the pre-clearance area and in their travel.

Thank you very much.

● (1540)

The Chair: We have time for one question each, if people have quick questions, and then we're going to go.

Does somebody have a quick question? We'll give you one, and we'll give the NDP one.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I want to thank you for coming.

Josh, you and I spoke previously on the phone. One of the things we spoke about was that you recognized that this bill is tied to an agreement that has already been signed. You've talked about a lot of things that you don't like about the bill, but I wonder if you could talk about recognizing that we are limited in how much we can change this, in terms of continuing to have pre-clearance, because then our option is to go through the whole thing in the United States, which wouldn't give us the same protections we'd have here.

Mr. Joshua Paterson: I don't understand the options as being having pre-clearance or continuing to have pre-clearance. I have not heard any indication from the government that, had none of this happened, pre-clearance would have been withdrawn. As we understand it, this was a condition precedent to getting new pre-clearance at Quebec City and for cargo, none of which we quibble with as desirable things.

All that being said, the executive or the Queen is free to make her agreements, but Parliament isn't bound to do the bidding of the executive. Parliament is free, and in fact obligated, in fashioning laws, to ensure that they respect the charter. If the executive has concluded an agreement that, in its particulars, requires Canada to violate its own constitutional principles, or at least to create an environment in which those violations may be more likely, I think Parliament needs to take that very seriously.

The Chair: I'm going to end that one there.

To the Conservatives, do you have a quick question?

Hon. Tony Clement (Parry Sound—Muskoka, CPC): It's almost the same as Pam's question, but just giving you a chance....

If there are specific amendments that would remediate some of the concerns you have, it would be helpful to table those, if not now, then certainly as we continue to contemplate the bill.

Is there anything on your mind right now?

Mr. Joshua Paterson: Sure, we would be happy to do that.

As a principal matter, we think it should be amended so that there isn't a power for a strip search. The agreement may say things about that. The minister himself has said he thinks it would be exceedingly rare that there wouldn't be a Canadian around. In that exceedingly rare circumstance, we think the Americans can wait.

We doubt, quite frankly, as a matter of international relations, whether there would be a huge conflagration with the United States because we tweaked the implementation. We would hope not, and we would hope that the good relationship the government is fashioning would help us through some of those things.

We think that—

● (1545)

The Chair: I need to end you there.

Hon. Tony Clement: Thanks.

The Chair: If you have any suggestions for written follow-up, you could send them to us.

Monsieur Dubé.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Chair.

Just very quickly, I had the opportunity on Monday to ask officials if there were any sort of formal list, or any codification of who was giving charter training to U.S. agents. The minister's answer was CBSA and others, which, quite frankly, given the emphasis put on training, is rather unclear.

I'm wondering what your thoughts are on having something formal, in terms of a list or anything specific—more details, in other words—for us and the public, as to what training is being offered in order to ensure charter compliance.

Mr. Joshua Paterson: We recognize that may not be a matter for the act or even for regulations, but, for policy, we think that the training is critically important. I mean, Canadian officers who get steeped in this stuff get it wrong.

We don't want several hours of training from CBSA. We don't necessarily have the institution to give you the curriculum handy, but we do think that some real thought needs to be given to the kind of training that's provided, that it ought to be provided by a police academy or an accredited educational institution, and that it needs to be ongoing. Laws change, the way the charter is interpreted changes, so it can't just be that these American officers get their training and off they go.

The Chair: I need to end that there folks. We have 17 minutes to get to the vote.

I would ask that you defend me in front of the whips. Tell them we had guests from Vancouver with us.

We will return. They will take care of you.

We're suspending; we're not adjourning.

•(1545) _____ (Pause) _____

•(1620)

The Chair: Folks, we'll call the meeting back to order with reduced quorum so that we can hear from witnesses in case we have bells again. To be fair to our witnesses—and on behalf of our institution, I apologize—we will be operating under reduced quorum. We can't have a vote, which is fine, but we can have witness testimony.

I believe we have a 30-minute bell. Because we're at reduced quorum, we can't even vote with unanimous consent. I believe we need to suspend the meeting again. We don't have the ability to continue the meeting.

To the witnesses, if this is a 30-minute bell, we should be back at 5:05 p.m. If you don't mind staying, we will try again.

Mr. Picard.

•(1625)

Mr. Michel Picard (Montarville, Lib.): Mr. Chair, can I suggest that if we do have votes and votes and votes, we might consider making arrangements for the panel to come back later on? I think the whole committee does want to hear from them. If possible, perhaps you could take the proper measures to inform them that this is not lost, that we would like to hear from them.

The Chair: Yes. I don't need to repeat that.

Mr. Gordon Miller (Vice-President, Rail Operations and Asset Development, Chief Safety Officer, Rocky Mountaineer): Thank you.

The Chair: Mr. Arseneault.

Mr. René Arseneault (Madawaska—Restigouche, Lib.): Correct me if I'm wrong, Mr. Chair, but we need unanimous consent if we want to continue for 10 minutes.

The Chair: Right.

Mr. René Arseneault: But if nobody...can't we continue? Nobody has raised a question on the issue.

The Chair: We have what's called reduced quorum—

A voice: We have quorum.

The Chair: We now have quorum.

If there is unanimous consent, then we will continue, at least to hear the presentation, for 10 minutes.

Some hon. members: Agreed.

The Chair: Thank you.

Let's do that and get it on the record.

[*Translation*]

Mr. Alroy Chan (Senior Director, Corporate Development, Rocky Mountaineer): Mr. Chair, members of the committee, thank you for inviting us to appear before you today.

[*English*]

As I am sure you are aware, Rocky Mountaineer's station in Vancouver is one of the four Canadian sites identified for expansion of pre-clearance operations under the new pre-clearance agreement between Canada and the United States, which Bill C-23 seeks to ratify and implement.

We genuinely appreciate the opportunity to share with you our company's story and how pre-clearance will have a positive impact on Canadian and international travellers transiting between Canada and the United States. Expanded pre-clearance in the land, marine, and rail modes will greatly benefit business and leisure travellers alike and generate increased economic activity due to more efficient border operations.

By way of background, Rocky Mountaineer is a proudly 100% Canadian family-owned business that has been operating as a private company in western Canada since 1990, when it was then privatized by the federal government. Since the privatization, we have grown to become the world's largest privately owned luxury tourism train company. We have welcomed aboard nearly two million guests from around the world to enjoy an unparalleled experience on board our all-dome fleet, which offers rich historic storytelling, authentic Canadian hospitality, world-class cuisine, and a first-hand look at the vast and untouched natural beauty of western Canada.

Our company's purpose from day one remains the same: to be creators of life-changing experiences for both our guests and our team members.

Rocky Mountaineer is considered one of the best ways to see the Canadian Rockies and has received numerous international awards and accolades for service excellence. These honours include eight World Travel awards, "World's Leading Travel Experience By Train", and "World's Leading Luxury Train". We've also been listed as a "Dream Trip" by *Travel + Leisure* magazine.

We offer over 65 unique Canadian vacation packages on four distinctive rail routes—all rich in history and natural wonders—through British Columbia, Alberta, and, most recently, into Washington state. Before or after a Rocky Mountaineer journey, a significant number of our guests visit other parts of Canada.

Rocky Mountaineer is proud to employ a strong, passionate team of almost 700 individuals. Each year since 2014, we have been recognized as one of Canada's best-managed companies. In addition, we have earned the "employer of the year" title from the Tourism Industry Association of Canada multiple times, as well as being named one of Canada's "top small and medium employers".

Those of us who are fortunate enough to spend our time as part of Canada's vibrant tourism community know what an honour it is to be able to showcase the uniqueness and generosity of our great country. We also appreciate our industry's role as an important economic driver for Canada. Each year, tourism in Canada generates \$35 billion of GDP—more than forestry, agriculture, and fisheries combined—and employs over 637,000 Canadians. Tourism is one of the fastest-growing industries in Canada and the world.

Rocky Mountaineer is proud of the contributions we are making to our community and the economy, be it from our operations directly, through our partnerships with 1,540 suppliers across the country, or by virtue of the spending of our passengers. Rocky Mountaineer is a significant contributor to the Alberta and B.C. economies. As a matter of perspective, Rocky Mountaineer's GDP contributions in Canada are equivalent to approximately 50% of the Vancouver cruise ship industry's annual GDP contributions in Canada or the employment supported by the construction of 1,200 new homes.

We are very proud of the fact that for every 1,000 tourists who purchase a Rocky Mountaineer journey, approximately \$3 million of GDP is directly added to the Canadian economy as our guests stay, dine, cruise, sightsee, and more while enjoying B.C., Alberta, and the Canadian Rockies. Over 80% of our guests are international tourists, with those from the United States, Australia, and the United Kingdom representing our largest markets.

Our newest rail route between Vancouver and Seattle, Washington, which was introduced in 2013, is offered to tourists as a means of connecting the U.S. directly to the Canadian Rockies. This route has been quite popular. We are proud of the fact that our annual guest count growth rate on this route has averaged 20% since its inception. This route shows great promise for us, as cruise passengers are an increasing priority customer base for us. We believe that a breathtaking train journey is an attractive complement to the beginning or the end of a cruise.

● (1630)

While U.S. pre-clearance has long been established at many airports in Canada, ratification of the new agreement between Canada and the U.S., through Bill C-23, will extend benefits for those travelling across our border by train, car, bus, and ship. Currently we have a post-clearance customs and immigration process on our Vancouver to Seattle route. On the southbound journey, U.S. Customs and Border Protection officers conduct customs and immigration processes on board our train upon arrival in Seattle's train station. On the northbound journey, our train arrives in Vancouver's Pacific Central Station where CBSA officers conduct post-clearance procedures.

The average customs and immigration clearance process takes approximately 30 to 45 minutes to clear an entire train set. With the potential implementation of pre-clearance at Rocky Mountaineer

Station, we believe we can reduce the processing time and improve security while simultaneously improving our guests' cross-border experience.

Since 2010, Rocky Mountaineer has been a committed and active participant with Canadian and American governments in advancing customs and immigration procedures. For example, we worked collaboratively with U.S. Customs and Border Protection to pilot their new hand-held mobile clearance devices on our Vancouver to Seattle route.

We are pleased to see that the government is continuing to collaborate with industry to improve the arrival experience for visitors. As a company in the business of providing people with life-changing experiences, pre-clearance will ensure a seamless and efficient arrival experience for our guests travelling between Vancouver and Seattle. Once pre-clearance is fully implemented, it will remove an extra step for tourists and travellers, who will simply be able to disembark upon arrival. Pre-clearance will create a much smoother guest experience for us and other cross-border tourism and transportation providers.

In B.C., in addition to Rocky Mountaineer, we know there are numerous other transportation and tourism companies that will greatly benefit from expanded pre-clearance to the marine and rail sectors. For example, Black Ball Ferry operates a daily ferry service from Victoria, B.C. to Port Angeles, Washington, and annually carries over 400,000 passengers, 127,000 passenger vehicles, and \$250 million worth of commercial goods. In addition, the *Victoria Clipper* operates a daily passenger-only ferry service between Victoria and Seattle.

Similarly, on the rail side, our Amtrak colleagues operate a successful twice-daily rail service connecting Vancouver and Seattle.

All of these companies will appreciate the smoother, safer operations that pre-clearance will bring. Undoubtedly, expanded pre-clearance will support continued growth in Canada's valuable tourism industry.

Rocky Mountaineer is dedicated to showcasing Canada as the world's premier travel destination. We are looking to build on our success and continually seek opportunities to grow our business in Canada. We recently made the largest capital investment in the history of our company. The capital program includes the acquisition of 10 new custom-designed bi-level domed rail cars, eight custom-built single-level domed cars, and a major refurbishment program to our existing fleet of 16 bi-level domed cars.

It is our ambition that with this increased capacity, and with pre-clearance capabilities, we can achieve our aggressive growth plans to host most guests, expand our operations, and build even more world-class attractions. We are well under way in achieving these goals. Our 2017 operating season, coinciding with Canada's 150th anniversary celebrations, will be the best year in the history of Rocky Mountaineer.

We continue to assess ways to leverage pre-clearance to expand our reach into the American market, and will develop a pre-clearance program for our guests that will ensure an even more seamless journey between our two great countries. We look forward to continuing to work with government on pre-clearance implementation and other feature initiatives to grow Canada's vibrant tourism industry.

Thank you, and we'd be pleased to take any questions you may have.

•(1635)

The Chair: Thank you.

I think we're going to take three minutes. That will give us 15 minutes to get to the House. We'll give one question to the Conservatives, one to the Liberals, and one to the NDP.

We'll go to the NDP first this time.

Mr. Matthew Dubé: Just quickly, you mentioned this in your comments, and I want to perhaps get a better sense of it. Obviously airport pre-clearance determines how many destinations we can go to because of the infrastructure in airports. I wonder if you could perhaps re-explain it, just so I get a good sense of how it makes train travel smoother.

My understanding from what I've heard is that when you cross over the border, the schedule of the train is more predictable from start to end, because you don't have to stop in the middle.

Would that be correct?

Mr. Gordon Miller: A couple of things come into play. Today we put all our guests on the train and we run down toward Seattle and we disembark everybody at the same time. Imagine 300 people showing up at once with a handful of customs agents to greet those 300 people. It becomes quite a long process.

Doing it at our station allows us to manage that relationship with the guests as people arrive at the station, make them comfortable and run them through the queues at our leisure, as opposed to all at once in a herd.

The second part of pre-clearance on the good side is a lot of freight traffic runs between Seattle and Vancouver as well, so if the goods also have a pre-clearance and that can run smoothly through the border that won't hold us up as we travel.

The Chair: Mr. Spengemann, you're next.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): I have two brief questions. With respect to the integrity and security of the train, does the pre-clearance scenario add to or detract from that, like post-departure and pre-arrival, en route security? Are there any factors that—

Mr. Gordon Miller: Both border agencies have deemed our train relatively low risk, given our guests are of the age that they are, 65-

plus world travellers. All have come into the country with passports, so they're relatively low risk.

With pre-clearance our operation wouldn't change a lot today as far as the actual train operation, but it would become more consistent. We lock it up once the guests get on. We don't unlock it except for emergencies, and we stay locked up all the way to Seattle.

Mr. Sven Spengemann: Have you surveyed your customers on pre-clearance? Have you done any opinion polling or questionnaires among them?

Mr. Gordon Miller: Prior to our running to Seattle we reached out to our partners: travel agents, tour block operators, those who serve our guests. We reached out to them and asked about the restrictions on selling that service. One of the things that came back was the hassle of border hassles or border timelines.

When we first looked at this there was talk of stopping at the border, having to take everybody off and process them. We've got to a different place now, but pre-clearance would definitely assist us in reducing any of those preconceived concerns of delays.

Mr. Sven Spengemann: Were any concerns raised or comments made with regard to the standards of legal protection in Canada versus the U.S.?

Mr. Gordon Miller: Not to my knowledge.

Mr. Sven Spengemann: That's all I have.

Thank you.

The Chair: Thank you.

I'm making a decision. It looks as if we're going to have at least two more votes, and we may run back and forth twice. I don't think we're going to be able to do more.

I'm going to thank both Mr. Chan and Mr. Miller for coming. You're Ottawa-based. We're going to invite you back. I give the committee notice; we're going to have a three-hour meeting at some point, so we can make up for the lost time.

Mr. Dubé.

•(1640)

Mr. Matthew Dubé: Can we have advance notice of when that longer meeting will be?

The Chair: No, it depends on who's calling these votes.

Mr. Matthew Dubé: I'm alone here. Give me a break.

The Chair: Yes, we will give you advance notice. We'll have that meeting. I want to remind you that if anybody had questions they won't be on the record, but if you have questions for either the B.C. CLA or Rocky Mountaineer, contact them and that can help you as individuals on the committee.

Also, if you have something you didn't get in, be sure to do it.

The meeting is adjourned.

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