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**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Crime in the community

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SYDNEY

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Wednesday, 26 February 2003

Members: Mrs Bronwyn Bishop (*Chair*), Mr Murphy (*Deputy Chair*), Ms Julie Bishop, Mr Cadman, Mr Kerr, Mr Melham, Ms Panopoulos, Mr Sciacca, Mr Secker and Dr Washer

Members in attendance: Mrs Bronwyn Bishop, Ms Julie Bishop, Mr Cadman, Mr Melham and Mr Murphy

Terms of reference for the inquiry:

To inquire into and report on:

The extent and impact of crime and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

- a) the types of crimes committed against Australians
- b) perpetrators of crime and motives
- c) fear of crime in the community
- d) the impact of being a victim of crime and fear of crime
- e) strategies to support victims and reduce crime
- f) apprehension rates
- g) effectiveness of sentencing
- h) community safety and policing

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Subcommittee met at 10.04 a.m.

CHAIR—I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs ‘Inquiry into crime in the community: victims, offenders, and fear of crime’. At its hearings last week the committee heard serious allegations of corruption permeating the New South Wales Police hierarchy. Allegations ranged from a corrupt staff management culture to paedophile protection to death threats made against officers who sought to expose corruption and the careers of police officers being ruined because they were whistleblowers. Allegations were also levelled at those charged with investigating and oversighting the New South Wales Police. The committee was told last week that investigators seconded to the Wood royal commission had bullied and intimidated witnesses and fabricated evidence against serving police officers but the investigators themselves and their conduct cannot be complained about because the legislation establishing the royal commission expressly forbids that to occur. According to one of the witnesses, this has contributed to not only an increase in crime but also an increase in the fear of crime.

What all the evidence to date seems to show is that there is nowhere for whistleblowers to go. Over and over the committee has heard that the usual channels, such as the Ombudsman’s office, the police minister, the Police Integrity Commission and ICAC, refuse to investigate or have not thoroughly investigated serious complaints brought before them. Today we will hear further allegations about the New South Wales Police, including claims of corruption of the police promotions system, victimisation of whistleblowers and falsification of crime statistics.

Today we will hear from two new witnesses dealing with these further allegations. The submission from Mr Fenlon, from whom we will first hear, including his supplementary submission and attachments, with the exception of attachment No. 69, were authorised for publication as evidence last week. Included in that evidence is a videotape showing among other things a video conference between former Commissioner Ryan, former Assistant Commissioner Jarratt and now Commissioner Moroney and Mr Fenlon voicing his desire for proper investigation.

We also determined last week that we would write to and invite all persons who are adversely mentioned in evidence and those people who could give corroborating evidence. We are in the process of doing that at the present time, and we will be willing to hear those witnesses as quickly as we possibly can should they indicate to us that they wish to be heard.

Is it the wish of the committee that Mr Kennedy’s submission No. 126 with supplementary submission and attachments be authorised? Mr Kennedy, who is the second witness we will hear from today, has agreed that his submission be released at this time. All in favour? Carried.

Mr MELHAM—Madam Chair, can I have it noted that I object to this process because we have not had an opportunity to hear directly from Mr Kennedy.

CHAIR—I would be amazed if you did not want it noted.

[10.08 a.m.]

FENLON, Mr Mark Anthony (Private capacity)

CHAIR—Welcome. Mr Fenlon, the committee originally accepted your submission, supplementary submission and attachments on a confidential basis but, with your agreement, we made these documents public last week with the exception of part 69 of the attachments. Would you like to make an opening statement?

Mr Fenlon—Yes, I would. Thank you for the opportunity to address this committee. By way of introduction, I was up until very recently a sergeant of police with almost 20 years service, the last 10 years being in general duties and the last five as a supervisor at Blacktown. I am therefore well placed to provide a recent perspective on many issues impacting on policing today. I was a thoroughly dedicated and professional police officer throughout my career, receiving many commendations during my service, most notably in 1998 an award from the Blacktown City Rotary Club for my contribution to that community as a police officer. In 1999 I received the Royal Lifesaving Society Police Service Award and in 2001 I received the National Medal.

My commitment to policing, to my oath of office and to the community of this state, far from advancing this otherwise promising career has, however, ultimately led to this my present situation and culminates today in my appearance before this committee. Here, ironically, no longer a police officer, I perform the most important duty of my career, fulfilling my obligations to the profession of policing, honouring the oath I took and seeing through the responsibility I have had for the safety and wellbeing of the community that was entrusted into my care. It is a long story, but it is one that must be heard if this committee is to discover the reason why crime and fear of crime in the community has continued to increase within New South Wales.

I will commence by providing the answer, and a simple one it is. Serious crime continues to escalate in New South Wales because of the ineffectiveness of policing in this state as a direct consequence of the gross mismanagement, maladministration and corrupt conduct of its senior officers in recent years. However, it goes far beyond that. My submission and supporting material provided to this committee should leave little doubt that our state government and its anticorruption legislation and institutions have failed time and again to address this endemic conduct within the senior echelons of the Police Force—not for the want of evidence but for the want of will. As a result, police internal informants, such as me and others, who are duty bound within the Police Service Act to report misconduct, corruption and gross administration wherever it may be occurring condemn themselves and their careers as a consequence.

In my case my health and career have been destroyed—destroyed because in 1999 I had the courage to complain about corruption within the police promotion system; destroyed because, despite overwhelming evidence of the corruption I had predicted and warned against, the Police Force, the New South Wales Ombudsman, the Police Integrity Commission and the Minister for Police himself have done nothing nor intend to do anything to address the risk to the future integrity of the Police Force; destroyed because, again in 2001, I demonstrated the outcomes of such an organisational risk with the exposure of the falsification of statistics surrounding the implementation of highly politically motivated legislation, that being the Police and Public

Safely Act; destroyed because those in the senior echelons of the Police Force who were responsible for creating this mess, for telling and maintaining the lies, for deceiving the community of New South Wales, have not been, and it appears will never be, held accountable. They are instead protected by the very institutions and persons charged with the responsibility of ensuring the integrity of the Police Force. It is a scandal and one that can be addressed only with a complete review of anticorruption and whistleblower legislation—anticorruption legislation which guards against the cover-ups I continue to witness and whistleblower legislation which truly protects and recognises police officers who speak out against high-level corruption.

It is with firm conviction that I state that since 1998 the integrity of the entire middle and senior management of the Police Force has been severely compromised. That integrity, along with dedication and professionalism, have been replaced by corruption, incompetence and deceit, made possible only through the unlawful manipulation of an alleged corruption resistant system introduced by Peter Ryan. I refer of course to the police promotion system. The significance of any system of promotion upon the health and effectiveness of any organisation cannot be understated. It should provide the means to identify and select for advancement those with the greatest merit and those who will be charged with and capable of holding the custodial responsibility for the organisation's wellbeing, its operational effectiveness and its integrity. In order to perform this most vital of functions, that promotion system must be objective. But, above all, it must be free from unlawful and unethical internal or external manipulation.

Within the private sector, and indeed even in some areas of the public sector, the effects of a corrupt promotion system might be so insignificant as to never make its presence felt. Within the policing environment, however, where public safety relies not only on the integrity of its police but on the integrity of the systems which confer the power and authority upon those police, a corrupt promotion system will have devastating effects.

A corrupt promotion system allows other forms of corruption to flourish. It enables the corrupt to expand and solidify their influence within the organisation, growing and nurturing their networks exponentially as they themselves continue to progress up the corporate ladder until, at last, they control not only the corruption but also the means of combating it. These people care not for the competence of the minions they promote into positions around them. The only requisite characteristics sought by them are blind loyalty and ethical malleability, purchased forever by public money through the promotion granted. Promotions corruption, more than any other issue, has been the underlying cause for every matter which has been or is likely to be placed before this committee. It underpins every single incidence of corruption within the Police Force, for it has placed the corrupt and incompetent into positions where they wield the ultimate power—power and authority which allows for the control of and access to information, power and authority to influence internal investigations and their outcomes and power and authority over both the whistleblower's complaint and the whistleblower's fate. And what of the organisation's effectiveness? It declines. It must, as greed and malice replace commitment and professionalism. Crime in New South Wales continues to spiral upwards while those at the helm of the Police Force desperately attempt to conceal their managerial incompetence in dealing with it. Instead of admissions and effective remedial action, the community becomes victim to a fraud—a fraud made possible only through a corrupt promotion system which has enabled these networks of deceit to be created and maintained.

This is exactly what has been permitted to occur in New South Wales since 1998, and it continues as we speak. In 1998 the Police Force introduced a new promotion system. This promotion system was part of the much-heralded reform process introduced by former commissioner Peter Ryan. In 1999, having taken part in the process, I identified that it had major integrity failings, in that it was susceptible to corruption and in a manner not easy, if not impossible, to detect. As a consequence, in 1999 I reported this matter directly to Mal Brammer when he was Commander of Special Crime and Internal Affairs. From that time to today, a period of over three years, the Police Force—assisted in no small degree by the Police Association of New South Wales, the New South Wales Ombudsman and the Police Integrity Commission—have embarked upon a conspiracy of lies, deceit and gross misconduct to protect those responsible and to cover it up.

So who has been involved in this conspiracy—who do I hold accountable? Former commissioner Peter Ryan, who was well aware of promotions corruption and the susceptibility of the process to corruption and yet did nothing and later lied regarding his knowledge. Former deputy commissioner Jeffrey Jarratt—and I include his staff officers Adrian McKenna and former superintendent Peter Rankin—who, like Ryan, had complete knowledge in relation to the susceptibility of the promotion system to corruption and did nothing. Jarratt lied before the Cabramatta parliamentary inquiry in relation to the integrity of the promotions system. Former assistant commissioner Mal Brammer also knew of the promotion system's fallibility and did nothing. He also allowed senior public servants Michael Tiltman and Angela Myers to escape prosecution after completing a fraudulent internal investigation of my complaint. Former human resources manager Michael Tiltman and a senior public servant still attached there, Angela Myers, were responsible for conducting a fraudulent internal investigation surrounding my complaint, arriving at false findings to protect themselves, Ryan and Jarratt.

The current Commissioner of Police, Kenneth Moroney, was also aware of what had been going on with promotions and, like Ryan and Jarratt, did nothing. Worse than that, he has actually been sitting on recommendations for a reinvestigation of the entire matter for the last 12 months in order to protect Ryan, Jarratt, Brammer, Tiltman, Myers and especially himself. He is protecting also those police who have been the subjects of complaint regarding promotions corruption, including the likes of Clive Small, Lola Scott, Ron Sorensen and others—protecting the networks and the upper echelons so that other liars will not be undone.

Former President of the Police Association Mark Burgess, current President Ian Ball, Phil Tunchon and others within the Police Association have refused to acknowledge the problem or the extent and the effect it has had upon the workplace and the effectiveness of the Police Force. They deliberately ignored the phenomenon of an unprecedented 419 complaints of misconduct surrounding the promotion system, which demonstrate a systemic problem with the integrity of the process. They have endorsed the bandaid approach that has been adopted by the minister and the Police Force by introducing ineffective and worthless amendments to the current promotion process and by placing their own interests in front of their members and the community.

Mr Brian Donovan, Mr Tim Sage, Mr Richard Kenna and others within the Police Integrity Commission deliberately and continually failed to act upon my complaint of June 2000. In doing so, they failed to prevent promotions corruption from continuing to occur. They deliberately confined the terms of reference of the Jetz investigation and produced a cover-up report designed to protect the reputation of Ryan's previous administration of the Police Force

and now Moroney's. Senior police were protected although they were guilty of gross maladministration, incompetence and misconduct through the provision of worthless and contrived investigations such as Jetz, Malta and Mosaic—investigations which served no purpose other than to reinforce such conduct as acceptable within the managerial culture of the Police Force.

Mr Steve Kinmond and others at the New South Wales Ombudsman's office were content to deliver police internal informants, and their complaints, into the very hands of the criminal organisations those police were attempting to reveal as corrupt. Superintendent Les Wales, local area commander, Blacktown, and other local area commanders forfeited their integrity and dedication to policing in pursuit of personal ambition. They were complicit in providing worthless and false crime statistics to conform with the unrealistic expectations of their regional and state commanders, who have themselves become willing political instruments of government.

Deputy Commissioner David Madden, Assistant Commissioner Robert Waites and Chief Inspector Steve Matthews have played parts in undermining the investigation into my complaint of false statistics surrounding the Crimes Legislation Amendment (Police and Public Safety) Act. Individually and collectively, they have attempted to conceal the extent of the involvement and complicity of the senior administration in political policing.

Finally, the Minister for Police, Mr Costa, has been aware not only of my specific complaints but, more importantly, of their truth in terms of their effects upon the efficiency of the New South Wales Police Force and, consequently, the integrity of its management. He has done nothing more than the minimum required to ensure his and his party's political survival into the next election.

Mr MELHAM—You are in cowards' castle, Mr Fenlon. Have you missed anyone yet?

Mr Fenlon—He has known and done nothing. This government has known and has done nothing, Mr Melham. The organisational risk has not, and cannot, be addressed by his inquiry headed by Geoff Schuberg. There are just too many obstacles: a corrupt and inept police leadership, a police association little better, external oversight agencies that fail to do their jobs and a government that continues to give them all the green light. The evidence for these statements is contained within my weighty submission you have on hand. I invite the committee to test that submission and to test this statement. Call those who I have named.

I also stress the importance of one other person in particular—Mr Garry Richmond, now the manager of the firearms registry. Richmond, who was effectively booted out of Internal Affairs, at the time of our meeting in April 2001, which was recorded, was effectively the most senior internal investigator in the Police Force. The audio tape of that meeting is hard evidence of the truth of my statements and, coupled with other information I have since learned, casts serious doubt upon the integrity of our current commissioner, Ken Moroney. Richmond figures prominently in a number of other matters to be brought before this committee. I submit that he must be called as a witness, for I have little doubt his evidence will be most enlightening and damning. I draw your attention to a telephone call I had with Richmond on 20 December last year. I made notes; Mr Melham will be happy with this.

Mr MELHAM—I am sure you made a lot of notes, Mr Fenlon.

Mr Fenlon—I did indeed, Mr Melham.

CHAIR—Please just continue with your evidence.

Mr MELHAM—We will ask you about them later.

Mr Fenlon—I made a telephone call at 3.40 p.m. on 20 December 2002. I spoke with Gary Richmond and he indicated that he had not heard of the Bishop inquiry. I asked whether he had made recommendations regarding promotions. He stated that he had—to Jarratt, Moroney and Ryan. After reading my material, he recalled meeting with Ryan and stating, ‘We have major problems with this man,’ with this investigation carried out by Myers. He indicated that Myers had deliberately misled the Ombudsman and senior police. He stated also that Jarratt and Ryan received regular briefings regarding the Radium investigation, told in no uncertain terms that the promotions system had been corrupted, admitted that it was now a major problem for the Police Force that nothing had been done about the promotions system, that something could have and should have been done three years ago—or, if not when I made the complaint, certainly as a result of the Radium investigation. He has heard nothing back regarding his recommendations in 10 months.

He indicated that he was still unable to comment on a number of matters because of a secrecy agreement he signed with the New South Wales Crime Commission. Lola Scott was discussed briefly. He considered her treatment as unfair. I stated that someone close to him had actually recommended her dismissal some two years ago. He responded by saying, ‘That’s always a problem. They don’t want to make the difficult decisions.’ He still could not understand why nothing had been done with Myers, Tiltman, Jarratt, McKenna and Rankin and he defined them as being cronies. He could not understand why no investigation had been carried out. He said here that it is a matter for the Police Service to worry about now. I advised him that a lot of people were worried and he stated, ‘And they have every reason to be.’ He stated that on a number of occasions he had made recommendations regarding his findings on promotions corruption and none were ever acted upon.

In conclusion, Mrs Bishop and members of the committee, get used to seeing those rising crime rates in New South Wales—those statistics—for I have absolutely no doubt that that trend will continue well into the future. I am now happy to answer any questions you may have in relation to my submission or anything I have said today.

CHAIR—Thank you, Mr Fenlon. I might begin by asking you if you would mind outlining the steps you took to make the hierarchy aware of your complaint concerning the integrity or corruption within the promotions system and when that new promotion system was first introduced.

Mr Fenlon—I will start by answering the second part of your question first. The new promotion system was introduced in 1998. It commenced with the introduction of assessment centres in 1998. The actual positions began to be advertised in 1999. I beg your pardon—the first positions to be advertised utilising the assessment centre were superintendent positions in late 1998. I first became involved in the process in 1999 when I applied for duty officer grade 2 positions early in the year. I went through the first process, through the first round of advertisements and applications, in 1999. My analysis was a basic analysis of the process. It highlighted that the system could be undermined quite easily. The process was by way of a

written application and assessment centre processing which included psychometric testing and an interview.

The concept that was recommended by Wood, as far as I know, was to be a holistic one. It was to include all aspects and the individuals were to be graded. The Police Service used the first two phases, the written application and the assessment centre phase, as a culling mechanism and it relied wholly upon the interview to make its determinations in relation to who was going to be appointed. The problem was that the interview comprised eight set questions that were asked of every candidate. There were over 1,000 applications for the first round of appointments and I think 700 made it through to an interview. It took over three months for the interviews to be completed for the first round of duty officers. The same questions were being asked of every candidate and to me that seemed ridiculous in the extreme because, by virtue of the length of time of the process, the questions would become known: ergo, individuals could study or bone up on responses before being interviewed and score highly as a result. For me, that was not a fairly objective or reasonable test of one's capacity or merit for the position. In fact, it was ridiculous.

I was also concerned about a reliance upon a system of promotion where one was asked eight questions which were known to certain people, that is, the selection committee. That rang alarm bells for me. My greatest fear has always been that, if we had a senior hierarchy that was corrupt or individuals within the senior hierarchy who were corrupt, access to that information could be utilised to set up internal networks by providing the questions to the people you want to get promoted. It was a simple situation.

CHAIR—So what did you do?

Mr Fenlon—First of all, I contacted the Police Association by way of letter, telephone and email and I advised them that this process had major problems and faults in terms of its integrity and the way it was constructed. I said it was not going to work and that it was not what the members of the association wanted post royal commission.

CHAIR—Can I stop you there. As I understand it, when the new system was set up, the culling mechanism was put in place, and then the eight questions were asked. Then if anybody wanted to object to or complain about the promotion that was given there was an appeal mechanism to the organisation called GREAT; is that right?

Mr Fenlon—That is correct.

CHAIR—Which stands for?

Mr Fenlon—The Government and Related Employees Appeals Tribunal.

CHAIR—Three people sit on that tribunal?

Mr Fenlon—Yes, they did at the time; there was an amendment recently.

CHAIR—At the time there were three people, and one of them was the representative of the Police Association; is that right?

Mr Fenlon—One was the representative of the Police Association—generally an executive of the Police Association. The second member was a senior member of the New South Wales Police Service at the time—the force. The third member was the chairperson who was an appointee of GREAT.

CHAIR—So you complained to the Police Association, who had a representative sitting on the appellate body from the appointment body?

Mr Fenlon—That is correct. I raised my concerns with the senior members of the Police Association. It did not do me any good; they were not listening. A month later I sent a report of complaint to Superintendent Mal Brammer. I felt that it was—

CHAIR—Explain his position. He was then—

Mr Fenlon—Superintendent Mal Brammer was the Commander of Special Crime and Internal Affairs. It was his responsibility, I felt, to consider and look at the integrity of processes within the Police Force to ensure that they could not be compromised. I felt reasonably confident that, given the potential for catastrophe with the introduction of a process that was so inherently corruptible, something would be done about it and that it would be his responsibility to actually oversight the process in terms of its integrity. That was not to prove to be the case. It was in September 1999 that I sent that complaint off. At the same time, in November 1999, there was an invitation extended through the *Police Service Weekly*. Peter Ryan was going to conduct an episode of *Police TV*, ostensibly to discuss the reform process and to take any questions in relation to the reform process. I put my hand up—when I say ‘I put my hand up’ I contacted the media unit and said, ‘I have a couple of questions I would like to ask, and they are fairly relevant, in relation to the reform process; do you have any objections?’ They said no, and I got the green light.

I think on 23 November 1999 I was contacted at Blacktown police station and I asked the senior executive of the service, Peter Ryan, Jeff Jarratt and Ken Moroney a question in relation to the promotions system. I told them that it had no integrity, that it lacked value, that it needed a complete review; and that appeals to GREAT at that time numbered over 450, which was a phenomenal, unprecedented number of complaints and appeals that had been lodged in relation to process. There was every indication right from the earliest days that there was something desperately wrong with this process.

CHAIR—There was one example of one of those appeals where I think a senior person was promoted into the Special Crime and Internal Affairs agency who had claimed to have tertiary education and did not. Can you detail that?

Mr Fenlon—I became aware of a matter involving Senior Constable Carole Dowsen some time later—in fact, it was about 18 months later. The situation with Dowsen was that she was an acting inspector then working with Special Crime and Internal Affairs. Dowsen had applied for a duty officer’s position. What you have to understand too is that in going from a senior constable’s salary of about \$43,000 to \$45,000, I think it was at the time, to a salary in excess of \$95,000 or \$100,000 there is considerable incentive to do the wrong thing. The promotional system, in terms of the written application, the assessment centre process, the structured interview and the lack of checking of credentials and substance of application—everything—

had so many holes in it and it still does. When a system is so openly manipulable it is like putting a cake and a child in the same room and expecting them—

CHAIR—So what happened with the inspector?

Mr Fenlon—Dowsen produced fraudulent documents in relation to tertiary qualifications which she purported to hold. They were forgeries. It is as simple as that. It was discovered by chance by a colleague of mine who worked at Blacktown, Sergeant Greg Wren. He had done his research in relation to it. He got in touch with the tertiary education institution and confirmed it. He had statements from the dean of studies, the senior lecturer et cetera—he had a watertight brief. The only thing Greg did not do was report it there and then. He waited until he appealed against her appointment and made the evidence known.

Suffice to say there was absolutely no doubt that her credentials were false, that she had forged them and that she had tendered them before the appeals tribunal and before a selection panel. She had included them in her written application as qualifications held when in fact she did not hold them. The upshot of that, in my view as an officer of 20 years experience, is that the woman should have been charged criminally with forge and utter or with attempting to obtain a benefit by deception—criminal proceedings. They are criminal charges. Certainly it is prima facie—sufficient to go along with. I would have thrown her in the dock myself.

CHAIR—What happened? She was promoted and it went to appeal?

Mr Fenlon—Nothing. She went through the appeal. The appeal was held up because of the complaint made by Sergeant Wren. The internal investigation was conducted. It was found that she had presented false documents. The punitive action that was imposed at the discretion of Commissioner Peter Ryan was removal from Special Crime and Internal Affairs and return to her substantive rank of senior constable—and that was it.

An important point, which I would like to make now if I could, is that promotions corruption has not been and is not viewed as corrupt conduct; it is not viewed as criminal conduct. It is viewed as a managerial issue, and that allows people to escape responsibility, accountability and punishment. The strategy that is adopted by the Police Force in relation to issues like this is: 'Let's treat it as a managerial issue rather than an issue involving criminality, and nobody gets charged as a result.' Dowsen is still employed. I would draw your attention to the Jetz investigation—

CHAIR—I will come to Jetz in a minute, if I may. First of all, in 1999 you wrote to Mr Brammer at Special Crime and Internal Affairs and had no response?

Mr Fenlon—Yes.

CHAIR—In November 1999 you took part in *Police TV*—that was 23 November—and you put your concerns about the possibility of corruption to the current commissioner, the former commissioner and the former assistant commissioner?

Mr Fenlon—Indeed.

CHAIR—What happened as a result of that—anything?

Mr Fenlon—It was quite amusing from my perspective, because the responses of both Mr Jarratt and Mr Ryan gave me every indication that they had absolutely no idea what they were talking about in relation to the promotion system. They had no understanding of what the promotion system involved. It did not lead to anything other than the commissioner extending an opportunity for police from the field to assist him in coming up with a better process. I took that as a personal invitation and actually sent off a report to his chief of staff at that time, Superintendent Andrew Scipione. I wanted to meet with the commissioner. I wanted to put forward ideas for changes which I considered vital in order to tighten up the integrity of the system.

CHAIR—So you actually met with Commissioner Ryan?

Mr Fenlon—No. I was delegated to Chief Inspector or Inspector Adrian McKenna and a Superintendent Peter Rankin who were on Jeff Jarratt's personal staff. That meeting was farcical in that I had prepared I think an 11-page submission outlining specifically what the problems were, or what I identified the problems were at the time, with the promotion system. I even put forward some recommendations for changes—which, surprisingly enough, the minister has actually incorporated into some of his legislative changes for the promotion system—that still are not going to work. Suffice to say I was trying to be constructive in relation to my criticism. I was offering alternatives. I was attempting to identify a major problem with an organisational system that had major potential for catastrophe in years to come.

The complaint was dismissed, but the meeting had to be held—and I will tell you why. Because it would allow Ryan, Jarratt and others within the senior administration to say, 'If we give Fenlon the opportunity of airing his grievances, no-one can accuse us of not listening to him.' They gave me the time certainly, and they listened to me certainly; but they did nothing.

CHAIR—Nothing happened. So what did you do next?

Mr Fenlon—At this stage I was making telephone calls and further written complaints to the Ombudsman and I was concerned that I had heard nothing back from the Police Service in relation to the complaint that I had made through Brammer, and in June 2000 I made a comprehensive complaint to the Police Integrity Commission. It eventuated that absolutely nothing happened with it. The Police Integrity Commission referred it back to the Ombudsman's office and the Ombudsman's office did the old revolving door trick with it and gave it back to the Police Service, who subsequently sat on it again for more than 12 months.

CHAIR—When the Ombudsman seeks to get advice or information about any complaint, where does he get that advice?

Mr Fenlon—From the Police Force.

CHAIR—So the Ombudsman seconds people from the Police Force, those about whom the complaint has been made, to his staff for him to get advice. Is that the way it works?

Mr Fenlon—No. The New South Wales Ombudsman's office is an independent agency. There are no police attached to it. It will examine the matter. There is an understanding or an

agreement that has been contrived between the Police Integrity Commission, the Police Force and the Ombudsman in relation to categorising complaints. In hearing evidence from other witnesses, you may hear of a category 1 complaint, a category 2 complaint and a category 3 complaint. They have made a determination in relation to categorising complaints and, as a result, as to who will have responsibility for conducting the investigation.

CHAIR—So who makes that decision?

Mr Fenlon—I would like to know that myself, but suffice it to say that the promotions complaint that I made was deemed to be a managerial issue and was therefore referred back to the Police Force for investigation. The Police Force did nothing with it—absolutely nothing. In the interim I received a reply from Angela Myers—it was under the hand of Michael Tiltman but ostensibly it was prepared by Angela Myers—saying there was absolutely nothing wrong with the promotions system. At that time I had anecdotal evidence and circumstantial evidence in relation to—

CHAIR—What date did Angela Myers say that the system was terrific?

Mr Fenlon—The report was dated February 2000 but I did not get it until March. The date on the document is significant because, before she actually penned that document on behalf of Mick Tiltman, she was already privy to Operation Radium and the outcomes of the Operation Radium investigation.

CHAIR—We will come to Operation Radium in a minute. I want to get those dates. So in March 2000 you received a letter from Angela Myers?

Mr Fenlon—It was signed by Michael Tiltman but it had been prepared by Angela Myers.

CHAIR—But dated February 2000?

Mr Fenlon—Yes.

CHAIR—And it was received by you on 9 March?

Mr Fenlon—It was early March.

CHAIR—It was saying that the whole system was terrific and your complaint was without foundation.

Mr Fenlon—Absolutely.

CHAIR—I have in my hand a copy of the report on Operation Radium and its executive statement states:

On the 18 January, 2000 an officer attached to the Lake Macquarie LAC was in the office of another Inspector. Whilst there the IPC saw what he believed were the questions asked by the selection panels for the current round of Duty Officer position on the Inspector's desk.

Are they the jobs that have a salary of around \$100,000?

Mr Fenlon—Absolutely.

CHAIR—They did not exist before Commissioner Ryan invented 300 of them—is that right?

Mr Fenlon—He said he created 300 new jobs. He did not, and to me that followed—

CHAIR—What did he do?

Mr Fenlon—He devolved around 150 positions that were previously inspector positions. They were called patrol tacticians and there were secondary inspectors and there were senior sergeants positions—

CHAIR—Did those inspectors do policing work?

Mr Fenlon—Yes, indeed. He changed the patrol structure from a commander, a patrol tactician and an intelligence inspector. He took those last two positions, threw them back in the bucket and then developed or created these duty officer positions from—

CHAIR—Do duty officers do policing work?

Mr Fenlon—Duty officers do what sergeants have been doing for the last 100 years, I would imagine, in policing—certainly for the last 20 years that I have been a police officer.

CHAIR—But to get \$100,000 for that job would be terrific. I continue the quote:

The IPC had previously participated in an interview for these advertised positions and the Inspector was due for interview on the 20 January, 2000. An investigation established that two officers from this LAC admitted to having possession of, and using what they believed was to their advantage, questions which appear to be those asked at the Duty Officer Selection interviews. As part of the investigation inquiries were made in relation to the systems used by Human Resources Command to maintain confidentiality of the interview process. The attached report deals that phase of the investigation.

In summary, it says:

1. The confidentiality requirements on persons interviewed for promotion. In the second round Duty Officer positions failed to stop a document, with similar interview questions on it, being circulated to potential interviewees.

So they found that the questions being used were being circulated.

2. The identified risks to the organisation still operate because the original author of the circulated questions was not identified, the extent of the circulation not quantified and a wide spread knowledge of the existence of the circulated questions had occurred due to the investigation.

So it was widespread.

3. Past complaints relating to security and confidentiality breaches have led to attempts by Human Resources Command to improve security processes, such as the introduction of directions not to discuss interview questions.

They were asked, ‘Please don’t tell anyone about this.’

5. The wording of the directions do not disclose the contents of interview questions are inadequate.

He said that direction was not adequate.

6. Prior to the commencement of the second round of Duty Officer Panels, major concerns with the use of the same questions for all applicants were brought to the attention of Human Resources Command through a very specific complaint that predicted the breaches which did occur. These allegations were not given the weight of attention they required.

Mr Fenlon—Could I stop you there. That was my complaint to Brammer.

CHAIR—So Brammer was part of the Human Resources Command?

Mr Fenlon—No, and that is the second point I was going to make. That report in front of you was completed by Special Crime and Internal Affairs officers who worked for Mal Brammer. Mal Brammer was still in command of Special Crime and Internal Affairs when that report was completed. That particular finding seeks to remove the responsibility and obligation, if you like, from Mal Brammer for failing to do what they should have done. In other words, they were saying, ‘Let’s put it on human resources. Let’s say it was human resources’ fault that they didn’t do anything about Fenlon’s complaint,’ when in actual fact it was Brammer and Internal Affairs who I went to. But that document, that recommendation, that finding, seeks to exculpate Mal Brammer and Internal Affairs from the entire matter.

CHAIR—The report continues, and I quote:

7. The senior executive were not aware that a single set of questions were being asked of all applicants for the duty officer promotions.

Mr Fenlon—I will stop you again. That is obviously a falsehood in relation to the Radium findings, given the efforts that I had made from certainly September 1999 through to December 1999.

CHAIR—Is it possible that the detective inspector who signed off on this report, in questioning the senior executive, accepted the evidence from them that they did not know?

Mr Fenlon—If a detective inspector is conducting an investigation of his commissioner of police and deputy, he is not in a position to—

CHAIR—Question them.

Mr Fenlon—question them. They can basically say what they like. He would be a very brave man indeed. But that investigator chose to ignore, if you like, evidence to the contrary.

CHAIR—I continue to quote from the report:

8. The senior executive were of the opinion that “common sense” would dictate that different questions would be used to prevent breaches in confidentiality.

Mr Fenlon—I will make a comment on that, too, if I may. If that were the case, why didn’t the promotion system change post Radium? It did not. They were still using the same questions afterwards; they were still rotating the same questions afterwards. There was no tightening of the integrity of the process thereafter. That document condemns Jarratt, Moroney and Ryan, because there has been—

CHAIR—We might go on to Jetz in a moment. The report continues:

9. Officers involved were of the opinion that a single set of questions being asked of all applicants raised the level of risks associated with breaches of confidentiality.

Mr Fenlon—Absolutely.

CHAIR—It goes on:

10. The Human Resources Command has introduced a system of rotating the questions asked of applicants as a result of this breach of confidentiality.

So they put a few more questions in but the same ones were still being generated.

Mr Fenlon—In relation to the effectiveness of Radium in tightening up the process or its recommendations being endorsed by the Police Service or the executive of the Police Service at the time, obviously the findings and the recommendations were not sufficient, because we did have the Jetz inquiry and we did have promotions and corruption occurring after the Radium investigation had concluded its findings and made those recommendations. There was one significant change to the promotion system as a result. The document, where there was an undertaking by the applicant officer or the officer taking part in the interview not to disclose the questions to other candidates, was reworded. That was the only change to the process; that was the only improvement to the integrity of the process.

CHAIR—To recap the dates, you made your complaint in 1999, in the police TV session, to Special Crime and Internal Affairs, and to the Ombudsman, ICAC—

Mr Fenlon—The commissioner's office; not ICAC.

CHAIR—So a report dated 23 March 2000 establishes that the corruption which you said could occur did in fact occur.

Mr Fenlon—Yes.

CHAIR—They found that as a matter of fact.

Mr Fenlon—Absolutely.

CHAIR—Irrespective of other problems you might have with it, as a matter of fact they found that it was corrupt to the extent that they were swapping questions.

Mr Fenlon—Indeed.

CHAIR—I want to turn to Operation Jetz. As I understand it, Operation Jetz was an inquiry that arose out of Operation Florida.

Mr Fenlon—Correct.

CHAIR—Operation Florida was a drug related investigation whereby there were phone taps on different policemen’s phones to see whether or not they were involved in drug dealings.

Mr Fenlon—Correct.

CHAIR—In the course of those phone taps, they picked up a conversation between serving officers relating to the swapping of questions that were being used in the promotion system. One man—I am ashamed to say his name—Inspector Robert Gordon Menzies, had in fact compiled something called the ‘study book’.

Mr Fenlon—Yes.

Mr MELHAM—I thought there was only one Robert Gordon Menzies.

CHAIR—He would be horrified to think that someone who had been given his name was doing this.

Mr MELHAM—Yes, but he had a star chamber where some journalists were jailed in 1955 for three months, and they did not release the evidence until 45 years later.

CHAIR—I am glad you have a good memory.

Mr MELHAM—At least he protected his reputation.

CHAIR—So Inspector Robert Gordon Menzies created the study book, which then seemed to have quite a wide circulation.

Mr Fenlon—Yes.

CHAIR—Inspector Robert Gordon Menzies, who seems to have been the instigator of this, was having a conversation with Mark William Messenger.

Mr Fenlon—I did not hear all the evidence presented at Jetz but I was there during the first day and, yes, he spoke to Messenger and to other people.

CHAIR—It says that Robert Gordon Menzies during his evidence admitted receiving the key actions which he incorporated in his job applications and assessment centre report; conveying and/or receiving information from Scott, Jones and Long that related to specific questions for the duty officer interview; discussing topics directly or through the means of the study book with Graham—who was another serving officer mentioned—and Mark Messenger; obtaining and conveying information to Museth, Graham, Moss, Jones and Scott with respect to the questions being asked at interview for the team leader, sergeant and investigation manager sergeant positions; breaching the confidentiality requirements relating to the questions to be asked; and not reporting that misconduct.

It then says, relating to this same Menzies:

Other witnesses and telephone intercept material provided evidence regarding Menzies’ activities, including:

- the provision of information by Menzies about competencies and technical professional questions;
- the provision of information by Menzies about specific questions before an interview;
- the receipt of information by Menzies that would be passed on to other officers;
- the provision of information in the form of his “study book”; and
- a telephone intercept also shows Menzies agreeing to assist Marks in relation to the Investigation Managers interview.

Menzies gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceeding, but is available for disciplinary proceedings.

There is no evidence that Menzies was involved in any criminal conduct ...

Really.

Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Menzies for any criminal offence.

A section 181D notice was served on Menzies on 28 December 2001. On that date Menzies tendered his resignation, dating it 27 December 2001. His resignation was accepted by the Service and was effective from 19 January 2002. As he is no longer a police officer, he cannot be subject to disciplinary or administrative action under the *Police Act 1990*, the question of taking action against Menzies pursuant to sub-sections 97(2)(b), (c) or (d) of the Act does not arise.

In other words, he was allowed to retire, which meant, presumably, he kept all his superannuation and other entitlements.

Mr Fenlon—I do not know if that would be the case. He was certainly given an opportunity to leave. This is where I have a great deal of difficulty in relation to it. If someone were to look from another perspective, these people—

CHAIR—Let me just draw this one—Messenger—to your attention. I would then ask if one of the staff would find on the tape that part, which is part of the attachment that you provided, relating to Mark Messenger. It was found that Mark Messenger, as you have just heard, had been part of this with Menzies. Again, it was found he gave evidence under objection. It said there was no evidence that Messenger was involved in any criminal conduct and he should not be prosecuted. Messenger was served with a section 181D notice on 12 April 2002 and his legal advisers requested a deferral of his response to the section 181 notice because he was seeking a medical discharge. Subsequently he resigned, his termination being dated 18 September 2002, and, as he was no longer a servicing police officer, he could not be subject to disciplinary action. I wonder if we could now see the tape about Mr Mark Messenger.

A video was then shown—

CHAIR—This government report, tabled in the parliament of New South Wales about three weeks ago, says that Messenger was allowed to resign and that there was no criminal action against him. What was the date of that tape?

Mr Fenlon—That was ‘Directing Traffic’, done by the *Four Corners* program for the ABC. I cannot give you a date off the top of my head.

Mr MELHAM—There was a date of 26 October 2000 that looks like the video date.

Mr Fenlon—That could be correct.

CHAIR—So the *Four Corners* program was done in 2000 and I have here the findings of a report dated 2003. This same report had evidence of this corruption of the promotion system; we heard evidence that to get promoted was a big financial benefit to whoever was fortunate enough to get promoted. Mr Menzies, I understand, was on the executive of the Police Association?

Mr Fenlon—Yes.

CHAIR—Did he sit on the GREAT tribunal?

Mr Fenlon—My understanding is yes.

CHAIR—So the man who was providing the answers to questions for promotions was actually sitting on the appeals board when objections were made about certain appointments?

Mr Fenlon—Correct.

CHAIR—Was that true of Mr Messenger as well?

Mr Fenlon—My understanding is that Mr Messenger also sat on GREAT. He was an executive member of the Police Association.

CHAIR—And Mr Messenger had been given a promotion himself under section 66—

Mr Fenlon—Correct.

CHAIR—which meant he could go right around all this so-called transparent system and just be given his promotion without having any of this so-called scrutiny at all.

Mr Fenlon—Section 66 appointments were introduced by Peter Ryan—as he said—to maintain some stability within management whilst these changes were being effected. I said it in 1999 and I will say it again: section 66 is a means of rewarding one's cronies. It is a sinister form of nepotism. For an individual who is appointed to a section 66 position, there is a statutory provision within the police act which says that, if the individual occupies a position for—I think it is—two years or more, they are automatically promoted and they retain the rank and position. It is a situation where the question of those who are selected for section 66 appointments is totally at the discretion of their commanders, so there is no process involved in selecting these people for section 66 appointments—none.

CHAIR—So would Mr Raymond have been responsible for Mr Messenger's appointment?

Mr Fenlon—I would say that somebody locally would have had to make that recommendation, certainly.

CHAIR—That is the same Raymond that we heard about in our evidence last week concerning Mr Martin, who is sitting in the audience today—

Mr Fenlon—Correct.

CHAIR—who had his career absolutely ruined because Mr Raymond wrote a false report about him to the Queensland police?

Mr Fenlon—Correct. This is the point I am trying to make. We have a system and we have had systems—particularly the promotional system—operating within this Police Force which allow this type of conduct to go unabated and there is no-one to report it to. There is no-one listening to us. The result at the end of the day is that the community sees the crime statistics continuing to climb and they are asking themselves why. It is because we have an organisation that is rotten to the core and no-one is prepared to do anything about it.

CHAIR—We have all this evidence about just how bad this system is and yet this report by the Police Integrity Commission—and there was a report in the paper on the weekend that said that the government was going to disband the Police Integrity Commission because it was not doing its job—

Mr MELHAM—It has been denied.

CHAIR—Mr Costa subsequently denied that and said it was only going to be reviewed. This same commission said this at the end:

The Commission does not propose to make further comment on the structure of the promotion system at this time, given:

- the limited scope and purpose of the Operation Jetz hearings ...

Mr Fenlon—That was deliberate. The terms of reference were confined deliberately to exclude an examination of senior police, to exclude an examination of the process itself, to ensure that no accountability was attributed to the senior administration of the Police Service for the introduction of this promotion system, so no-one has to accept responsibility for the consequences. You see them in those documents.

CHAIR—There is a problem here. As I understand it, they have the power to themselves decide that they want to go on.

Mr Fenlon—They are totally autocratic.

CHAIR—In fact, they say:

Following the public hearings in Operation Jetz, a significant number of serving and former officers contacted the Commission to provide information concerning the promotion system.

I understand that that number is 419.

Mr Fenlon—Yes.

CHAIR—They go on:

In the main, these were matters that did not fall within the scope and purpose of the hearings.

What a joke!

At the conclusion of the scheduled public hearings, the Commission considered whether it was appropriate to expand the terms of reference of the investigation, and determined it was not appropriate.

It had the power to do so and decided not to do it.

Matters raised with the Commission by officers and others were referred to the Service—

back to the Police Service—

which established Strike Force Uman to consider them.

If I have got it right, this has been considered since 1999. We have had Radium, which found that the system was corrupted; we then had this huge Jetz inquiry, which goes from 2001 to 2003, and nothing of substance has been done.

Mr Fenlon—Nothing.

CHAIR—They are not even going to make a determination about whether it needs to be investigated.

Mr Fenlon—Strike Force Uman is a sham; it is an absolute sham. The investigative techniques that it employs are nothing more than putting allegations to the officers concerned. I said in 1999 that this type of corruption was almost impossible to detect. The only reason that Menzies was caught was on the basis of the telephone intercepts. People involved in this type of conduct are not likely to implicate themselves by admitting their involvement in it. So Uman can look at 419 complaints, go out to each of the officers concerned and say, ‘We’ve received an allegation, sir, that you were involved in promotion corruption. Is that correct?’ ‘No, it is not.’ ‘Thank you.’

CHAIR—I have two more points to make. Operation Jetz said that low-ranking officers, inspectors, were allowed to resign but that the people who were lower down the chain, the detective senior constables, the sergeants—whatever—could have disciplinary action taken against them. No action was taken against the senior officers; they were allowed to go. But the nature of the disciplinary action, as I understand it, was that you could be demoted a rank, or else within the band of your existing rank you could suffer a diminution in pay but still keep the rank. That was considered to be adequate discipline for what is totally corrupt criminal behaviour. How on earth can frontline policemen who want to uphold the law get on with their jobs when the service itself and the Police Integrity Commission condone this sort of behaviour?

Mr Fenlon—They condone this conduct because they have to.

CHAIR—They do not; they have the power to go beyond it.

Mr Fenlon—They have to. These people do not want this problem exposed. They do not want the extent of the problem exposed and they do not want the risk to the organisation to be made known. We are talking about one individual, Menzies, one person who had 20 people running from him. There were 419 other complaints. This is a widespread problem within the organisation.

CHAIR—That is exactly what I am saying.

Mr Fenlon—That it is a widespread problem has been denied because then they would have to do something about it. They have been denying this all the time, and the Police Association has been standing shoulder to shoulder with them.

CHAIR—The point I am making to you, Mr Fenlon, is that the Police Integrity Commission had the power—

Mr Fenlon—Yes, they did.

CHAIR—to extend their terms of reference and thoroughly investigate the system and refused to do so.

Mr Fenlon—Absolutely.

CHAIR—I would put it to you that their failure to act was compounded by the tabling of Operation Malta only six days or so later in which, after \$8 million and 61,000 pieces of evidence, they found that nobody was guilty of anything.

Mr Fenlon—Nothing was achieved.

CHAIR—Except that they said of people like Mal Brammer that he ‘used malicious and unfounded investigation into individuals as a means of maintaining the old control and punishment mechanisms in order to derail and delay genuine reform,’ but that there was no evidence that he was guilty of any criminal conduct. The report goes on to talk about Clive Small; it goes through everybody who is mentioned in it but says that nobody was guilty of anything. So how can anyone have any confidence in the Police Integrity Commission to carry out a fair dinkum inquiry and come down with hard findings?

Mr Fenlon—The answer is that we have not. We have tried but we have not.

Ms JULIE BISHOP—Mr Fenlon, I would like to ask a few more questions about the Government and Related Employees Appeals Tribunal. Can you tell me a little more about how the tribunal is constituted? I assume that it examines more than just police employee matters.

Mr Fenlon—That is correct. The Government and Related Employees Appeals Tribunal looks at all government departments. As I understand it, it did reviews of disciplinary action and promotional appointments right across the public sector. It has a sitting chairperson who is, ostensibly, a former magistrate or judge and, depending on the government agency being examined, it would have a representative of the government agency and an employee representative, generally from the union or association.

Ms JULIE BISHOP—Let us look at police appointments. If there is to be an appeal in relation to police appointments, a tribunal is constituted.

Mr Fenlon—Correct.

Ms JULIE BISHOP—Comprising?

Mr Fenlon—I will just take you back a bit. The situation now in relation to appeals against police appointments has changed.

Ms JULIE BISHOP—When did that occur?

Mr Fenlon—That occurred on 1 January.

Ms JULIE BISHOP—This year?

Mr Fenlon—Yes, with the introduction of a bill amending the police promotions system. Part of it was a change to the procedure in relation to GREAT appeals. Now they have removed—and we are yet to be told why, although I suspect I know the reason—the Police Service representative and the Police Association representative. So now promotional appeals are heard by one person, and that is the chairperson. I believe that is as a direct consequence of what has gone on. I think the minister has taken on board what has gone on in relation to the appeals process.

Ms JULIE BISHOP—So you see the changes that were introduced on 1 January this year as being consequent to the failings of the previous system?

Mr Fenlon—Absolutely.

Ms JULIE BISHOP—Can we go back to the previous system that existed at the time of your complaint.

Mr Fenlon—Yes.

Ms JULIE BISHOP—For a grade appointment, a police appointment, a tribunal is constituted comprising a chair—

Mr Fenlon—Is this for an appointment or an appeal?

Ms JULIE BISHOP—For an appeal to the tribunal. The tribunal is constituted by a chair who is the same chair for all government and related employee hearings.

Mr Fenlon—Yes. I think they have two or three.

Ms JULIE BISHOP—Then there are two other members of the tribunal. Which organisations are they from?

Mr Fenlon—One is from the New South Wales Police Force—generally a senior officer of superintendent rank or above—and the other one is an executive member of the Police Association.

Ms JULIE BISHOP—In the event that the subject matter of the appeal involved issues concerning the Police Service or the Police Association, are you aware—tell me if you are not—of how a tribunal would be constituted if the questions to come before the tribunal involved the workings of either the Police Service or the Police Association?

Mr Fenlon—All of the matters that I attended GREAT in relation to were promotional appeals matters. Conflict of interest, if you like, did not and would not exclude members from taking part. I have never seen or heard of a member of GREAT standing aside from a decision in relation to an appeal, ever.

Ms JULIE BISHOP—Is the person who is bringing the appeal able to have legal representation?

Mr Fenlon—They were not at the time, no. There were no rules of evidence; there was no sworn evidence. There was nothing.

Ms JULIE BISHOP—Were the hearings public?

Mr Fenlon—They were generally, yes.

Ms JULIE BISHOP—But the appellant did not have legal representation?

Mr Fenlon—No. You had to present your case yourself.

Ms JULIE BISHOP—What about if, as an appellant, you were to take issue with the presence of one of the tribunal members, as in a court proceeding if you are going to take issue with the judge about bias or conflict?

Mr Fenlon—There was no compunction on the part of that individual to stand aside—none whatsoever.

Ms JULIE BISHOP—Can you tell me about the workings of the tribunal? If you have appeared before it or have been aware of its workings, what would happen in the normal course of events?

Mr Fenlon—You had to lodge an appeal on the basis that you had greater merit than the nominated person for the position. You had to put forward your case in a succinct matter, covering specific points. After you had delivered it, the nominated person would have the right to reply, then the tribunal would adjourn, consider its decision and return.

Ms JULIE BISHOP—So the chair of the tribunal is a magistrate or somebody like that?

Mr Fenlon—Yes.

Ms JULIE BISHOP—They are not somebody from within the Police Service.

Mr Fenlon—No.

Ms JULIE BISHOP—Mr Menzies, who was the vice-president of the Police Association, was a member of this tribunal on a number of occasions.

Mr Fenlon—Yes, that is my understanding.

Ms JULIE BISHOP—So if a matter came before a tribunal of which he was a member and a person complained about an appointment under this promotions system, he, as the person within the Police Association, would then sit in judgment on that.

Mr Fenlon—Correct. People like Menzies could benefit in two ways. Firstly, they had the power to influence the decisions of the tribunal in relation to appeals that might be lodged by colleagues of theirs or against colleagues of theirs. Secondly, the most significant thing about Menzies' participation on that tribunal was his access to information. As a tribunal member, you are provided with all of the technical questions that were asked and all of the material that was used in order to make the determination in relation to who had relative merit in the first place. So here is Menzies sitting up here on the tribunal and he has access to myriad confidential information in relation to appointments.

Ms JULIE BISHOP—In other words, from the outset he would have had access to the whole interview process, including the eight questions or whatever.

Mr Fenlon—Indeed.

Ms JULIE BISHOP—What was the nature of those eight questions? Are we talking about rocket science here? What sorts of questions were they?

Mr Fenlon—We are not talking about rocket science; we are talking about procedural issues. I cite one example in there in relation to crime scene management, critical incident and emergency management, and employee relations—myriad issues. If you had the questions beforehand you could go to the police handbook or to the respective legislation or to the procedural journals that we have and—

Ms JULIE BISHOP—You could be word perfect.

Mr Fenlon—Absolutely; you would be well prepared for it.

Ms JULIE BISHOP—Going back to the scenario where Mr Menzies is a member of this tribunal, it has been admitted that he gave interview questions or confidential information to between 20 and 30 police officers—in exchange for what?

Mr Fenlon—One would have to ask him. The way I would see it is in return for favours. Some of those individuals would have been in a position to vote favourably for him. They were executive members of the Police Association and I think he was hunting for the presidency of the Police Association. It is not just that, what you have to understand is that he was a relatively

young police officer—he is 40-something—and that if you are a crooked cop you start setting up your networks as soon as possible. Over time those networks become stronger and more trusting of individuals. If I have done you a favour, you will be expected in turn, at some time later on, to return it for me, wherever it may be—you own the person. That is what corruption is all about: having something on them, having something you can barter with. So you do not necessarily want anything immediately. You would not want anything immediately.

Ms JULIE BISHOP—You have just done a favour?

Mr Fenlon—They think: I have done a favour for a senior constable over there. One day he will be a sergeant or an inspector and I will make a phone call and I will say, ‘Listen, I’ve got a buddy of mine who is coming up before your selection committee. Look after him.’

Ms JULIE BISHOP—Were there written reasons for the decision of the tribunal?

Mr Fenlon—Yes, there were.

Ms JULIE BISHOP—Who would generally write them—the chair?

Mr Fenlon—Generally it was the chair.

Ms JULIE BISHOP—Were there ever dissenting views?

Mr Fenlon—Rarely. The GREAT process has been tarred with the same brush for quite some time. Decisions which defy logic have been made—I say that in my case at least once. It was a ridiculous process. It provided no security in relation to securing the integrity of the process. Mr Jarratt, in his evidence before the Cabramatta inquiry, made a great deal of GREAT and its capacity to oversee the integrity of the process when in fact it has no role in it whatsoever—and he knew that at the time he made those statements. It is ridiculous. If you introduce a promotional system that is fair and equitable and transparent and truly corruption resistant, in that it is removed from the people making the decisions, you do not need an appeals process; appeals become moot.

Ms JULIE BISHOP—As of 1 January the changed appeals system now means that there is only one member of the tribunal?

Mr Fenlon—Indeed.

Ms JULIE BISHOP—So there is nobody from the Police Association or the Police Service on the tribunal?

Mr Fenlon—Yes.

Ms JULIE BISHOP—So it avoids the Menzies and Messengers of the world being on the tribunal?

Mr Fenlon—It does.

Ms JULIE BISHOP—Going back a step, was there an appeal from the appeals tribunal?

Mr Fenlon—Only on a point of law.

Ms JULIE BISHOP—It was to the Administrative Appeals Tribunal?

Mr Fenlon—No.

Ms JULIE BISHOP—Where did it go?

Mr Fenlon—It went to the District Court.

Ms JULIE BISHOP—On a point of law?

Mr Fenlon—On a point of law. It has always been one of my concerns in relation to GREAT that its decision is final and there is no review of its decision on the material that is presented. The evidence is not given under oath. Individuals can say what they like. It is untested information, if you like. These decisions were made on untested information, and there was no one that you could go to afterwards. The entire promotional system is just ridiculous. But it plays an integral role in ensuring the integrity of the Police Force into the future, so they should have got it right—and they got it wrong. They knew they got it wrong and then they started to cover it up. In my view the appeals process should not exist. There should be no need for an appeals process.

Ms JULIE BISHOP—In an ideal world.

Mr Fenlon—In an ideal world, true.

Ms JULIE BISHOP—Can we just come to your meeting on 2 December 1999 with McKenna and Rankin. In response to a question from Madam Chair you described it as ‘farcical’. Did you raise at that meeting your specific concerns about the fact that having a set of questions was just inviting a problem? If you share the questions, everybody is going to know in advance. There is no point in having the questions. Did you share that concern with them?

Mr Fenlon—I gave them a written submission in which it was outlined as well as other issues which were of concern. It was just dismissed.

Ms JULIE BISHOP—Did they respond to your recommendations? You say you had a series of recommendations. Was there discussion about your recommendations?

Mr Fenlon—Very little. Adrian McKenna was probably the more positive of the two. The excuse I was given in relation to the recommendations was time and money. That was basically it. It was nothing to do with the validity of my statements. McKenna actually accepted some of them as being reasonable.

Ms JULIE BISHOP—How long did the meeting take?

Mr Fenlon—About an hour and a half.

Ms JULIE BISHOP—You said—in terms of the time frame—that there was a very minor procedural change. What was that?

Mr Fenlon—There were two. One was that the direction, not the disclosing information, was reworded.

Ms JULIE BISHOP—From what to what?

Mr Fenlon—I do not have the document in front of me but it went from ‘you should not’ to ‘you are directed not to’. The second change was that, instead of being interviewed for each position—so if you applied for four positions you would be interviewed four times—you would be interviewed once. To me that made sense. A duty officer is a generic position. If you are a duty officer, effectively you should be able to be a duty officer anywhere. Geographical location should have little impact in relation to position.

Ms JULIE BISHOP—How did the meeting end? On what basis did it conclude? Was there an undertaking to look at your concerns?

Mr Fenlon—There was an undertaking that they would provide my submission to both Jarratt and the commissioner and that my concerns would be raised with both.

Ms JULIE BISHOP—You also contacted the New South Wales Ombudsman and spoke with Yvon—

Mr Fenlon—Yvon Piga.

Ms JULIE BISHOP—I am sorry, I am not from New South Wales. Who is Yvon Piga?

Mr Fenlon—He was one of the investigating officers at the Ombudsman’s office at the time. I do not think he works there any longer.

Ms JULIE BISHOP—He told you that the Ombudsman had similar concerns to yours.

Mr Fenlon—Absolutely. This is the really strange thing about it. The Ombudsman was expressing concerns in relation to the integrity of the process to the Police Service encouraging the Police Service to do something about it. The Police Service did not and would not until such time as I contacted the Ombudsman’s office and threatened to go to the press. Only when I did that was a meeting arranged between Gary Richmond, Kim Castle and me at the Ombudsman’s office. The tape recording of that meeting should paint the picture.

Ms JULIE BISHOP—So that I understand the sequence of things, you say the conclusions or the Radium report had direct evidence of promotions corruption occurring. What was that direct evidence?

Mr Fenlon—The direct evidence was the involvement of the police up in the Lake Macquarie command, who were caught red handed with the questions. Not Menzies.

Ms JULIE BISHOP—Menzies is later.

Mr Fenlon—Yes, Menzies is later.

Ms JULIE BISHOP—So this was Lake Macquarie?

Mr Fenlon—Yes. This has been going on since 1998, because I understand that, in his evidence before Jetz, Menzies indicated that he actually obtained the interview questions from a member of the water police in 1998. So six months before I looked at the process and made my complaint, people were already—

Ms JULIE BISHOP—The questions were already circulating.

Mr Fenlon—They were all ready undermining the promotion system then. It has been absolutely ridiculous.

Ms JULIE BISHOP—So between the introduction of the system in—

Mr Fenlon—1998.

Ms JULIE BISHOP—and Jetz—

Mr Fenlon—A fortnight ago.

Ms JULIE BISHOP—the promotions system remained the same except for a few minor procedural changes?

Mr Fenlon—Yes.

Ms JULIE BISHOP—The series of questions was still being used?

Mr Fenlon—Yes.

Ms JULIE BISHOP—Yet from 1998 it was acknowledged that the questions had been circulated, for one reason or another, to any number of people?

Mr Fenlon—Yes. Like I said, this is a gross neglect of duty which constitutes misconduct on the part of the most senior administration of the New South Wales Police Force, the Police Integrity Commission, the Ombudsman—everybody.

Ms JULIE BISHOP—Again, to put it in a time frame for me, you were later contacted by a Kim Castle—

Mr Fenlon—Yes.

Ms JULIE BISHOP—About when was that in the chronology?

Mr Fenlon—It was shortly before our meeting in April. It was ostensibly to arrange that meeting between myself and Gary Richmond.

Ms JULIE BISHOP—Who showed you the documents in relation to—

Mr Fenlon—In relation to Radium?

Ms JULIE BISHOP—Yes.

Mr Fenlon—I first became aware of Radium on the grapevine and it was confirmed for me in December in an article by Darren Goodsir in the *Sydney Morning Herald*. I contacted Goodsir and I told him that that specific reference was to a complaint of mine. I said, ‘Come and see me.’ Darren Goodsir provided me with a copy of the investigation’s report. I did not ask him where he got it and I wouldn’t.

Ms JULIE BISHOP—Is that when you got information about Carole Dowsen?

Mr Fenlon—No, that was afterwards.

Ms JULIE BISHOP—And what information did you see in relation to Carole Dowsen? You said it was a series of documents, damning evidence that confirmed the rotting of the promotions system. I was just referring to your submission.

Mr Fenlon—I saw the documents that were to be tended by Greg Rehn at the appeals tribunal against Dowsen’s appointment. He showed them to me.

Ms JULIE BISHOP—What sort of documents were they?

Mr Fenlon—Basically, I believe it was the external qualifications which she purported were hers, and he showed me letters from the dean of studies from the institution concerned. If you wish to press the matter, I suppose you could contact Senior Sergeant Rehn and establish what they were. Suffice to say I did see the documents and they were fairly damning.

Ms JULIE BISHOP—And essentially there had already been an investigation or at least, to your appreciation, there had been an inquiry into her qualifications and the institution had written back saying, ‘No, she doesn’t have these qualifications.’

Mr Fenlon—Yes, she never completed the course.

Ms JULIE BISHOP—Do you know whether this process of claiming to have tertiary qualifications—or any qualifications—

Mr Fenlon—Is policed?

Ms JULIE BISHOP—is widespread?

Mr Fenlon—Why wouldn’t it be? Nobody checks them. That is basically what I said. There is no checking of content of written applications in relation to their substance. There is no verification done at all. If it is done, it is one in 1,000 or one in 2,000.

CHAIR—What else goes in the applications?

Mr Fenlon—They address the application in relation to what they call the SOAR principle—situation, objective, action and result. You highlight specific scenarios that are relevant to specific key actions. You can basically say, ‘I attended a siege at Blacktown on whatever date. The man was armed with a rifle. He had taken three children hostage. I marshalled resources and I involved this agency and that agency. I embarked on negotiations with this person and the situation was effectively resolved without loss of life and the children were recovered and returned safely to mum.’ Nobody ever bothered to check whether that event had actually occurred, but it satisfied—

Ms JULIE BISHOP—So you can make up a scenario?

Mr Fenlon—It is storytelling.

Ms JULIE BISHOP—In the case of Dowsen, do I take it that she put down in her application for promotion that she had a particular tertiary qualification?

Mr Fenlon—Yes.

Ms JULIE BISHOP—Did she have a certificate or a document purporting to be it?

Mr Fenlon—Yes.

Ms JULIE BISHOP—So it is a forged document?

Mr Fenlon—Yes.

Ms JULIE BISHOP—A document purporting to be a graduation certificate or something similar from a New South Wales institution?

Mr Fenlon—Yes.

Ms JULIE BISHOP—And it was forged?

Mr Fenlon—Yes.

Ms JULIE BISHOP—And as a result of that she was not dismissed from the Police Force?

Mr Fenlon—No. She was removed from Internal Affairs, where she was an acting inspector of police.

Ms JULIE BISHOP—And that was the promotion that she had obtained as a result of—

Mr Fenlon—No—this is the wonderful thing about it: we pick the right people for the job, don't we? She is a senior constable—

Ms JULIE BISHOP—She was looking into forgeries?

Mr Fenlon—She was a senior constable of police. She was working at a local area command. She obtains a transfer to Special Crime and Internal Affairs, the pillar of integrity within our service. She is given, if you like, a section 66 appointment to detective inspector or to acting detective inspector. So she is now effectively a senior investigator attached to Internal Affairs. The positions for duty officers are advertised so they say, ‘Instead of the relieving money, jeez, I’d like that full time. I’m in a perfect position; my integrity will never be questioned. Why would it? I am here in Internal Affairs.’

Ms JULIE BISHOP—‘But I just need a tertiary qualification.’

Mr Fenlon—‘I just need a tertiary qualification just to round out the image a little bit.’ But she was caught.

Ms JULIE BISHOP—Caught before the appointment was made?

Mr Fenlon—No. Her appointment was recommended. She was caught by my colleague who subsequently appealed to GREAT, and that was a farce, let me tell you, in relation to the appeals process. The chairperson or the Police Service representative at the time—I can’t remember the man’s name, and I won’t say it because I can’t recall it—was quite disgusted with that colleague of mine, Greg Rehn, because he didn’t make the complaint and waited until the appeal was actually running before he disclosed this information in relation to Dowsen. But Dowsen’s punishment, effectively, was simply to be returned to senior constable. That was it.

Ms JULIE BISHOP—For forging a document upon which she was to receive the benefit of an appointment?

Mr Fenlon—For purporting to have the qualifications in her application which she knew to be false at the time. That’s fraud—that’s an attempt at fraud—and the benefit at the end of the day is \$45,000 or a \$55,000 increase in her salary. Multiply that by 7.5 times, when she is due to retire at 30 years service and aged 55, and you will see how lucrative promotions corruption is. These guys at north side over at Manly dealing in drugs are mugs—they really are.

Ms JULIE BISHOP—Are you aware of why no criminal charges were pressed? Was a reason ever given? Members of the public would be interested to know why they would be charged with forging and uttering, obtaining a benefit by deception or whatever other criminal charges could flow from this. If a student did it—

Mr Fenlon—Yes, if a student did it they would be dismissed from the university or whatever—from the institution.

Ms JULIE BISHOP—Are you able to tell me whether any justification was given for not pressing ahead?

Mr Fenlon—No, there isn’t any. It is totally at the discretion of the Commissioner of Police what action he takes. If no criminal charges are preferred, on the advice of these learned gentlemen down in the corner from legal services, that is it—the Police Service is off the hook. Think about it: if the Police Service started to charge people criminally with promotions corruption, given the extent—419 complaints involving a great number of people, 20 to 30 running off Menzies alone—it is not exactly the best image of the Police Force to present, is it?

'We don't want to catch that many; we don't want to have to deal with that many sackings.' My God, it would undermine the entire integrity of the Police Force—well, it already has. But what is the community going to think? That is the reality. We have police who have been involved in this. It has gone right throughout the service. It is at every level from sergeant upwards, in every section of the organisation—it permeates everywhere, right throughout it. The end result is the crime statistics, because our organisation is lacking—it is suffering—in terms of its effectiveness to fight crime as a result.

You have a changing organisational work dynamic. We have younger police—less experienced, more transient. Why? Because you have disfranchised and—excuse the language—pissed off senior ranks like me with 20 years service who get overlooked for some reason or another. You are put on the sideline while these young high-flyers are getting the jobs because of whom they are connected to—not in my case; I could wear it. I felt sorry for the men that I looked up to as role models: fellows like Jack Ferguson and Peter Black at Blacktown—sergeants. Brilliant policemen, good policemen, did not even get a look in with this promotional system, and they have since gone. I have never seen so many police so anxious to get out of the Police Force, and that has left a void now within middle management that can never be filled or addressed.

We have young police coming in, staying for four or five years and in that time learning exactly what is going on, not liking it and leaving—but in the interim they are being trained and directed by either the corrupt or the just patently inept. If that is the situation that the New South Wales government wants to proceed with, that is fine. You are going to have 5½ million victims for the next 50 years in New South Wales whilst this is not addressed.

That is the way I feel about it. I am one of those victims. I am now a resident in New South Wales, a private citizen, and I am concerned about it. And I have been concerned about it since 1999 because I was a decent cop and I could see the potential outcome for this state in terms of crime. No-one gives a shit, because they are interested only in themselves. People have changed. They are not committed to policing; they are only interested in feathering their own nests and getting further up the corporate ladder—and that is how they have done it, through a promotion system like that.

CHAIR—Thank you, Mr Fenlon. The Productivity Commission's *Report on government services 2003*, which came down two weeks ago, provides an interesting comparison between New South Wales and other states. It measures victims of recorded crime against the person per 100,000 people, so it is a static measure right across the states. The armed robbery rate in New South Wales is 86 per 100,000. The state that comes closest to that is Victoria with 53.6 per 100,000. The unarmed robbery rate is 147.3 per 100,000 in New South Wales. The state that comes closest to that figure is South Australia with 70.5 per 100,000. Are you saying that the New South Wales figures are so out of kilter with the other states because of the low morale and the inability of good policemen to get on with the job they really want to do?

Mr Fenlon—It is because of low morale. It is because of the inability of the decent and good police that are left to do what they need to do. It is because we lack experience now. There is a general across-the-board decrease in expertise and in the availability of expertise. We do not have the prosecutors we had. The quality of the briefs is declining. The quality of investigations is declining. It is because we got rid of specialist squads. The expertise just does not exist anymore. It has been eroded so significantly that now we cannot address major crime—I do not

believe so, anyway. I was only a general duties police officer. I was seeing the effects out on the street. Basically, I was seeing what those statistics are reflecting: an increase in serious crime.

CHAIR—Thank you. I will now cede to Mr Melham.

Mr MURPHY—With respect, Chair, as the deputy chair of this committee I want to pull rank and go next.

CHAIR—That is fine, Mr Murphy, but there is no deputy chair of the subcommittee. Nonetheless, I would be delighted for you to go next.

Mr MURPHY—Mr Fenlon, have you read the terms of reference for this inquiry?

Mr Fenlon—I have.

Mr MURPHY—Okay. Do you have a copy of those terms of reference here?

Mr Fenlon—No, I do not.

Mr MURPHY—Here is a copy. To refresh your memory, and for the benefit of the committee and the audience, could you read out those terms of reference, please?

Mr Fenlon—It says:

Inquiry into crime in the community: victims, offenders and fear of crime.

Terms of reference for inquiry and report

The Committee shall inquire into the extent and impact and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

- (a) the types of crimes committed against Australians
- (b) perpetrators of crime and motives
- (c) fear of crime in the community
- (d) the impact of being a victim of crime and fear of crime
- (e) strategies to support victims and reduce crime
- (f) apprehension rates
- (g) effectiveness of sentencing
- (h) community safety and policing

That is it.

Mr MURPHY—Mr Fenlon, with regard to part (a) of the terms of reference, what qualifications do you possess to comment with authority on the types of crimes committed against Australians?

CHAIR—Mr Murphy, as you just heard read out, the terms of reference state ‘shall consider but not be limited to’.

Mr MURPHY—That is right. Madam Chair, I am asking a question. You have had a go. You have been on for about 50 minutes. It is my turn. I repeat: Mr Fenlon, what qualifications do you possess to comment with authority on the types of crimes committed against Australians?

Mr Fenlon—I would say some 20 years experience as a police officer at Blacktown has exposed me to all types of crime committed upon people. I suppose over 20 years one has the tendency to become cynical in relation to what one sees and what one becomes desensitised to by virtue of the volume of crime that one has had to deal with over 20 years. Can I say that 20 years as a police officer should be sufficient qualification to make some comment in relation to crime.

Mr MURPHY—Mr Fenlon, what experience do you have in the analysis of statistics?

Mr Fenlon—None, formally.

Mr MURPHY—In relation to part (b) of the terms of reference, have you undertaken any sociological or physiological studies of the perpetrators of crime?

Mr Fenlon—No.

Mr MURPHY—What expertise do you possess in terms of criminal profiling?

Mr Fenlon—None.

Mr MURPHY—In relation to part (c) of the terms of reference, what study or investigation into community attitudes towards crime have you undertaken?

Mr Fenlon—I have done some internal courses at the police academy.

Mr MURPHY—What are those courses?

Mr Fenlon—One was on community based policing. Another one was the supervision development program. I have done a number of in-service courses at the police academy that would have had components of that.

Mr MURPHY—Have you ever conducted any surveys into the fear of crime?

Mr Fenlon—No.

Mr MURPHY—What benchmarks would you apply in measuring the fear of crime in the community?

CHAIR—I could give you the Productivity Commission’s—

Mr MURPHY—I am asking the witness, Madam Chair.

Mr Fenlon—Could you repeat the question please.

Mr MURPHY—What benchmarks would you apply in measuring the fear of crime in the community?

Mr Fenlon—I would imagine they would be the public reaction to crime, the public’s perception of crime and the public commentary in relation to crime as an issue. There was an article recently in the *Sun Herald* in respect of a gentleman who was issued a certificate by the local police station acknowledging that he was a recidivist victim. I would say that that little article was significant in terms of its capacity to relate to me how the community feels about crime and what has been happening with crime.

Mr MURPHY— How do you measure the impact of crime on a victim? Part (d) of the terms of reference is about the impact of being a victim of crime and fear of crime.

Mr Fenlon—Could you repeat the question again. I would hate to misunderstand you.

Mr MURPHY— How do you measure the impact of crime on a victim?

Mr Fenlon—That is very difficult. Do you mean from a personal perspective, having dealt with victims of crime?

Mr MURPHY—Yes.

Mr Fenlon—I would say their physical and emotional response, their sense of loss, their sense of complete victimisation and their sense of complete powerlessness in relation to the situation—what has occurred or what is likely to occur.

Mr MURPHY—Have you undertaken any studies into the impact of crime on victims?

Mr Fenlon—No.

Mr MURPHY—Part (e) of the terms of reference talks about strategies to support victims and reduce crimes. What experience have you had and what have you done to support victims of crime?

Mr Fenlon—As an officer in charge of investigations, I have kept in contact with my victims on a regular basis—I have dropped in to see them, kept them abreast of the investigation and kept them fully advised in relation to the course of the investigation and the proceedings of court later on. I made them feel as though they were part of the investigation and that their input was necessary, important and indeed vital to its outcome—giving them some ownership, if you like, of the investigation because I was merely a servant for them. That is way I felt anyway—that I was actually working for them.

Mr MURPHY—Moving on to part (f) of the terms of reference, what investigation into apprehension rates in New South Wales or other jurisdictions in Australia have you undertaken?

Mr Fenlon—None. I was concerned as a police officer with what was going on at Blacktown. That was my specific patch, if you like.

Mr MURPHY—Moving on to part (g) of the terms of reference, what investigation into the effectiveness of sentencing have you undertaken?

Mr Fenlon—None, except within the confines of an operational police officer who would make observations in relation to penalties imposed upon the offenders that he has locked up.

Mr MURPHY—In relation to part (h) of the terms of reference, can you say anything good about community safety and policing?

Mr Fenlon—Yes, I can.

Mr MURPHY—I would like to hear that.

Mr Fenlon—On a micro level, at places like Blacktown, Fairfield and Mount Druitt, individual police officers do an absolutely outstanding job. There are some absolutely outstanding and fine people.

Mr MURPHY—Would you please tell the committee.

Mr Fenlon—What do you want me to—

Mr MURPHY—We have heard a lot of negative evidence from you. I am not challenging at all your right to give that evidence, but I am asking you as a police officer who has had 20 years experience whether you can say something good about community safety and policing and the Police Service. You have said ‘At a micro level’. I think it could put in a bit of balance for the Police Force if you were able to give some details.

Mr Fenlon—I can and I will. It is up to the individual officer concerned. That is what I have found and that has been my observation. A committed police officer will go the extra yard and concern themselves with community safety and local community safety—a committed one will. There are too few of them, although they do exist and they are holding up the rest. They are actually making the system work. That is what I would say about it. I have seen some fine police officers and I have been proud to work alongside them—absolutely.

Mr MURPHY—Are those police officers that you know of who are doing a good job getting promotions?

Mr Fenlon—No.

Mr MURPHY—None of them—not one?

Mr Fenlon—Very few. If those police officers that I had identified and witnessed as having done a good job in the last four or five years since 1998 get promotions to a higher rank—they are not there.

CHAIR—Can I just clarify a point there. Your evidence relating to the promotion system, as I understood it, was that it was subject to corruption and therefore it should have been investigated and it was not. Was that what your evidence to us was about?

Mr Fenlon—That is the point I was trying to make initially.

CHAIR—Did you ever say that good policemen were not promoted?

Mr Fenlon—No. There are some excellent officers who have been promoted, certainly.

Mr MURPHY—Could I take you specifically to the promotion system in the Police Force. Could you tell the committee the promotion system as it existed prior to Commissioner Ryan's changes in 1998? What was the system if you wanted to apply for a job?

Mr Fenlon—It was based on years of service. One had to be a specific rank—for example, senior constable—before one could apply. There was a written application which comprised, from memory, approximately eight pages, although additional pages could be added as an addendum. Your application was vetted by the selection panel. Individuals were culled, a shortlist was compiled and then the interviews were conducted. Depending on the number of applicants and the mood of the selection committee, anywhere between three and eight people would be interviewed for a position. Their decision would be the recommendation. It was basically an application and interview situation.

Mr MURPHY—How was that old system materially different to the new system that was introduced by Commissioner Ryan?

Mr Fenlon—It actually wasn't. That was the ridiculous thing about it. During the royal commission I made recommendations to the commissioner. An investigator came out and spoke to me in relation to my recommendations for promotions. I indicated then that the promotion system that we had in place, which was the application and interview, was susceptible to corruption. In fact, there had been complaints in relation to it being corrupted. It was referred to as the old boys network—the telephone system. You simply made a telephone call to the individuals who were sitting on the selection committee and said, 'Appoint my boy and I will return the favour for you next month, next week or next year.'

CHAIR—Are you saying that the old system was—

Mr Fenlon—The old promotions system was as corruptible as the current one.

Mr MURPHY—So under Ted Pickering and Terry Griffiths, when they were police ministers, that system existed?

Mr Fenlon—Yes.

CHAIR—And under Neville Wran too?

Mr Fenlon—Absolutely.

Mr MURPHY—Excuse me, Madam Chair, you can have your go when I am finished. Mr Fenlon, when you applied for your job in 1999 how many jobs were there advertised?

Mr Fenlon—From recollection, there were somewhere between 100 and 130 or 150.

Mr MURPHY—How many people applied for those jobs?

Mr Fenlon—Somewhere in the vicinity of 1,200.

Mr MURPHY—So there was about a 10 per cent chance, if you were all equal, of getting a job. Is that a fair assessment?

Mr Fenlon—Yes.

Mr MURPHY—How did you go in your application for a grade 2 duty officer? What was the outcome?

Mr Fenlon—Not well. I did not get one. I was unsuccessful.

Mr MURPHY—Did you seek feedback from the committee or any of the people who participated in the selection panel as to why you did not get the job?

Mr Fenlon—No, I did not.

Mr MURPHY—Why not?

Mr Fenlon—There was a score out of 40 that was given and my score was 23 or 24. The process itself was new to me and I attributed that unfamiliarity with the process to the result that I gained. In any event, I did not feel too slighted about it because I had to be convinced to apply for the position in the first place. I had been a sergeant for just over two years and I felt as though I was not really prepared for it anyway.

Mr MURPHY—Do you think it was dumb of other police officers to share the eight questions that you referred to with their fellow applicants?

Mr Fenlon—Have you read any of the details of my submission, sir?

Mr MURPHY—Yes.

Mr Fenlon—Then you should have gleaned from that that I think it was ludicrous and stupid for police to go about sharing that particular information. What I thought was basically irrelevant, and remains irrelevant today. What has actually happened is what is important.

Mr MURPHY—So you go for an interview, you are asked questions and you are aware that some of your colleagues are sharing questions—and we will accept that that is pretty dumb because they are probably lessening their opportunities—

Mr Fenlon—I actually was not aware at that time that this had gone on. I was not aware until I had actually gone to the interview and gone through the interview process how ridiculous the process was. I made my complaint after having gone through the process. My analysis of the process was conducted after having taken part in it. I could not very well comment on something that I really had no information on and something that was supposedly brand new.

Mr MURPHY—When did you become aware that some people knew about the questions and that other officers who were competing with you had shared information?

Mr Fenlon—That was starting to come out in June. I was starting to hear rumours, and we were all starting to hear rumours, in relation to whiteboard conferencing taking place in crime agencies. We were told that police from crime agencies who had gone down to be interviewed were returning to an office within crime agencies and writing up the questions on a whiteboard.

Mr MURPHY—That is dumb, isn't it?

CHAIR—Is it dumb or is it criminal?

Mr Fenlon—That is the question. It would depend on one's intent, wouldn't it? If one's intent is just to help a friend or a close associate, then yes, it is dumb, but if one's intent is to assist a number of people with a more sinister purpose to establish a network where these people now have in their mind that they owe me a favour then it is criminal, isn't it?

Mr MURPHY—You are asserting, and you are entitled to assert, that certain people gaining knowledge of the questions is the foundation of setting up a criminal network within the Police Force. I want to suggest to you that the Police Force is not limited in its selection processes in relation to information being disclosed about an interviewing committee, panel or indeed an appeal panel in terms of how the applicants are tested when they come before the committee or the appeal panel. To that extent, I put to you that in any public or private sector position there is always the opportunity for a candidate who goes into the interviewing room or the appeal room first to tell a friend what questions were asked. My own experience—I had 28 years in the Commonwealth public sector—is that something that was constantly said by the disaffected malcontents who did not get a job was that someone knew or had insight into the question, because their friend went to the interview earlier and they got knowledge of the questions.

Mr Fenlon—I think I alluded to this in my initial statement. I am not saying that the practice did not take place; in fact, it is taking place—it is human nature. We are talking about human nature—people doing the wrong thing, stupidly or with a more sinister intent.

CHAIR—When you applied did you get a direction that you were not to say what questions you had been asked?

Mr Fenlon—Yes, but a verbal direction—

CHAIR—And was that then strengthened to a directive not to tell the answers?

Mr Fenlon—It was, later.

CHAIR—Subsequently, was a statutory declaration required to be signed that you had not done that?

Mr Fenlon—Yes, none of which ensures the integrity of the individual. None of those documents are going to ensure that I will keep my mouth shut. I am saying that the anticorruption strategy that was put in place, authored as a consequence of my complaint and which has subsequently been changed by the minister through the amendment to the bill, has done nothing to improve the integrity of the process. People are still going to provide the information to others. You have to look at and examine a modus for doing so. If it is a friend, it is stupid; if it is to obtain some small, sinister advantage, it is criminal.

I am not a disaffected individual, I am not disgruntled; I missed out. I did not consider myself at that time probably a worthwhile candidate for promotion. What disturbed me was that this had the capacity to undermine the entire organisational structure—the integrity of the entire middle and senior management of the Police Service. That was my concern. I have never been motivated politically; I have shown no political bias. I have given everyone the opportunity to do exactly the right thing—everybody, every agency. I trusted Mr Ryan, I trusted Mr Jarratt and I trusted the senior administration to identify this as a serious problem. It is not a case of sour grapes; it is not a case of being aligned politically one way or the other—it is not. My loyalty, when I took my oath of office, was to the people of this state. I made my oath to the Queen, but metaphysically it is to the people of this state. That is where my first loyalty lies.

Mr MURPHY—I have listened very carefully to your evidence today and I have read your submission, and I can assure you that I do not doubt your sincerity in what you say, but I doubt the credibility of the leak that you are putting to this committee in relation to the promotion system. You have accepted the changes that were made, that there was really no material difference in how police were selected, but you are suggesting that somehow or other there was some foundation for developing criminality in building a base of people who were, if you like, in the club by getting some advantage over their colleagues in the selection process. That is what I am testing.

Mr Fenlon—I am saying that the risk—

Mr MURPHY—Let me finish so that you understand clearly. I had many years in the Commonwealth public sector interviewing people. I worked at the Public Service Commission, I chaired promotion appeal committees and I was the state manager of grievances in New South Wales for all Commonwealth departments in the Australian Public Service here in New South Wales. Many times I listened, one on one, to people who came before me and complained bitterly about the outcome of a selection process. We all feel disappointed when we do not get a job. When we had to assess people in the Public Service for a job, we looked at their applications, their supervisors' reports and their referees' reports, and we developed an interview and an assessment, which was identical for each of the candidates—and I will get to that in a minute. In the final analysis, after having looked at the duty statements, the job description, the selection criteria and the definition of efficiency in the Public Service, to the best of our ability—and this was a very subjective process, and I put it to you that it is probably

very subjective in the Police Force and in any other public or private jurisdiction today—someone has to make a decision, taking all those things into account. I do not doubt that perhaps you thought you should have got a job and you did not get a job and others got the job. But the point—

Mr Fenlon—No, sir. Hold on a moment, sir.

Mr MURPHY—I will just finish the point I am making—

Mr Fenlon—No. I will just stop you where you are.

CHAIR—Mr Murphy, let him answer the question.

Mr MURPHY—I will finish my point because I am trying to say—

Mr CADMAN—What is your question, John? Are you making a speech or asking a question?

Mr MURPHY—If you will let me finish, I will tell you what I am saying.

CHAIR—You are trying to say that he is a disgruntled applicant.

Mr MURPHY—What Mr Fenlon is putting to this committee today is—

CHAIR—Mr Fenlon, have a drink of water. You do not have to be intimidated.

Mr MURPHY—that the candidates who apply somehow or other—at least today in the Police Service—are getting some advantage, and this is building the base of corruption, if you like, in the Police Service because certain old boys are put into a particular network.

CHAIR—I will lend you a copy of Operation Jetz. Have you read it?

Mr MURPHY—Madam Chair, I am talking to Mr Fenlon.

Mr Fenlon—You should take note of Operation Jetz, because the corruption that Mr Menzies was attempting to establish was utilised into the promotion system in order to establish it. I suggest, Mr Murphy, that you get a copy of Jetz and you read it from cover to cover and that you also get transcripts of the evidence and actually listen to what Menzies says and what his purpose is and the fact that it does involve between 20 and 30 other people. And I also draw your attention to another little bit of information. We have an assistant commissioner, Lola Scott, who was implicated and complained about 11 times between 1998 and 2000 with promotions corruption issues. An assistant commissioner of police implicated 11 times in promotions corruption! What does that suggest to you, sir? That there is an organisational risk or that I am fabricating it? Does that suggest that my motives for doing it are political or because I am a disgruntled individual? I have never known Lola Scott, I have never worked under her command, I have never been under her influence and I have never appeared before an appeals tribunal before her. I have absolutely no motive at all to dislike this woman other than

the fact that she has been complained about 11 times in relation to promotions corruption. The rank she was at—

Mr MELHAM—Did you say you had met her?

Mr Fenlon—I have never met her.

Mr MELHAM—So you are not in a position to give a character assessment of her?

Mr Fenlon—No, I am not.

Mr MELHAM—Thank you.

Mr MURPHY—Mr Fenlon, what I am trying to say to you—and I repeat that I do not doubt your sincerity—is that in any federal, state or local government or agency, or indeed in the private sector, selection processes are always going to be subject to criticism, particularly by the failed applicants. I have 28 years experience in the Commonwealth Public Service—

Mr Fenlon—Of course you are going to get disgruntled people who are going to say, ‘I was hard done by; ergo this system is useless.’

Mr MURPHY—But you are taking an enormous leap here today to say that there is tremendous corruption. I would say it is a monumental task.

Mr Fenlon—I am not.

CHAIR—Mr Menzies was found guilty of what he said.

Mr MURPHY—If you have 1,200 applicants applying for a job, to somehow go through all those applicants and prefer, let us say, 10 per cent or 120, of them so they would be promoted is what I am putting to you.

Mr CADMAN—How many were sacked, John?

Mr MURPHY—That is what I am putting to him.

Mr Fenlon—I would disagree.

Mr MURPHY—We will agree to disagree.

CHAIR—Mr Fenlon, can I ask you—

Mr MURPHY—I just want to finish, Madam Chair, because the Police Association were consulted about the selection process.

Mr Fenlon—Are you talking about the tripartite committee in which the police ministry, the New South Wales Police Service and the Police Association were involved? Is that correct? Where are you getting your information from, Mr Murphy?

Mr MURPHY—I am talking about the selection processes in the Police Force.

Mr Fenlon—You are talking about the recommendation—

Mr MURPHY—There has been consultation between the police department in relation to—

Mr Fenlon—Certainly, and there has been complicity as well.

Mr MURPHY—Okay, you are alleging complicity.

Mr Fenlon—Absolutely. Who do you think penned the recommendations for changes to the legislation that were effective from January—

Mr MURPHY—Do you have no faith in the Police Association?

Mr Fenlon—Absolutely none. I will restate that: none whatsoever in relation to this matter. The Police Association had an obligation to their members for a fair and equitable promotions system to be introduced—one that was free from internal and external manipulation and free from the possibility of it. I told them about it; they did nothing about it. The motives should be quite clear, given that half of the executive members of the association have been implicated as a result of Jetz. Not only have they failed the majority of their members in doing nothing but they have failed the broader community. All of the executive members are sworn police officers, and they have a greater obligation and responsibility to the community of New South Wales than they do even to the Police Association as a body. These people do not see it that way. There is no nobility there, there is no honour and there is no truth.

Mr MURPHY—Mr Fenlon, at the risk of going over old ground, I say to you: when you walk away from this committee, go and make some inquiries of Commonwealth, state and local government departments and agencies, and in the private sector, in relation to selection processes and then drop me a note if you can find evidence that many people are upset with the outcome of selection processes. I am saying that there is a one in 10 per cent chance in the Police Force. People will be upset. You have to think very carefully about whether the whole system is rigged from the stage of grade 2 duty officer so that only certain people will be selected so that, right up to the police commissioner, they are going to get the old boys club in the future. That is what I would like you to think about as you leave this committee.

Mr Fenlon—Sir, have you any idea that over the last 3½ years I have given consideration and thought to a great many aspects in relation to the action I have taken and to the consequences for me, in relation to the system that I have examined and analysed and in relation to the remedial action that has been taken by the service, the minister and others. When I leave this room today after having given this evidence I want nothing more to do with it. I have done my duty today. I will be able to sleep with a clear conscience, as an old man, safe in the knowledge that I have done my best to present the truth before this committee. I don't care if you want to question my motives for doing this. You have a right to.

Mr MURPHY—I have not done that.

Mr Fenlon—You have a right to. I do not object to that at all because, under normal circumstances, one could perhaps assume that this fellow is a disgruntled member and therefore he has kicked up a stink because of that. Let me assure you that was not the case, and if it were do you think I would still be here after nearly four years? No. When I took that oath of office it meant something to me.

CHAIR—Mr Fenlon, I have an additional question I would like to ask you about Mr Murphy's assertion that you are here only because you are disgruntled.

Mr MURPHY—No, I did not say that. I think I can say that I have been verbally by you, Madam Chair.

CHAIR—Did you apply a second time?

Mr Fenlon—No, I did not. I disqualified myself. In fact, I had gained an interview for the second round of duty officer promotions and I indicated to the police department that I was not prepared to take part in a process, or lend credence to a process, that I believed to be inherently corrupt. I would not do it.

CHAIR—So the way the system worked was that, when the 1,200 applications went in, the assessment centre used that as a culling process and decided who would get an interview.

Mr Fenlon—Yes.

CHAIR—You were one of the people selected for an interview on the first occasion and you were not successful. You applied a second time and were again given an interview, but you withdrew from the interview because you did not believe it was a fair system, that it was corrupt.

Mr Fenlon—That is correct.

CHAIR—And then you endeavoured to bring this to the attention of others.

Mr Fenlon—Absolutely.

CHAIR—I would ask the secretary to the committee to obtain a number of copies of the report of Operation Jetz so that other members of the committee can have the advantage of reading it. They already have a copy of the report of Operation Radium; it is in the exhibit papers they have within their possession.

Mr MELHAM—Mr Fenlon, you are aware that this parliamentary committee is not bound by the rules of evidence.

Mr Fenlon—I am.

Mr MELHAM—You are aware that hearsay, smear and innuendo is permissible before parliamentary committees. Just answer the question.

Mr Fenlon—Yes.

CHAIR—You do not have to intimidate the witness.

Mr MELHAM—I am not intimidating the witness.

CHAIR—I think using the word ‘smear’ is.

Mr MELHAM—I am asking some questions. You are aware that hearsay, smear and innuendo is permissible before parliamentary committees.

Mr Fenlon—Yes.

Mr MELHAM—You are also aware that character assassination is permitted before parliamentary committees.

Mr Fenlon—I would say that the function of a parliamentary committee is to establish truth, much like a coronial hearing. The same rules of evidence at a coroner’s hearing do not apply in a normal court of law either. The function is to arrive at truth; sometimes the truth hides behind civil litigation.

Mr MELHAM—Mr Fenlon, I asked you a simple question. Are you aware that character assassination—

CHAIR—He can answer in any way he chooses, Mr Melham.

Mr MELHAM—Madam Chair, the witness—

CHAIR—May answer in any way he chooses.

Mr MELHAM—has been asked a question. You are aware that character assassination is allowed and is given the protection of parliamentary privilege at committees.

Mr Fenlon—I am aware that parliamentary privilege can be and could be abused in such circumstances.

Mr MELHAM—Thank you. You are aware that it is referred to as a kangaroo court at times.

CHAIR—Mr Fenlon, you may answer or not answer as you see fit.

Mr MELHAM—Mr Fenlon, they are just simple propositions I am putting to you. Parliament has often been referred to as cowards castle.

Mr Fenlon—If you would prefer to describe it as such, then who am I to question you?

Mr MELHAM—Mr Fenlon, you are aware that parliament has been referred to in the past as cowards castle?

CHAIR—You have been accused of that yourself!

Mr MELHAM—You are aware that I made a number of comments on Wednesday and Thursday, Mr Fenlon.

Mr Fenlon—Who could escape those theatrics. They were quite amusing, from my perspective.

Mr MELHAM—You found them amusing, did you?

Mr Fenlon—I did because—

Mr MELHAM—Thank you. That is fine. I am just interested in your view.

CHAIR—The witness can continue his remarks if he wishes. Go on, Mr Fenlon.

Mr Fenlon—Obstructive, mind you, but interesting.

CHAIR—Were you wanting to complete your answer?

Mr MELHAM—I thought he had completed it, Madam Chair. You do not need to hide behind the Chair's skirt, do you Mr Fenlon?

CHAIR—I will wear pants next time, like you.

Mr MELHAM—Madam Chair, there have been a number of comments from the gallery. I will suggest that if people in the gallery make comments—

CHAIR—Oh, you are a delicate flower.

Mr MELHAM—you might warn them that this is a parliamentary committee and that their comments are not allowed.

CHAIR—This is a parliamentary committee and Daryl is a bit sensitive, so could you keep your comments quiet, please.

Mr MELHAM—It is not a question of being sensitive, Madam Chair. Mr Fenlon, you took an oath to tell the truth before this committee.

Mr Fenlon—I did.

Mr MELHAM—You are aware that much of your evidence in terms of your submission would not be admissible in a court of law?

CHAIR—This is not a court of law. We have been down this track before.

Mr MELHAM—I accept that it is not a court of law, Madam Chair.

Mr Fenlon—I would disagree with that, quite frankly. A significant portion of it would be admissible.

Mr MELHAM—I asked you a particular question.

Mr Fenlon—I disagree then.

Mr MELHAM—So you say that all of your submission—

Mr Fenlon—No. Don't go putting words in my mouth.

Mr MELHAM—I am not putting—

Mr Fenlon—I am used to counsel trying to do the same thing in court. Not all—some would be admissible in a court of law.

Mr MELHAM—So you insisted on parliamentary privilege for your submission, didn't you?

Mr Fenlon—Yes, I did.

Mr MELHAM—Indeed, you wrote to the committee secretariat saying that it was conditional that parliamentary privilege attach to your submission.

Mr Fenlon—Yes, absolutely.

Mr MELHAM—Was it also conditional that the evidence you gave before this committee be given in public?

Mr Fenlon—I wanted the public to know exactly what was going on.

Mr MELHAM—I understand that. Was it conditional that your evidence before this committee be given in public?

Mr Fenlon—No.

Mr MELHAM—Thank you.

Mr Fenlon—I never insisted on it.

Mr MELHAM—Your insistence was parliamentary privilege alone?

Mr Fenlon—My insistence was parliamentary privilege, absolutely. People have a right to know what has gone on.

Mr MELHAM—I am not disputing that. I am trying to work out the conditions you attached to the submission you made to this parliamentary committee and the giving of your evidence. Let us be clear. I do not want us to be at cross-purposes here.

Mr Fenlon—No, neither do I.

Mr MELHAM—I am not trying to deceive you or trick you. Feel free to answer the questions for as long as you want.

CHAIR—Believe me, he is free to answer, and that freedom will be protected.

Mr MELHAM—Madam Chair, your gratuitous comments are noted.

CHAIR—Good. Get on with it.

Mr MELHAM—Mr Fenlon, was it a condition of your submission and giving evidence before this committee that it had to be given in public with the press present and cameras rolling?

Mr Fenlon—No. That was my preference.

Mr MELHAM—It was your preference?

Mr Fenlon—It was my preference, certainly.

Mr MELHAM—But it was not a condition of you giving evidence?

Mr Fenlon—No, it was not a condition.

Mr MELHAM—So you were prepared to give this evidence in camera, as long as privilege attached to it?

Mr Fenlon—No. When you think about it now, no. I would have, if it was absolutely necessary, because at least someone would have been listening. I would have had an opportunity for it.

Mr MELHAM—But—

CHAIR—Let him finish.

Mr MELHAM—I did not cut him off. He can continue.

Mr Fenlon—You have a situation where myself and other police have done something that is quite unprecedented in the history of the New South Wales Police Service, and that is to attempt to bring our specific concerns and circumstances before somebody who would listen and do something ethical and honourable with them.

Mr MELHAM—And you wanted privilege attached to that?

Mr Fenlon—Absolutely, yes.

Mr MELHAM—You are happy to have your evidence tested as to its integrity?

Mr Fenlon—I would make the request to the committee to call any of these individuals that I have named, based upon that information.

CHAIR—We will be doing that; they will be given the opportunity.

Mr MELHAM—You attended this parliamentary precinct on 6 December this year.

Mr Fenlon—Yes, and on a couple of occasions before then, speaking to Mr Costa.

Mr MELHAM—I mean in relation to this committee.

Mr Fenlon—Yes, I believe it was on 6 December.

Mr MELHAM—You say in your submission, on page 1:

I was prompted to make this submission after having been advised of the existence of your committee and its terms of reference.

Who advised you of the existence of the committee?

Mr Fenlon—Richard Basham.

Mr MELHAM—Was it as a result of an approach by Mr Basham that you decided to prepare a submission to this committee?

Mr Fenlon—I did not know about the existence of this specific committee at all. I make no bones about it: I have known Mr Basham for over 12 months, and I consider him a decent person.

Mr MELHAM—When were you first approached by Mr Basham, drawing your attention to this committee?

Mr Fenlon—It was before that submission was made—probably three or four weeks before the date of my initial submission, not my supplementary submission.

Mr MELHAM—I will come to your supplementary submission a bit later. Are you aware that Mr Basham gave evidence before this committee on Wednesday, 9 October?

Mr Fenlon—I had not actually been aware of it beforehand, no.

Mr MELHAM—Was it before or after that that Mr Basham contacted you?

Mr Fenlon—I cannot recall, but if you are inferring that it is a conspiracy then, yes, you are right: it is a conspiracy to try to get the truth out. That is what it is.

Mr MELHAM—Who is part of that conspiracy?

Mr Fenlon—I am. I put my hand up.

Mr MELHAM—You know a conspiracy does not involve one person, does it?

Mr Fenlon—No, it does not. How about a show of hands?

CHAIR—There are a few hands up over there.

Interjector—We are all guilty.

Mr Fenlon—Guilty.

Mr MELHAM—Mr Fenlon, were you here when the committee heard evidence on 10 October?

Mr Fenlon—No, I was not. I was not aware of the hearing.

Mr MELHAM—On 6 December, did you attend a press conference in relation to—

CHAIR—Yes, he was with me, standing behind me, because you had pulled a trick and we could not proceed with our hearing.

Mr Fenlon—That is right. You know very well, sir.

Mr MELHAM—Thank you for your gratuitous intervention, Madam Chair.

CHAIR—You pulled a big stunt, Daryl. We had to wait until that was remedied.

Mr MELHAM—You are aware, Mr Fenlon, that the committee proceedings did not proceed on 6 December.

Mr Fenlon—Yes.

Mr MELHAM—Advice was taken from the Clerk that showed that the committee was unable to proceed in the form that was proposed at that time.

Mr Fenlon—Thanks to your objections, Mr Melham, yes.

Mr MELHAM—It is a matter of record that I objected, Mr Fenlon.

Mr Fenlon—Yes, I know.

CHAIR—And the parliament overturned the objection.

Mr MELHAM—It is a matter of record that the parliament has temporarily suspended the operations of the particular standing order until after the New South Wales election, and it only applies to this session of the parliament.

CHAIR—No. The parliament has made a sessional order that goes until the end of the parliament—the session is the life of the parliament. Do not get it wrong: it is a sessional order to the end of the life of this parliament.

Mr MELHAM—The chair would also know that the leader of government business has also requested a report by 19 June.

CHAIR—Indeed he asked for a report from other committees to see if anybody else had pulled your trick.

Mr MELHAM—So Mr Basham approached you in relation to giving evidence before this committee, Mr Fenlon?

Mr Fenlon—He suggested that it was a last port of call.

Mr MELHAM—I take it that it is under the last of the terms of reference, ‘Community safety and policing’, that you say your submission is relevant.

Mr Fenlon—Absolutely. If you are looking for a reason why crime is out of control in New South Wales, you have to look at the management of the organisation responsible for combating it. I would have imagined that evidence of an organisation that is inept or corrupt and the processes that are responsible for the establishment of that situation would be relevant within the terms of reference of this inquiry.

CHAIR—Mr Fenlon, I might just add here that the terms of reference are very broad. You are not limited to any one of the terms of reference in particular; neither are we limited to those specific items as set out. That was an attempt by Mr Melham to try to make you say that you are somehow outside the terms of reference. It is not for you to determine that; it is for others.

Mr MELHAM—Madam Chair, there is no attempt in relation to that. You are making gratuitous comments from the sideline.

CHAIR—No, from the centre-line.

Mr MELHAM—You are to the far right of me, which I think is pretty appropriate.

CHAIR—You are to the far, far left of me.

Mr MELHAM—If I make those assertions, I will make them; I have not made such an assertion. If I thought Mr Fenlon’s submission was outside the terms of reference, I would have taken the point.

Mr MURPHY—In talking about the terms of reference, I started my questioning with regard to the terms of reference for this inquiry.

CHAIR—We noticed.

Mr MURPHY—I would like to put on the record so that the people in the audience know that when you originally tried to visit the terms of reference on this committee, in a stunt to politicise this committee, there was no reference to the Commonwealth. It was only with regard to the protestations by the Labor members of this committee that we got the terms of reference that we did.

CHAIR—Might I just add for the record that Mr Murphy is referring to matters that were discussed at an internal private meeting. I know you would not want to do anything improper, but you are not allowed to actually talk about those internal discussions. Aside from anything else, the terms of reference were given to us by the minister. I think we should desist and not break the rules, don't you?

Mr MURPHY—I am not breaking the rules because what I have said has been reported in the media, and I did not give the content of those discussions, did I?

CHAIR—I do not know; maybe you did.

Mr MURPHY—No, I did not.

Mr MELHAM—You should read Alan Ramsey, Madam Chair.

Mr MURPHY—Yes, read Mr Ramsey.

Mr MELHAM—Mr Fenlon, after 6 December when the hearings were aborted, did you approach any journalists from the *Sun-Herald* or the *Sunday Telegraph*?

Mr Fenlon—If you are inferring that I had anything to do with the article that appeared in the *Sun-Herald*, of course I spoke to John Kidman, yes. You have to realise that my connection with the media has been made necessary because of the lack of action on the part of the Police Service, the Police Integrity Commission and the Ombudsman.

Mr MELHAM—You made contact with Mr Kidman?

Mr Fenlon—You should be asking the question: why was it necessary for a sergeant of police to have to go to such lengths to ensure that the Police Service, the Police Integrity Commission or the Ombudsman acted with some degree of ethics in terms of the investigations of these complaints?

Mr MELHAM—Thank you. So you confirm that you approached Mr Kidman from the *Sun-Herald*?

Mr Fenlon—Absolutely. I speak to him on a regular basis.

Mr MELHAM—Did you show him your submission to the committee?

Mr Fenlon—No, I did not.

Mr MELHAM—Did you hand him over your submission to the committee?

Mr Fenlon—No, I did not. In any event, it would not have mattered because I changed it subsequently on the weekend. Nobody has seen that except me and my wife.

Mr MELHAM—Okay. With regard to the photo that appears on page—

Mr Fenlon—It is a file photo that has been on record for some time.

Mr MELHAM—I am just trying to establish the circumstances.

Mr Fenlon—That is fine. If you are alluding to a collusion or a conspiracy amongst police officers, members of the press and professors of anthropology, go ahead. I will admit to it because there was no-one else left to turn to. No-one was listening to us, so who else have we got?

Mr MELHAM—Thank you. You say that you did not hand over your submission to Mr Kidman?

Mr Fenlon—No.

Mr MELHAM—Are you aware if anyone else did hand over your submission to Mr Kidman?

Mr Fenlon—No, and it would not have made any difference anyway. Mr Kidman is probably one of the most astute journalists around and he has his ear to the ground most of the time. He knows what is going on and where it is going on.

Mr MELHAM—I do not seek to question that.

Mr Fenlon—That is fine, I would hope not.

Mr MELHAM—I am asking you a number of questions and feel free to answer them for as long as you want.

CHAIR—I think *60 Minutes* showed some good initiative too. No, it was *Four Corners*. I apologise to the ABC.

Mr MELHAM—That is right. There is a difference between *Four Corners* and *60 Minutes*; they are chalk and cheese.

CHAIR—We will make a note that you have no time for *60 Minutes*.

Mr MELHAM—I did not say that.

CHAIR—Which is chalk and which is cheese?

Mr MELHAM—It is a different brand of journalism—each has their own constituency.

CHAIR—Could you tell us which is chalk and which is cheese?

Mr MELHAM—I have always been a fan of *Four Corners*. Sergeant—

Mr Fenlon—It is 'Mr' now.

Mr MELHAM—Yes, I will come to that in a minute. Are you aware that your submission was quoted—direct quotes—in the *Sun-Herald*?

Mr Fenlon—Whether that was from the submission or information from documentation that I sent to somebody else, I don't know. I have no recollection.

Mr MELHAM—The submission that we received on 21 November—submission No. 127 that is currently public—on page 2—

Mr Fenlon—Yes. Certainly, I made details of the submission known to John Kidman. I make absolutely no bones about that.

Mr MELHAM—So you disclosed to Mr Kidman the contents of your submission?

Mr Fenlon—Yes. I have no problems with admitting that. Certainly, I did.

Mr MELHAM—Because, you see, there is a direct quote that appears at point 2.7 of your submission that is contained in the quote under your photo in the *Sun-Herald*. Also there is a direct quote that appears from point 6.6 of your submission.

Mr Fenlon—I have absolutely nothing to hide—nor has Mr Kidman—in relation to that information. I have never made a secret of passing on anything that I know—information that I have had—to any member of the media.

Mr MELHAM—It is not information, Mr Fenlon. Let us be clear. These are direct quotes in terms of your views contained in the submission.

Mr Fenlon—Yes.

CHAIR—Mr Fenlon, Mr Melham is referring to the fact that, when you made your submission to the committee, you would have received a letter from the secretariat—

Mr MELHAM—I will come to that, Madam Chair.

CHAIR—talking about the fact that the submission becomes the property of the committee and asking you not to disclose your submission to somebody else. The Clerk has written to the committee, because we sought advice on this matter, and advises that any dealing that you make with your submission or material in it—a statement you make, for instance—is a separate publishing, and therefore that statement is not covered by privilege. So if you thought that making a statement would be covered by privilege simply because it had come to this committee from outside in that way, it would not be covered. Mr Melham, I think, is alluding to the fact that once you sent the submission to us, that submission became the property of this committee.

Mr Fenlon—I don't quite understand what you mean.

Mr MELHAM—Let me just put it very bluntly, Mr Fenlon. The quotes that are attributed to you, that you say you gave to Mr Kidman—

Mr Fenlon—Those quotes I would have made on a number of occasions to John Kidman over the preceding 18 months, in any event. They are nothing new.

Mr MELHAM—Let me tell you, they are not covered by parliamentary privilege, and you can be sued for defamation—

Mr Fenlon—Which quotes are we talking about?

Mr MELHAM—Let me quote them to you. Under your photograph, it says ‘Sergeant Mark Fenlon, uniformed officer based at Blacktown’. It directly quotes you as saying:

We remain a corrupt, unethical, poorly led and ineffective organisation.

Mr Fenlon—I stand by that.

Mr MELHAM—And they are your quotes in your submission on page 2.

Mr Fenlon—I stand by that, and I would say that outside the confines of this building, because I believe it to be true.

Mr MELHAM—You obviously have, because it appears in Mr Kidman’s—

CHAIR—Mr Melham, there was also in the attachment that came to the committee a videotape—have a sip of water, Mr Fenlon; you do not have to feel under pressure—which indicates that much of the material that is in the submission that Mr Fenlon has made has actually been on television on a number of channels and has been to air long before this inquiry was called. We will show those excerpts.

Mr MELHAM—Madam Chair, I have no problem with that occurring in due course, but I would appreciate it if I was allowed to continue to ask questions of this witness which are relevant—

CHAIR—Go right ahead!

Mr MELHAM—I do not seek to close these proceedings down. I have a number of questions that I want asked and I am quite happy for this to continue as long as it does—

Mr Fenlon—I am happy to stay here as long as is necessary to answer your questions.

Mr MELHAM—Regarding the subsequent quotes in that article, Mr Fenlon, which appear on page 6 of your submission, I suggest to you again that, whilst they appear in your submission to the committee, they are not covered by parliamentary privilege, because they appeared in a newspaper before your submission had been released publicly. But you say that you gave those words to Mr Kidman.

Mr Fenlon—What words were they?

Mr MELHAM—Let me read them to you so we are not at any cross-purpose:

The corrupt and incompetent have become impervious to prosecution surrounded by loyal and obedient cronies. These senior police are now in positions of supreme influence and power.

Mr Fenlon—I stand by that statement and I am prepared to make it outside of parliamentary privilege.

Mr MELHAM—You already have.

Mr Fenlon—That is fine. I stand by it because I firmly believe that that is the case.

Mr MELHAM—You basically gave that to Mr Kidman, did you, after the proceedings were aborted on 6 December?

Mr Fenlon—I cannot recall.

Mr MELHAM—You were pretty upset, weren't you, when those proceedings were aborted on 6 December?

Mr Fenlon—I was disappointed in you, Mr Melham.

Mr MELHAM—That is okay. You are entitled to be disappointed, Mr Fenlon. I am not being critical of you. You are not Robinson Crusoe in that regard, I might add.

Mr Fenlon—I would not infer that I was.

Mr MELHAM—Thank you.

CHAIR—Lots of us are disappointed in you, Daryl.

Mr MELHAM—Did you show or discuss your submission, prior to its release, with any other person who made submissions to the committee?

Mr Fenlon—No. I discussed making the submission—

Mr MELHAM—Who was that with?

Mr Fenlon—I discussed the substance of the submission—

CHAIR—Mr Fenlon—

Mr MELHAM—Madam Chair, let him answer the question.

Mr Fenlon—but not the actual content of the submission.

Mr MELHAM—Okay.

CHAIR—Mr Fenlon, Mr Melham is attempting to say that you are somehow in contempt of the parliament because you spoke to Mr Kidman. That was his contention earlier on, and he is attempting to establish that by asking these questions.

Mr MELHAM—Madam Chair, the record speaks for itself. I would appreciate it if you would allow me to ask questions which I am entitled to ask.

CHAIR—I think you should disclose your intent.

Mr MELHAM—It is not a question of disclosing intent, Madam Chair. I am entitled to ask questions. The questions speak for themselves.

CHAIR—Daryl, you have worked backwards and forwards to stop testimony being given in this inquiry. You have pulled every trick in the book.

Mr MELHAM—Madam Chair, you know that is not true.

CHAIR—The fact of the matter is that Mr Fenlon is entitled to give his evidence. I know damn well it is true. First you tried to use standing order 344—

Mr MELHAM—It is a matter of record that each time I have sought to ask questions there has been interference run against me by you, in particular, and that you continue to interrupt. In relation to the length of the time that you and other members of this committee have been allowed to ask—

CHAIR—I am the chairman, Daryl, and part of my responsibility is to ensure that a witness is not badgered.

Mr MELHAM—I appreciate that you are the chair. I have no intention of badgering this witness. Let us be clear. This witness can protect himself. If I ask a question that is out of order, I expect you to intervene.

CHAIR—Believe me, I will.

Mr MELHAM—No question I have asked is out of order. The questions are within the standing orders. Mr Fenlon, do you have any problems with any of the questions I have asked you to date?

Mr Fenlon—No.

Mr MELHAM—You don't seek the chair's protection in answering those questions at this stage?

Mr Fenlon—No.

Mr MELHAM—Thank you. Relating to your submission, I want to get a few facts on the record so that we are not at cross-purposes. When were you admitted to the force? Can you give us the date?

Mr Fenlon—I joined in January 1983, and I was tested as a constable on 8 April 1983.

Mr MELHAM—Just a second. When were you a constable?

Mr Fenlon—On 8 April 1983.

Mr MELHAM—Was your service primarily at Blacktown?

Mr Fenlon—It was all over the place, really. I started at Blacktown, went to fingerprints for a short time, back to Blacktown and then to Penrith for a while. I worked at the north-west region office, under Assistant Commissioner Laurie Poulton, for four years. I returned to general duties at Penrith.

Mr MELHAM—So you were in the Penrith-Blacktown region.

Mr Fenlon—Yes, the western suburbs.

Mr MELHAM—So most of your evidence would have been in the Penrith District Court and the local courts at Penrith and Blacktown.

Mr Fenlon—It was all over the place, Mr Melham.

Mr MELHAM—I am not seeking to discredit that; I am just trying to work out where you worked primarily.

Mr Fenlon—That would be correct. It was Penrith local courts and numerous children's courts. You would know yourself.

Mr MELHAM—I accept that. I worked in the criminal justice area in that region as a legal aid solicitor and public defender. I am just trying to establish the facts, because many people who read this transcript will not understand how these things operate.

Mr Fenlon—That is correct.

Mr MELHAM—At the time you started in the force, the structure was different from how it is now. You have heard Mr McGann complain about the breaking up of squads, and I think you have complained about it yourself, as part of your evidence.

Mr Fenlon—Yes.

Mr MELHAM—How were the squads run when you first joined the force? I am talking about the breaking squad. You operated as specialist units, didn't you?

Mr Fenlon—I do not know; I was never in plain clothes. I have always been a generalist policeman.

Mr MELHAM—Generalist?

Mr Fenlon—Yes. My understanding is that we had the CIB, and the CIB was composed of numerous squads.

Mr MELHAM—But as a generalist you were very limited in the contact you had with fellow officers in other regions.

Mr Fenlon—That is correct. Do you mean as a general duties policeman?

Mr MELHAM—Yes.

Mr Fenlon—Are we talking about criminal investigation or general duties? My career path was general duties, not criminal investigation.

Mr MELHAM—I am trying to establish how much exposure you had to other regions in your career path in general duties.

Mr Fenlon—I had lots, a great deal. I was involved as a branch member of the Police Association for Blacktown and Penrith for quite some time. That would involve negotiating with and meeting other branch members from other commands all over the state. My time at the region office in the north-west opened my perspective to operations within, at that time, the other four regions, such as the north, the south, the south-west, and a fifth region which was Operations Support and everything else. That period of time assisted me organisationally in familiarising myself with the organisational structure across the board.

Mr MELHAM—You say in your supplementary submission, 1271, at the bottom of page 4:

Factions exist within the Police Association as they do within the Police Force and this promotion system provided the perfect means to shore up members of those factions into positions of more power and authority both within the Police Force and Police Association.

Mr Fenlon—Yes, I believe that.

Mr MELHAM—Were you in a faction within the police force?

Mr Fenlon—No.

Mr MELHAM—How many factions were there within the Police Force and the Police Association?

Mr Fenlon—An unknown number, but they exist.

Mr MELHAM—Do they revolve around personalities?

Mr Fenlon—They revolve around personalities and within specific sections as well. Mr Richmond in Internal Affairs is a case in point. He was part of Mr Brammer's faction. Mr Richmond was conducting the investigation in relation to the promotions corruption, and is a reasonably decent man, I think. He suffered as a consequence of the change in administration within Internal Affairs.

Mr MELHAM—In summary, what are you saying about promotional systems within the force—that they should be taken out of the hands of the police?

Mr Fenlon—Absolutely. They have to be removed from the Police Service.

Mr MELHAM—Should they be dealt with independently outside the Police Force?

Mr Fenlon—Yes. You have to remove from the Police Force the capacity or the power to manipulate the internal workings and the managerial workings of the organisation.

Mr MELHAM—So that is the principle that you seek to push?

Mr Fenlon—I would be happy if that was all that was achieved as a result of my giving evidence today—that and a change in how we conduct internal investigations. I would be satisfied with that.

Mr MELHAM—In summary, what change would you like to see in terms of internal investigations? You do not accept that the police should accept—

Mr Fenlon—I—

Mr MELHAM—Let me just finish. I am trying to summarise it so that we can cut a bit of time. Is it your view that police should not be investigating police, but that it should be done by an independent body?

Mr Fenlon—There are arguments for and against. I have looked at both.

Mr MELHAM—Which side do you lie on?

Mr Fenlon—I am a little down the middle in relation to it. I think you need police officers, but you need police officers like me who cannot be touched, swayed or cajoled one way or the other, to provide an insight into the organisation and to provide advice to an external agency, whatever it might be comprised of. It is easy for investigations to be manipulated otherwise. It is easy for external agencies to miss significant items and to miss what is truly going on by virtue of the fact that they are not familiar with the territory. They are outside the territory.

Mr MELHAM—I am interested in the structure that you would prefer to see set up in relation to complaints within the Police Force. Do you think someone from the police should be involved?

Mr Fenlon—Ideally I would like to see a federal agency created, because police corruption is not unique to New South Wales.

Mr MELHAM—It crosses boundaries.

Mr Fenlon—It crosses boundaries, as does crime.

Mr MELHAM—Of course, but what I am concerned about, Mr Fenlon, is that this is a federal parliamentary committee. We have no power over—

Mr Fenlon—I appreciate that you have jurisdictional problems.

Mr MELHAM—In terms of the Federal Police and other agencies like the former National Crime Authority and the Australian Crime Commission, we have power as a federal parliament regarding complaints and procedures at a federal level. I ask that you understand also where I am coming from. I have always been a fan of police not investigating police.

Mr Fenlon—I would lean more towards your view.

Mr MELHAM—But you think that there has to be people from within the police involved?

Mr Fenlon—I think that there has to be someone with a policing background, but I would caution against using someone from the same state agency that is being investigated.

Mr MELHAM—Would you have them in an advisory capacity?

Mr Fenlon—I would have them only in an advisory capacity, having absolutely nothing to do with the decisions or the direction of the investigations, if you like. But there needs to be somebody there because, at present, we have a situation where the current watchdog agencies are failures. They are failing police internal informants; they are failing everybody because they are not doing their job. No-one is concerned that they are not doing their job.

Mr MELHAM—Have you spoken to me prior to giving evidence today?

Mr Fenlon—No, sir.

Mr MELHAM—Have you spoken to any members of this parliamentary committee prior to giving evidence today?

Mr Fenlon—I spoke to Mrs Bishop. On the 6th she came up to us and spoke to me about it.

Mr MELHAM—Is that the first time you have spoken to Mrs Bishop?

Mr Fenlon—Yes, it was. I beg your pardon, it was not. She may not recall that I met her at the Australian Defence Force Academy—I had a nephew who was an officer in the army—and the Minister for Defence, and we briefly said hello.

Mr MELHAM—In relation to this inquiry, is the date you mentioned the only time you have spoken to Mrs Bishop about the public hearing.

Mr Fenlon—Yes.

Mr MELHAM—In terms of your submissions to this parliamentary committee, I refer you to your supplementary submission. I quote:

Dear Mrs Bishop,

I hereby authorise you to release to other members of your Committee, at your discretion, my supplementary submission and supporting material, dated 26 November, 2002, which I had provided to you under confidential cover.

I further authorise the release for publication, any or all such documents or other materials contained within that supplementary submission as you, the Committee chairperson, sees fit, conditional only upon such material release being deemed by the Committee as evidence given by myself under Parliamentary privilege.

Yours sincerely,

Mark Fenlon

Mr Fenlon—Yes, I think that was last week, or a week or so ago.

Mr MELHAM—That is why I am trying to reconcile the dates. It says that it was actually received by the committee on 12 February 2003.

Mr Fenlon—That would have been made on 12 February, because it was a request for—

CHAIR—No, it was sent to me under cover. The letter from you was received in my office, I think, on 12 December, after the aborted hearing on 6 December. We were then in recess.

Mr Fenlon—I think you are right.

Mr MELHAM—I am not trying to ambush you; I am just trying to work out the difference in dates. Did you sent that to Mrs Bishop under cover?

Mr Fenlon—In her capacity as the chairperson of the committee.

Mr MELHAM—Thank you, that is okay.

CHAIR—I then locked it up until parliament resumed and then brought it forward to the other members of the committee after getting authorisation from Mr Fenlon—

Mr Fenlon—Yes.

CHAIR—because it was sent to me personally, originally.

Mr MELHAM—That's okay. There is no secret about this; I am just trying to establish the order. The supplementary submission was sent to Mrs Bishop by letter?

Mr Fenlon—Yes.

CHAIR—Handwritten letter.

Mr MELHAM—That's okay. I haven't seen that handwritten letter.

CHAIR—It was a personal letter to me, not as—

Mr MELHAM—I don't have a problem with that, Madam Chair; I am just interested in trying to reconcile some dates, that's all.

Mr Fenlon—Yes, no problems.

Mr MELHAM—Was there any other contact that you had with Mrs Bishop?

Mr Fenlon—This morning.

Mr MELHAM—Just this morning?

Mr Fenlon—That's it.

Mr MELHAM—Thank you.

CHAIR—Incidentally, had he had discussions with me, I hope you are not suggesting that that would be improper, Daryl.

Mr MELHAM—Madam Chair, have I suggested that?

CHAIR—No, but I did not quite like the tone. I just wanted to get it clear.

Mr MELHAM—Madam Chair, I am just seeking to establish facts. If I am going to make assertions, you will be the first to know.

CHAIR—I can hardly wait.

Proceedings suspended from 12.51 p.m. to 1.06 p.m.

CHAIR—We will reconvene. Daryl, you have only a couple more questions, haven't you?

Mr MELHAM—Not a lot.

CHAIR—We are trying to have about equal time, except for me, so if you continue and then we have got Mr Cadman.

Mr MELHAM—Mr Fenlon, I want to clarify a point from your submission. You said, at paragraph 3, that you were on long-term stress leave and had been for the past 15 months.

Mr Fenlon—Yes.

Mr MELHAM—What is your current status?

Mr Fenlon—I have been medically discharged and granted a pension.

Mr MELHAM—When did that occur?

Mr Fenlon—That was effective from 7 February.

Mr MELHAM—This year?

Mr Fenlon—Yes.

Mr MELHAM—What was the basis of that medical discharge?

Mr Fenlon—Anxiety and depression.

Mr MELHAM—Were you examined by someone in relation to that?

Mr Fenlon—Yes.

Mr MELHAM—And that was not contested by the Police Service?

Mr Fenlon—No.

Mr MELHAM—So it was accepted by all parties?

Mr Fenlon—Yes.

Mr MELHAM—And that was the basis on which you were pensioned off?

Mr Fenlon—Yes.

Mr MELHAM—In relation to your long-term sick leave which you refer to in your submission, for the 15 months, what was the basis of that?

Mr Fenlon—The same.

Mr MELHAM—That was not contested at the time?

Mr Fenlon—No.

Mr MELHAM—And you were medically examined in relation to that as well?

Mr Fenlon—Yes.

Mr MELHAM—You mentioned in your evidence and submission the falsification of crime statistics. I have some short questions in relation to that. Are you aware of the work of the New South Wales Bureau of Crime Statistics and Research?

Mr Fenlon—Yes.

Mr MELHAM—Are you aware that that agency has four main areas of activity?

Mr Fenlon—No, I was not.

Mr MELHAM—I will just list them for you: (1) developing and maintaining statistical databases on crime and criminal justice in New South Wales; (2) conducting research on crime and criminal justice issues and problems; (3) monitoring trends in crime and criminal justice; and (4) providing information and advice on crime and criminal justice in New South Wales.

Mr Fenlon—I am not casting any aspersions at all on that organisation.

Mr MELHAM—You are not suggesting that the work and research of the bureau cannot be trusted?

Mr Fenlon—I would never suggest that. It has provided the information from police reports. What I am suggesting to you is that the source of those reports is questionable. In other words, the information that the bureau is receiving is in error.

Mr MELHAM—It is in error?

Mr Fenlon—Absolutely.

Mr MELHAM—And you say that there is a flaw in relation to the information that they are giving the bureau?

Mr Fenlon—Yes.

Mr MELHAM—I have nothing further, Madam Chair.

Mr CADMAN—I need some explanation because I have been busting to have clarification on how the duty officer process worked. As I understand it, the positions of inspectors who were responsible for intelligence and strategy were wiped out and replaced by one duty officer; is that right?

Mr Fenlon—They were actually replaced by up to five.

Mr CADMAN—Up to five duty officers?

Mr Fenlon—Two officers' roles were replaced by up to five; in most cases four, but up to five.

Mr CADMAN—Were they the rank of inspector or were they a lower rank?

Mr Fenlon—Depending on the location, they were either a chief inspector or an inspector, if you had them.

Mr CADMAN—There was an expansion in that middle management level?

Mr Fenlon—There was.

Mr CADMAN—And 'duty officer' became one of those categories at that level?

Mr Fenlon—Indeed.

Mr CADMAN—Could you describe what the four or five might be—what their titles might be?

Mr Fenlon—That's it: duty officer.

Mr CADMAN—They were all called duty officers?

Mr Fenlon—They were all called duty officers and their functions were identical. My contention, sir, is that the creation of the role of duty officer was a direct result of and a direct response to recommendations from the royal commission which criticised the level of supervision of police that existed within the Police Service—in other words, supervision was being blamed for the emergence of corruption. So, in order to address that, or at least to be seen to be addressing it, Peter Ryan established these positions which were called duty officer.

Mr CADMAN—More supervision was the answer?

Mr Fenlon—That's what they say was the answer, yes.

Mr CADMAN—That is a clarification. So the 300 new positions were to solve that problem of inadequate middle management at that duty officer level; is that right?

Mr Fenlon—Yes, that is correct.

Mr CADMAN—Former inspector of intelligence or strategy?

Mr Fenlon—Indeed.

Mr CADMAN—So there were no inspectors currently serving in those positions who were dropped at that point?

Mr Fenlon—There were a lot of displaced inspectors and chief inspectors.

Mr CADMAN—Did they all have to reapply for duty officers' jobs?

Mr Fenlon—They did indeed, yes.

Mr CADMAN—Do you know how many at that rank were in New South Wales prior to the introduction of the new system?

Mr Fenlon—No. I would have loved access to human resources records in relation to a number of matters. That would have been one of them that I would have specifically looked at: how many people were displaced and how many people missed out on duty officers positions who ostensibly already were inspectors of police or chief inspectors. They are not going to give that sort of information to a sergeant of police at a general duties police station, even had I made the request. In fact, I made a request of human resources for information in relation to appointments and it was denied to me by Angela Myers, Mick Tiltman and Michael Lazarus.

CHAIR—We might write and ask for that information.

Mr CADMAN—To comprehend the change that occurred and then the need to bring in a whole raft of new people—

Mr Fenlon—It was seen as a golden opportunity by sergeants and senior constables. This was a golden opportunity to advance yourself expeditiously.

Mr CADMAN—To get a promotion and a pay rise?

Mr Fenlon—Yes, indeed, and a pay rise. The role and the function of a duty officer had not even been defined at that stage; nobody knew what they were going to do. It is still the subject of some mirth in the organisation in relation to what exactly a duty officer does. In reality, the function of the position is identical to that which was performed by the former senior sergeant or first-class sergeant, which is a direct supervisory role and some administration function. That is not quite at the executorial level but it is not at ground level either. It is a standing joke that these people are paid \$100,000 a year for doing basically what a sergeant or senior sergeant had been doing before that, for \$45,000 and \$50,000 a year. In other words, it is a huge expense.

CHAIR—Fifty million dollars, I think.

Mr Fenlon—It is a huge amount of money and the outcomes and results are not justified in the expenditure. It is as simple as that. It was part of Mr Ryan's strategy. He had to be seen to be adopting the recommendations of the royal commission on the supervisory issue because of the extent of criticism being levelled at the processes. His response was, 'Let's create all of these wonderful new positions. That way, when the quality and strategic review was conducted of the reform process and progress, we can say, "Well, we have done this."' I do not think its value has ever been questioned; I do not know. From an operational perspective, I have seen it in operation at Blacktown and it is worthless.

Mr CADMAN—Blacktown would be one of the largest stations in New South Wales?

Mr Fenlon—Yes, one of the busiest in New South Wales.

Mr CADMAN—You have made comments about networks of control. To exercise significant control of the New South Wales Police, how many people would you need at middle management level to say you had some form of control?

Mr Fenlon—In what respect?

Mr CADMAN—Let us call it a mate system. How many people need to be in a mate system for corruption to function without being detected easily?

Mr Fenlon—From two to 200. The organisational culture that existed pre royal commission still exists. It is a culture of silence and looking after the interests of your friends, colleagues and mates. It would not be in an individual's interests to disclose that corrupt conduct was going on, particularly in relation to promotions and those little networks that are happening, because you will find yourself disenfranchised. You will get nowhere. Everybody knows that, in order to

progress, you have to comply, you have to be loyal, and the definition of loyalty in our organisation is blind obedience and a complete unwillingness to rock the boat. If you were to raise your hand and say, 'Hold on a moment, this is not right,' as soon as you make that statement you identify yourself as working outside the framework, outside of what is expected, and you're absolutely getting nowhere.

Mr CADMAN—But surely that does not apply to everybody who is in authority. You must have had senior officers, superiors, who would have reacted positively if you had suggested this is not an appropriate procedure—no?

Mr Fenlon—I am not being cynical, sir; I am just being factual. The number of senior officers that I could have gone to in relation to matters that I raised in the last 20 years I could count on one hand.

Mr CADMAN—You loosely used the term 20 or 30 duty officers were established using the crib sheet process—the foreknowledge of questions they were going to be asked.

Mr Fenlon—All of the duty officers' positions were selected on the basis of eight questions.

Mr CADMAN—They were selected on their answers to questions, but how many had prior knowledge, do you think?

Mr Fenlon—This is where the risk is attached, because there has been no detailed examination and we cannot tell quantitatively how many people have been involved. All we can do is look at the number of complaints, the locations, the people who have been exposed as having acted corruptly and the geographical locations of these people to determine its geographical extent, look at the evidence of Menzies in relation to his implication of 30 other people in promotions corruption and then multiply it exponentially across the service. It is definitely widespread.

There is one person who would be able to answer that question, though, significantly better than I can, and that is Gary Richmond. It was Gary Richmond who said to me in a telephone conversation approximately 12 months ago or a little more, 'I wish I had shares in Kleenex'—he had access to all of the complaint documents—'because those who aren't shitting themselves are going to be crying their eyes out.' Richmond, I think, wanted to do the right thing.

Mr CADMAN—Was he just trying to keep you quiet and placate you, do you think?

Mr Fenlon—Yes. I think part of his role was to control this renegade Fenlon: 'Tell him what he wants to hear and keep a lid on the issue as much as possible.' It is quite apparent from the tape recording of the interview I had with Gary Richmond, which you may have listened to—

Mr CADMAN—Yes. You have a transcript here; is that right?

CHAIR—The transcript is in the papers.

Mr Fenlon—There is a transcript and a copy of the actual audio tape. It is quite apparent that he goes to great lengths to protect Ryan, Moroney and Brammer. I am convinced that at the time

we had that meeting he was convinced that the senior administration had been lied to and it was not their fault. But the undertaking that he gave me during that meeting—and he said it to me several times—was, ‘We guarantee we will reinvestigate all of your matters, Mark—all of them.’ Those investigations never occurred. Richmond said that to me as recently as December last year, as I quoted earlier in my opening statement. At that time, 10 months had expired. Richmond had made recommendations to Ryan, when he was in charge, and since to Moroney, because Moroney and Ryan were receiving regular briefings from Richmond.

Mr CADMAN—But he made a statement to you that he did not know whether or not McKenna and Rankin had passed on information to Jarratt.

Mr Fenlon—That is right. And that is why I was insisting that the investigation be conducted—that he interview McKenna and Rankin.

Mr CADMAN—You saw these people all in the same office, and yet he said he did not know whether the information had been passed on?

Mr Fenlon—I have absolutely no doubt that Gary Richmond was doing what most investigators do within Internal Affairs—that is, confine the terms of reference of the investigation in order to arrive at specific conclusions and recommendations. With this one, though, they were confronted with overwhelming evidence that something was horribly wrong with the promotion system. Richmond made written recommendations—I do believe the man—in relation to the termination of the promotion system and the entire matter of ‘Fenlon’s complaint’. Again, I quote what he wrote:

Recall meeting with Ryan after reading my material and stating, ‘We have major problems with this man and with the investigation carried out by Myers.’

That is Richmond with Moroney and Ryan.

Mr CADMAN—That is Angela Myers?

Mr Fenlon—That is Angela Myers. Here was a man caught between his loyalty to the Commissioner of Police, to the deputy commissioner, Moroney, and to his own commander, Mal Brammer, and concrete evidence that these people knew what was going on beforehand and did nothing about it. Richmond made the recommendations because he was saving his own backside by doing it. He said, ‘These matters need a full inquisitorial investigation.’

That file has been sitting with Ken Moroney for the last 12 months. They sit on it and do nothing with it, and Moroney has done nothing with it, because of the implications—because Moroney is implicated; he knew about it and did nothing. When he was Deputy Commissioner of Police, he had an obligation and a duty to do something about this when Ryan would not. Had I been in his position, certainly Deputy Commissioner Mark Fenlon would have said, ‘Excuse me, Commissioner, this has to be addressed.’

Mr CADMAN—How would you have addressed it?

Mr Fenlon—I would have gone to the Minister for Police.

Mr CADMAN—What solution would you have applied?

Mr Fenlon—First of all, I would have stopped the promotion straightaway until a complete investigation of the complaint had been conducted. A proper risk assessment should have been done on it.

Mr CADMAN—But you are going to stall the whole process and have more 66s or whatever they are called.

Mr Fenlon—That would have been unavoidable. I am saying that they were not even prepared to that. They were not prepared to slow down or stop the process. They were not prepared to do anything about it, because to do something about it would have meant admitting initially that its introduction was a mistake. That would have impacted upon Ryan's reputation as a reformist, because one of the key reforms following up on the royal commission was the promotional assistant, who was supposed to ensure and provide the framework and foundation for the future integrity of the Police Service. Well, here it is and it is failing.

CHAIR—Would it surprise you to know that the Wood royal commission report on page 544 states about promotions and transfers:

- The Service continue to develop and adopt the assessment centre method, and apply it to all career moves ...
- Assessment centres be regularly monitored by external experts to ensure their effectiveness
- Selection panels include at least one person who is not a member of the Police Service
- The PIC, the Office of Internal Affairs and commanders pay particular attention to delivery of careful and realistic integrity assessments
- The basis for transfers be confined to proper administrative and managerial considerations ...

That is what Wood said. We did not get that, did we?

Mr Fenlon—No. They were fine recommendations but they were poorly implemented. The promotional system that was introduced was very poorly conceived and poorly implemented, but it served its purpose insofar as Peter Ryan was concerned because it enabled him to state publicly that he was implementing the recommendations of the royal commission in terms of reform.

Mr CADMAN—So you would have stopped the process and you would have had a full investigation?

Mr Fenlon—Yes.

Mr CADMAN—You would have installed the process, and I think you said that you did not care whether it went to 1,000 written questions?

Mr Fenlon—At that stage, that is right.

Mr CADMAN—Done like a higher school certificate exam?

Mr Fenlon—Indeed. There is greater integrity to a higher school certificate examination than there was to this process, and there is significantly less at stake with a higher school certificate student passing his exam or not—we are not talking about putting individual lives in jeopardy.

We are talking about a system of promotion that was used to appoint people to the most senior operational supervisory role in the Police Force which is your critical incident supervisor—the person who is making decisions at sieges and decisions in relation to evacuations.

Mr CADMAN—You said that the old system was flawed?

Mr Fenlon—Absolutely.

Mr CADMAN—That Jarratt or Myers or whoever devised this new system that has just been booted out was flawed?

Mr Fenlon—Yes.

Mr CADMAN—From what I have read, you have told the minister that the current system is flawed?

Mr Fenlon—Basically, none of the minister's recommendations for change—which entail the introduction of a statutory declaration, the bar coding of applications and the integration of the written application with the structured interview results—are going to address the concerns that I have, because they do not address the inherent integrity failings of the process. A statutory declaration is not going to make any difference as to whether or not I am going to cheat. Where is the deterrent in signing a piece of paper which says that if I am later detected to have acted corruptly I could face punishment? We have already found out that people who are caught, engaged in this type of conduct, face nothing but lenient action anyway, so where is the deterrent? There is not any.

The second part is barcoding the application. They are talking about taking the names off written applications and replacing them with barcodes—that is nothing. A great majority of written applications these days are prepared by persons other than the applicants applying for them anyway. Professionally prepared applications are a fairly regular occurrence. So that is out the window. The second point is the integration and the scoring, if you like, of that application. The integration of that result with the structured interview results has no validity either. If the application has been prepared by somebody else and it contains someone else's work, how valid is that? If we still have a structured interview, and we do, that relies on set questions from a bank which are asked of each and every candidate, even if they rotate a couple of questions, it does nothing to improve the security of the process. It is my contention that people who are actually sitting on those selection panels are providing the questions to other people. What I am saying basically is that superintendents, inspectors of police and senior public servants are not above this type of conduct.

CHAIR—We already know that with Inspector Menzies, don't we? And Mr Messenger was a section 66 inspector, was he not?

Mr Fenlon—Yes.

CHAIR—He is in jail, by the way.

Mr Fenlon—These legislative changes that came about in January of this year through the bill that passed through parliament, rather hurriedly, are a concoction of recommendations that were arrived at through the tripartite committee meeting. In other words, the Police Service, the Police Association and the ministry themselves have said, ‘Okay, how can we get around this? We are going to have to show something. Let’s adopt this, this and this.’ Then they have handed it to Michael Costa and he has said, ‘Oh, this will do me’—the old silver bullet solution—‘let’s implement it.’ When I met with Michael Costa on 10 December 2001 we discussed these issues and I was as candid with him as I have been here with you today. They are not going to work. My recommendation to him was to take it out of the hands of the Police Force because we cannot be trusted with it. It is simple.

Mr MURPHY—Can I ask you a question.

Mr Fenlon—Absolutely, if Mr Cadman has no objections.

Mr CADMAN—No, that is fine.

Mr MURPHY—Mr Fenlon, I do not want to stop you. I am very interested in this. I will make some concluding remarks, you will understand, because I want to offer you a ray of hope. Did Mr Costa indicate to you that there was a possibility that you could take this selection process outside the Police Service?

Mr Fenlon—No.

Mr MURPHY—I want to say something to you about that.

Mr Fenlon—No. I made recommendations to Mr Costa to that effect. Two days later I went and had a meeting with Brian Donovan and Richard Kenna at the Police Integrity Commission and I made exactly the same statements to them. I indicated to them that I held the Police Integrity Commission culpable—not them individually—for what had been permitted to occur. But I did offer some solution in relation to how this could be best addressed, and that is to take the process out of the hands of the Police Force and the Police Association altogether to ensure that nobody could get their grubby mitts around it and manipulate it to ensure that the future leaders of the Police Service were made in the image of those who had gone before. That is what is happening. They are appointing people in their own image; they are promoting people in their own image. So you are not going to see any change of managerial culture because it is a self-perpetuating situation. You have to nip that in the bud, and the only way to do that is to take it out of their hands. It is not a difficult concept to get your head around. If somebody cannot be trusted with something, you take it off them. These people have demonstrated time and again that they cannot be trusted. They cannot be trusted with these systems. These fundamental systems are integral to the integrity of the organisation, and they cannot be trusted with them. They cannot be trusted to conduct internal investigations.

Mr CADMAN—All of those names you mentioned in your introduction you say are suspect, I would have thought. You basically read a list of people—

Mr Fenlon—Every single one of those people is accountable for what has occurred—each and every one of them, to varying degrees certainly. Each and every one of them has failed—

deliberately failed—to do what is right. They have deliberately been neglectful of the duty of their public office.

Mr CADMAN—We have been a bit intrigued by this scaling 1, 2, 3 in categories that go to the Ombudsman.

Mr Fenlon—In terms of the complaints?

Mr CADMAN—Yes. In the transcript of your discussion with Mr Richmond on 4 April 2001 at Blacktown he says, ‘The file came in as I understand it to Commander Brammer. It then went to SASC as it is required to.’ I have checked that and that is the process that it did go through.

Mr Fenlon—That is correct. They make an assessment in relation to that.

Mr CADMAN—‘That is our intelligence unit and that does the assessment and the initiations. It was initiated as a category 2 complaint.’ So the police nominate the degree of concern or significance of that complaint. The police therefore nominate the significance to the Ombudsman so that the Ombudsman will give it a weight appropriate to the way in which police have nominated it.

Mr Fenlon—Exactly. Giving this one a category 2 status would allow the Police Service—and the Police Service knew it—to look at this itself. It would be conducting the investigation itself. To me it just defies logic, but it happened. If that decision is made and it is put onto the Ombudsman’s office, it does not mean the Ombudsman is not going to have difficulty with it, because they have a memorandum of understanding, if you like, in relation to how these types of complaints are going to be dealt with. Category 1 complaints are generally, but not always, dealt with by the PIC. They involve allegations of drug dealing, extortion and those sorts of things. Category 2s are sometimes independently investigated by the Ombudsman, although the number of investigations conducted annually by the Ombudsman is tiny in comparison to the number of complaints it receives in relation to police. I think last year it conducted six independent investigations. It is a worthless body in terms of oversighting policing.

In fact, the entire structure we have operating is worthless. I will give an example. My complaint now in relation to the statistics surrounding the Police and Public Safety Act is that the investigation is being conducted by the Police Service because it was deemed again to be a category 2 complaint. The Police Integrity Commission wanted no part in it. The New South Wales Ombudsman refused to conduct an independent investigation in relation to it, instead adopting a supervisory role in relation to the investigation. Last year, in the gardens at the rear of this building, I called for an independent investigation and I said that I had no faith in the Police Force conducting an investigation into this matter because of the significant conflict of interest that existed.

CHAIR—This would come as a big shock, wouldn’t it, to the general public who think the Ombudsman is entirely independent with his own ability to investigate and to make up his own mind? You are saying that the Police Service makes a decision as to what the Ombudsman gets to investigate.

Mr CADMAN—You are saying that not only do the Police Service decide what he gets but they do the evaluation of the seriousness of it—they make that evaluation before the Ombudsman gets it.

Mr Fenlon—They do. I am not suggesting—and it should not be suggested—that the Ombudsman does not have the right, if you like, to conduct its own independent investigation if it does not agree with the Police Service findings regarding the category of complaint. What I am saying is that it is very convenient for the Ombudsman to simply accept the categorisation of the complaint as set down by the Police Service.

CHAIR—We had an example from Mr McNamara, who had a complaint made against him, and the Ombudsman made a finding against him ex parte, if you like, with only one side of the case put to him. We asked Mr McNamara to put forward his side of the case. The Ombudsman in fact wrote to him and apologised. Again, this seems to be another manifestation, that if you wanted to make trouble for someone you could make it a category 1.

Mr Fenlon—Can I give you an example. This illustrates it better than anything else.

Mr CADMAN—I want to clarify something. Would category 1 complaints normally stay within the PIC?

Mr Fenlon—Not always. Sometimes they will hand category 1 complaints back to the Police Force directly for investigators within Internal Affairs to conduct the inquiries.

Mr CADMAN—What about the Ombudsman? Will category 1 complaints go to the Ombudsman?

Mr Fenlon—Unlikely. Even if they did there is still no compulsion for the Ombudsman. The Ombudsman has an oversighting role. Basically it is a filing cupboard.

Mr CADMAN—Do you mean the Ombudsman gives authority for work to be done in its name without proper exercise of control?

Mr Fenlon—Effectively; that is a fairly accurate assessment of it.

Mr CADMAN—You used the term—

Mr Fenlon—Just to illustrate, as my train of thought went there, my complaint in relation to their statistics surrounding the Police and Public Safety Act, the Ombudsman has already found that the police findings resulting from that investigation and the recommendations were not consistent with the evidence that has been obtained by the police investigation.

CHAIR—I think you had better elucidate that for us, don't you?

Mr CADMAN—I think so. We need to really understand this; it is very important to us.

CHAIR—Could you tell us about those statistics so we understand what you just said?

Mr Fenlon—In November 2001, I penned a complaint to the Police Integrity Commission and to the New South Wales Ombudsman in relation to the falsification of statistics surrounding the Police and Public Safety Act, namely move-ons and night searches that were being conducted. My contention, based on the statistical returns that I had examined at Blacktown LAC and at other local area commands in the western suburbs of Sydney, was that the statistics in relation to night searches were being artificially inflated. Not only that but there was sufficient information, if you like, that had been passed on to me as an operational supervisor that police at Blacktown, particularly in the bikes and BART—the Blacktown area response team—the two proactive arms of the Blacktown police station, were engaging in misconduct in order to drive up those statistics. Basically they were creating false night searches and conducting night searches without reasonable cause consistent with the confines of the act. The statistics reflected this.

This was a matter that I raised. I made a complaint basically to highlight and to demonstrate the managerial organisational culture that exists within the Police Force and our managers' complicity in political policing. In other words, the New South Wales government introduced the Police and Public Safety Act as a direct response to negative publicity it was receiving in terms of street crime. It introduced the legislation, got it passed and then gave it to the Police Service for implementation. The police senior executive had to demonstrate that the legislation works. The pressure was on. It goes down the chain of command. It goes from state command, in this case Jarratt and Ryan, down to the regional commanders and then down to the local area commanders to enforce this legislation to ensure that we get results. I really do not blame people like Les Wales—it is not their fault that they are weak-willed men. If they do not comply, they face non-renewable contracts. It is a simple situation. Because of the operational crime review process which was just farce—it was a Spanish Inquisition; it had nothing to do with policing and was just a statistics exercise—

CHAIR—Could you explain about non-renewable contracts?

Mr Fenlon—They are all on contracts.

CHAIR—Who are?

Mr Fenlon—The superintendents. Local area commanders and above—superintendents and above—are on employment contracts of, I think, four years.

Mr CADMAN—It doesn't sound like a very good idea to me. I would not like to see it adopted in the Australian military.

CHAIR—I'm not sure either.

Mr Fenlon—If we had a similar system to that in the Australian military, I would be quite happy about it and I know people around my vintage would be.

CHAIR—What, contracts?

Mr Fenlon—God forbid, no.

Mr CADMAN—I am talking about contracts.

CHAIR—That is what we have said: we wouldn't want contracts in the military.

Mr Fenlon—That is the situation facing local area commanders. You comply and you provide the statistics that are required of you or face the Spanish Inquisition. This is what has gone on: you face the operational crime review; you are beaten about the head with the statistics for your local area command and you might be looking at the non-renewal of your contract at the end of the day. The pressure is on.

CHAIR—Who determines whether it gets renewed or not?

Mr Fenlon—The Commissioner of Police.

CHAIR—So it is at his discretion totally?

Mr Fenlon—Yes, absolutely. It is as if there is an axe held over the neck of every local area commander: 'You will comply and you will do as you are told, or else. And you will make this legislation work and you will make it appear as though it is working, or else.' That is what has happened in this case. Have you had an opportunity to hear my interview with Chief Inspector Matthews?

CHAIR—That is the one on the tape?

Mr Fenlon—That is the one on the tape.

CHAIR—Those tapes are a bit hard to hear.

Mr Fenlon—The one with Matthews should not be.

Mr CADMAN—Is that an audio tape?

Mr Fenlon—Yes.

Mr CADMAN—No, I have not heard that.

Mr Fenlon—It is very interesting, and I would recommend it to you.

CHAIR—Do we have a transcript of that one?

Mr Fenlon—No, you have not.

Mr CADMAN—Can we get a transcript?

Mr Fenlon—A transcript should be available through Internal Affairs. Suffice to say that my conclusions are that the investigation, which was codenamed Villarosa, was a straight-up whitewash. The terms of reference for the investigation have been deliberately confined and aspects of matters arising have been omitted altogether in order to present, again, managerial

issues rather than involvement in any direct misconduct. It has been attributed to non-deliberate human and systems error, and it is a crock.

CHAIR—So they did confirm that the figures were wrong but nobody meant to get them wrong. Is that right?

Mr Fenlon—This will be interesting with members of the media present. It said, ‘During the course of the investigation it was determined that the statistical data relevant to searches conducted, utilising powers conferred in the relevant legislation, was artificially inflated.’

CHAIR—I have a big concern about this. We rely a lot on statistics that are given to us by the Australian Bureau of Statistics, people like Don Weatherburn—

Mr Fenlon—To develop your strategies accordingly.

CHAIR—We rely a lot on those. There is one check and balance, and the one that I like the best is the dictum survey, because that does not rely on recorded police figures, and you can look at other data such as hospital admissions and so on to see if that all matches up. But it worries me that if you suddenly wanted to say that there has been dramatic drop in crime in New South Wales, for example, if you wanted to skew the figures—for instance, the categories that we use from the Productivity Commission are things like unarmed robbery, armed robbery, assault, unlawful entry with intent, and other theft, which has a definition all of its own: it really means you can break and enter and use a bit of force—you could report some of those things as something else, couldn’t you?

Mr Fenlon—Absolutely. I will give you the example of a break, enter and steal offence or an attempted break and enter on premises. I know from my own experience that commanders at some police stations have directed their personnel to report those events as malicious damage. In other words, police get a report of a break into premises. When they arrive there the door has been jemmied or the lock has been manipulated and the door is open, although no property has been taken. That is recorded as malicious damage—damage to the lock or to the door. That way it does not show up on your crime reports. It is reported as a much less serious offence.

There is a similar situation with car theft—malicious damage to a door lock and to the ignition barrel. If that is not an attempt to steal a motor vehicle I do not know what is; yet there have been instances where those things have been recorded as malicious damage to vehicles. There are others things too, such as demand money with menaces—whether a weapon was used. They would downgrade it from an attempted armed robbery to a demand money with menaces. The statistics themselves are manipulated at the coalface. It does not occur at every LAC, but it can, and there is no quality review or no quality control of the statistics either.

If you think about it, it is not in the interests of the local area commander to present the truth in these circumstances, particularly where they are facing the axe. So if they want to drive down the statistics for break and enters in the local area it is a far easier proposition, and can be addressed quite easily, with a direction to all staff: When you attend a report of a break and enter, if only the lock to the premises or a window has been smashed it should be recorded as a malicious damage unless you can establish that there was intent to steal. How can you possibly do that? Everyone knows if a door has been busted in or a window has been smashed and some attempt at entry has been made, then obviously it was not their intention just to do that specific

damage. This is the type of thing that I was trying to highlight with Mr Costa. This is the type of thing that I was trying to highlight in relation to the statistics overall within the Police Force: they cannot be trusted. It is all smoke-and-mirrors policing. It is a huge deception.

CHAIR—But it was seen with that contractual situation, where you have got your area commanders on a four-year contract, that if they are not—

Mr Fenlon—You have to be compliant—that is what I am saying. There is nothing there to protect them. How many superintendents have put their hands up to come forward before this committee?

CHAIR—None.

Mr Fenlon—To do so would be to commit career suicide.

CHAIR—So we go back to the problem of there being absolutely no whistleblower protection at all.

Mr Fenlon—None; for nobody.

CHAIR—I am sorry, I interrupted Mr Cadman.

Mr Fenlon—I apologise too, Mr Cadman, for digressing.

Mr CADMAN—The discussion was really worth while. That concludes what I wanted to ask.

CHAIR—Mr Melham has indicated he has two more questions he would like to ask and Mr Murphy would like to say something. We will do that now. Then I have a couple of things I would like to do too.

Mr MELHAM—Mr Fenlon, are you aware that the minister announced some time last year an inquiry into the promotion system?

Mr Fenlon—Yes. It is headed by Geoff Schuberg. I will give you some details in relation to the establishment of that committee, if you like. It took place—

Mr MELHAM—When?

Mr Fenlon—I think later on in the evening after I went public, at the back of the Domain here. I was invited to a meeting with the minister—

Mr MELHAM—When was it that you went public?

Mr Fenlon—I think it was 26 June. It was within 12 hours of going public on it. Mr Basham and I attended the minister's office within 12 hours of my going public in relation to the matter.

Mr MELHAM—So there is an inquiry currently with Mr Schuberg.

Mr Fenlon—Yes.

Mr MELHAM—What stage is it at, are you aware?

Mr Fenlon—Yes, I am aware, as a matter of fact. I do not know whether Geoff would appreciate me doing this—

Mr MELHAM—It has not reported; I am not interested in—

CHAIR—Please go ahead.

Mr Fenlon—It has not reported, but you have asked the question, Mr Melham, and I would appreciate the opportunity to present the findings and the results of that committee, as have been related by Mr Schuberg to me.

Mr MELHAM—Hang on.

CHAIR—Yes, please let him proceed.

Mr MELHAM—Let us just establish a couple of things first. When you say the findings of that as related by Mr Schuberg to you, when was that?

Mr Fenlon—On 2 December 2002.

Mr MELHAM—So Mr Schuberg relayed something to you—

Mr Fenlon—He did indeed.

Mr MELHAM—Did you make a submission to Mr Schuberg's inquiry?

Mr Fenlon—I did.

Mr MELHAM—When did you make that submission?

Mr Fenlon—It was a one-page submission. I met Mr Schuberg at his home.

Mr MELHAM—When was that?

Mr Fenlon—Within three weeks of the announcement of that committee.

Mr MELHAM—Then you had a conversation with him in December last year?

Mr Fenlon—Yes. I have had a number of telephone conversations with Geoff Schuberg.

Mr MELHAM—I am interested in relation to the inquiry.

Mr Fenlon—In relation to this one—yes, indeed.

Mr MELHAM—And he relayed something to you in relation to where he was headed with that inquiry?

Mr Fenlon—Yes. He told me that nothing worth while can be achieved in relation to it because of stonewalling by the Police Association and the Police Force. He said there were insurmountable problems associated with the implementation of any changes. And he said that, in any event, it cannot be remedied—what has gone on cannot be fixed.

Mr MELHAM—When you say ‘what has gone on’—

Mr Fenlon—The void that has been left in experience within the police, because of the introduction of the police promotions system and all the other issues associated with it, cannot be sorted.

Mr MELHAM—Did he raise with you any of his recommendations as to future action in terms of the promotions system?

Mr Fenlon—He said he was going to endeavour to get some feedback from people out in the field.

Mr MELHAM—Are you aware of whether an email was sent to all officers in terms of making submissions?

Mr Fenlon—Absolutely, I know that has occurred. I know that they are holding meetings throughout the state in relation to requesting officers to provide feedback. Fundamentally, I am saying that the action that is required, action that Geoff Schuberg knows should be happening, cannot happen because of obstruction by the Police Association and obstruction by the Police Force in relation to that action. And, in any event, we don’t have the people to replace anyone who might be dismissed or sacked as a result.

Mr MELHAM—Do you understand when Mr Schuberg is expected to make the findings of his report known?

Mr Fenlon—I think the interim report was delivered early this year. The final report is due in September this year. I applaud Mr Schuberg and his efforts, because Mr Schuberg at least has the wherewithal to appreciate exactly what has gone on and what the effects upon the organisation have been.

Mr MELHAM—He is undertaking a wide ranging consultation, isn’t he?

Mr Fenlon—He is indeed, but even he would acknowledge that the task he has been set is almost impossible to achieve.

Mr MELHAM—I will get that from him. I am interested to hear about his endeavours.

Mr Fenlon—I invite you to ask Mr Schuberg.

Mr MELHAM—I do not need you to verbal Mr Schuberg.

Mr Fenlon—I beg your pardon, sir.

CHAIR—You asked the question, Daryl.

Mr Fenlon—I would never in a moment cast any aspersions on the integrity of Mr Schuberg, and I think Mr Schuberg would know that.

Mr MELHAM—Thank you. Just to confirm, you have only made a one-page submission to Mr Schuberg and that was in about June of last year?

Mr Fenlon—Yes, but I discussed it for about 2½ to three hours with him.

Mr MELHAM—When was that?

CHAIR—He told you—three weeks after it was announced.

Mr MELHAM—Do not worry, Madam Chair, I am not interested in your answer.

Mr Fenlon—It was at his home, and it was about two to three weeks after the inquiry was announced. He called me at my home and said, ‘Come and see me. Talk to me about this.’

Mr MELHAM—Then you had a subsequent discussion with him in December.

CHAIR—It is all right, Mr Fenlon, just have a sip of water. Do not be intimidated, Mr Fenlon.

Mr MELHAM—I am not about intimidating.

Mr Fenlon—I am not intimidated in any way, shape or form.

Mr MELHAM—He does not need your protection, Madam Chair. There was the initial conversation.

Mr Fenlon—Absolutely.

Mr MELHAM—Then there was the subsequent conversation in December.

Mr Fenlon—I have spoken to Mr Schuberg on a number of occasions.

Mr MELHAM—Okay. I am not interested in discussions outside the inquiry on the promotion system; I am interested in that aspect that is the prime focus of your submission.

Mr Fenlon—Mr Schuberg indicated to me that he is facing insurmountable objections and hurdles with regard to the implementation of real reforms within the promotional system from both the Police Force and the Police Association.

Mr MELHAM—Okay. When did he indicate that to you?

Mr Fenlon—That was on 2 December. There were a number of other things he related to me as well, but I am reluctant to enter those matters on record. If you want to, I can go into it.

CHAIR—I think that might be useful.

Mr Fenlon—It is up to you, Mr Melham.

Mr MELHAM—I do not require it.

CHAIR—I bet you don't.

Mr MELHAM—Frankly, one of the reasons I do not require it is that I am trying to operate in terms of the submission that you have placed before me. I do not know what conversations you have had with Mr Schuberg outside the terms of reference.

CHAIR—You asked the question, Darly; he was answering it.

Mr MELHAM—Quite frankly, given your reluctance to tell me, I am not interested—

CHAIR—Mr Fenlon, would you please go ahead.

Mr MELHAM—Hang on, Madam Chair!

Mr Fenlon—I would prefer that Mr Schuberg came here himself—

Mr MELHAM—Exactly.

Mr Fenlon—and passed that information on to you.

Mr MELHAM—Thank you.

Mr Fenlon—It is a matter for Mr Schuberg. I am sure that the man has integrity and he would be prepared to do so. I will not steal the man's thunder if he has some intention to come before this committee.

Mr MELHAM—We do not know yet.

CHAIR—I might suggest to the committee that we write to Mr Schuberg and ask him to attend.

Mr MELHAM—That is fine. So the last time you spoke to him was in December in relation to the promotion system?

Mr Fenlon—Yes.

Mr MELHAM—You anticipate it will take until September for the final report to be tabled?

Mr Fenlon—Yes.

Mr MELHAM—Basically, is it fair to summarise that he indicated that the sorts of reforms that you wanted in the promotion system were not achievable?

Mr Fenlon—Absolutely. What I would like to see happen is unachievable because, by virtue of its very nature, it is going to be opposed by the Police Association and the Police Force because it wrests control of the process away from them.

Mr MELHAM—I accept that.

CHAIR—Can I go back to the statement you made about the void of skill. Are you saying, because this was let run from 1999 to 2003—four years—with all these people looking at it and deciding not to do anything, that we have lost the skills and that people have been put into those positions and that if you sack them because of impropriety, criminal offence—whatever—you would not have anybody?

Mr Fenlon—This promotion system disenfranchised probably about 70 per cent to 80 per cent of experienced police from all sections, from all backgrounds. Over the last four or five years since its introduction, police have consciously sought exit from the Police Force as a result—the old ‘passed over and pissed off’ syndrome.

CHAIR—So you lost the people who had the skills to investigate.

Mr Fenlon—That is correct. You have a void in terms of actual investigative skills to be applied in the fight against crime. Not only that, but you have a massive void in terms of the capacity of these people to train and pass on those skills in the work force to junior police coming up.

CHAIR—If that is the case, then the pressure to make the statistics look better is going to be greater.

Mr Fenlon—Absolutely, because it has got to be concealed; it has to be hidden.

CHAIR—I understand that the Australian Bureau of Statistics conduct—I think on a four-year cycle—a victim survey. There is one due in September this year; they are still working at it. I understand there is a new set of statistics recorded by the New South Wales Police to be released on 3 March, but we will not have the opportunity to compare those with the victim based study until September of this year. It will be interesting to make those comparisons. But, supposing we suddenly saw a great dive of some areas of crime as it is recorded and reflected, would that be credible?

Mr Fenlon—No, it is not. It is just impossible. If you were to see that happening—

CHAIR—So it is the old thing of garbage in, garbage out.

Mr Fenlon—That is exactly right.

CHAIR—We will see.

Mr MURPHY—Mr Fenlon, I would like to finish on a positive note and offer, as I said earlier, a ray of hope not only to you but to your colleagues here today. At the conclusion of the questioning of you earlier by Mr Melham, you said words to the effect that, if nothing else came of what you have put yourself through today—and I say this against the background that I believe you are sincere in what you are saying to this committee—if we could do something about the police promotion system and the way the police investigate complaints, that would give you some satisfaction. You have said that you could put your head on the pillow and feel that you could do no more. I commend you for that.

My experience in the Public Service was that I was an audit manager involved in a lot of fraud investigations, and I worked closely with the Director of Public Prosecutions, the Australian Federal Police and the New South Wales Police. I myself was a messenger within my own department in relation to a lot of corrupt practices. Because I put pressure on the secretary of my department at the time, I ultimately got a written notification from the secretary to vacate my job and I was moved from my job. But I accepted that I had done what I could do, and I moved on. In my career in the Public Service over a long period of time, exposed to many government departments, I heard on many occasions allegations of corruption, favouritism, nepotism and patronage. You have voiced those things today, and I can tell you that, in many selection processes and as the senior grievance review officer for the Commonwealth Public Service in New South Wales—as a manager of the grievance program for all Commonwealth departments at the Public Service and Merit Protection Commission—many times I heard stories analogous to what I have heard from you.

I am also an accredited mediator, and you have said something that I want to pick up on. I will speak for myself: I give you a commitment that, if we can do something, I will make a contribution on my committee to somehow change the selection processes within the Police Force and the investigation of complaints. I do not, from my experience, accept that you can just take, for example, the selection process completely out of the hands of the police. I will use the analogy that, when I was doing selections and appeals within the public sector, both in my department and in other departments and also at the Public Service Commission, I interviewed people in as disparate range of jobs as stores people in the Department of Defence, doctors in the health department, social workers in the Department of Veterans' Affairs, accountants in the tax office and migration experts in the department of immigration—the list goes on and on. I can tell you, as someone who has chaired selection committees and appeal committees, I appreciated having one member on my committee that could give me some insight into the job.

Ms JULIE BISHOP—You did not want Mr Menzies on your committee. That is the difference between where you are coming from and the example in this case.

Mr Fenlon—Sir—

Mr MURPHY—Let me finish, because I am happy for you to respond. I would like you to think that I am as sincere as I believe you are in what you have given here today that we change things. When I was in the Commonwealth Public Service there was no department where there was not at least one person from that department or agency who was a representative on the selection panel or an appeal panel in relation to a job. I can tell you I appreciated it, as someone who might not have been technically qualified for a particular job, because you have to assess the people and you want information to understand the duty statement, the job description, the selection criteria and what weight to put on those things—

Mr Fenlon—I agree.

Mr MURPHY—and to understand the referees' reports and supervisors' reports—all those things.

Mr Fenlon—I would agree, but policing is not unique to New South Wales. What I would suggest, if you were going to make those recommendations, is that you employ police officers from other states—

Mr MURPHY—Exactly.

Mr Fenlon—or territories in order to—

Mr MURPHY—I have written notes to myself that, for example, you could take the selection process and give it to another agency unrelated to the police—and I will give an example of my own former agency, the Merit Protection Commission—and you could have a nominee with a policing background from Victoria or Tasmania, in the case of New South Wales—

Ms JULIE BISHOP—This is the problem in this instance. There was no mechanism to challenge those with obvious interests.

CHAIR—And nobody is prepared to investigate it.

Mr Fenlon—That is exactly right.

Mr MURPHY—What I am saying is that we have some opportunity here, because with the multiplicity of investigation from the Ombudsman, the police minister, the Police Integrity Commission, ICAC, state parliamentary committees and royal commissions—all those things—nothing much changes. A lot of what you have said has been looked at by those various groups and nothing much has changed, as far as you are concerned.

Mr Fenlon—That is because they have done nothing.

Mr MURPHY—This committee has an opportunity to make recommendations into the way complaints and selection processes are conducted within the New South Wales Police Force. Doubtlessly, Madam Chair, when we go to the other states we will find similar complaints, because I found these same sorts of things in my entire career in the Commonwealth public sector.

CHAIR—But the difference is that you have got a government report finding criminality.

Mr MURPHY—Yes, but you want to come back, three weeks out from a state election—and that is fine; you want to make this political because—

CHAIR—They tabled the report two weeks ago—their own report.

Mr MURPHY—I am just giving a positive message to this witness because I think he is sincere in what he is putting to us and I would like to do something about it.

Mr Fenlon—I appreciate your views, I honestly do. I will reiterate that the promotion situation, and the manner in which complaints specifically from police internal whistleblowers are dealt with, can be and must be—and I will say it again: must be—removed from the hands of the New South Wales Police Force, the Police Association or any other state agency to ensure that things are rectified. I agree with you that we have to have somebody sitting on a selection committee or panel who has some knowledge in relation to policing or the position specifically. But to involve anybody from New South Wales in any selection process for its future candidates for leadership is fraught with danger, because you are going to get exactly the same situation. It is going to continue ad infinitum until it is looked at.

Mr MURPHY—Just by way of finality—

CHAIR—Very quickly, please.

Mr MURPHY—I know you have done pretty well over a long period here today—let me tell you that I was a whistleblower and I got shafted. I hope that gives you some degree—

CHAIR—You got elected to parliament as second prize!

Mr MURPHY—Madam Chair, there was a time when people were talking about you being the first woman Prime Minister of this country. Doubtlessly, those people who might have had a say within your own party to achieve that end probably left you feeling at the end of the day pretty disappointed because you did not do it. It does not matter whether it is in political life or lawyers who do not pay their fair share of taxation or corrupt doctors, there is always some element of corruption everywhere. We have seen examples of it in our own profession. We would like to do something about it too, Mr Fenlon. I would like to leave you on a positive note.

CHAIR—Thank you, Mr Murphy. I did not quite follow the line of logic of all of that last bit—

Mr MURPHY—I am sure you did not.

CHAIR—I am sure you diligently did your job to the best of your ability. I have no idea of the outcomes, but they are irrelevant for the purposes of what we are hearing today. Mr Fenlon has put forward—

Mr MURPHY—That is the politics. There are three weeks before a state election—

CHAIR—It is not politics. This is fact.

Mr MURPHY—Oh, yes, it is politics.

CHAIR—I know that is a concern for you. You have made that quite apparent.

Mr MURPHY—If you are genuine, Madam Chair, you will come back here after the election.

CHAIR—You bet we will; absolutely we will be back here.

Mr MURPHY—Depending on who is the minister of the day, who is the Premier of this state and any other state—

Mr CADMAN—It does not matter.

CHAIR—Thank you; I agree with you.

Mr MURPHY—I make the point that we are three weeks out from a state election. We are not in Victoria, Western Australia, Tasmania, Queensland or any other state, and that is the politics. Sadly, we do like to work together in the main—

CHAIR—Mr Murphy, we could have had these hearings in December, except for you. You are being hoist with your own petard.

Mr MURPHY—It is before a state election. We know your agenda, and I will go back to the original terms of reference and your interference in that. I have made my peace. I would like to work with you, but you do make it difficult at times.

CHAIR—I think we have to get it on record that the Labor Party's view is that, wherever there is a Labor Party election on, we cannot have any hearings.

Mr MURPHY—You will be there.

CHAIR—We will certainly be back after the election, no matter who wins. Now, Mr Fenlon, we will go back to the proposition that you have been dealing with. You were a whistleblower.

Mr Fenlon—Yes.

CHAIR—You saw in 1999 a problem for potential corruption. Operation Radium found there was corruption. A recommendation was made from Radium, and in the body of the report in Radium Mr Brammer put the proposals to both Deputy Commissioner Jarratt and Commissioner Ryan, and their responses went back to the investigator through Mr Brammer. It is written here that Commissioner Ryan expressed disappointment that the process had been compromised. He was very disappointed. It did not go anywhere. The next thing we have is you continuing with the pressing of your point to ICAC, PIC, the Ombudsman and the minister, and it goes around and around like a revolving door. It is almost like Watergate; it is 'policegate'. We have an error, and then we spend the rest of the time covering it up.

Mr Fenlon—Exactly.

CHAIR—We are covering up busily, and then we come to Operation Jetz, which they could not avoid simply because of Operation Florida, which had police taps of Mr Menzies and Mr Messenger, who I understand is in jail now. The same report said that Mr Messenger was not

engaged in criminal conduct and should not be subject to any criminal prosecution. But he has been prosecuted for something else, as we saw on tape, and he is in jail.

Mr Fenlon—Indeed.

CHAIR—This is a man who was subject to a section 66 promotion. He was an acting inspector. This is the man who the PIC wiped their hands of and said, ‘Don’t do anything.’

Mr Fenlon—They do it with everybody.

CHAIR—They refused to exercise their own power under their own enabling legislation to investigate the whole question of promotional rotting, dishonesty and corruption, and instead they said, ‘We’re not going to do that because there is a little ministerial inquiry as well.’ Why the two would be mutually exclusive is beyond my comprehension.

Mr Fenlon—Mine, too.

CHAIR—Why couldn’t you continue? The Police Integrity Commission—hear the name: the Police Integrity Commission—will not investigate, despite the fact it is given the powers.

Mr Fenlon—It is a joke.

CHAIR—The report that was in the paper last week about looking elsewhere for integrity measures was a good one. We have come to the stage now where you have come to talk to us. You have given us your evidence. You have talked about the way you think things should be changed. On my own behalf I simply want to thank you for coming to give evidence. This committee will benefit from that. To me, the lack of whistleblower protection is the most appalling lack.

Mr Fenlon—It is.

CHAIR—The fact that the very bodies that are set up to oversee integrity in the Police Force are failing in their duty is horrendous. No action was taken with regard to that person who was going to get a \$50,000 rise by falsifying her application. I understand there was another case where a particular LAC commander was sitting on one of those panels. His wife applied for promotion, used her maiden name and got promoted.

Mr Fenlon—That is my understanding.

CHAIR—And she still has that promotion. Something has to be done so that good honest policemen can get on with their job and the fear of crime is reduced.

Mr Fenlon—Yes. It is all interrelated.

CHAIR—Thank you very much for coming before us. We note that you have named a lot of people. We will write to those people and ask them to come and give their evidence. You have said that you want it tested. They will have their opportunity to come and put their points of view. Thank you for being with us.

[2.15 p.m.]

KENNEDY, Mr Michael (Private Capacity)

CHAIR—Welcome. The committee has accepted your submission, supplementary submission and attachment on a confidential basis, but this morning, with your agreement, the committee authorised your submission, supplementary submission and attachment for publication. I would now ask you if you would like to make an opening statement.

Mr Kennedy—I would like to thank the committee for giving me the opportunity to present my submission. I will begin my submission by explaining to you that snapshots of my story are told from the perspective of my role as a detective within the New South Wales Police and as a complaints person for the New South Wales Council for Civil Liberties.

I should explain that I joined the New South Wales Police in 1978 and I resigned of my own free will in 1996. I think it is important that I also explain that I joined the New South Wales Council for Civil Liberties in about 1982 and served on the committee from 1995 to 2000. After that time, I was still one of the complaints coordinators for a short time, and I am still a member of the council. I am well aware of the conflicts that exist amongst the various committee members as to the appropriate nature of this committee. I will attempt not to agitate the various political interests by presenting to this committee a series of snapshots that will be supported by statements, letters, newspaper articles and other documentary and material evidence, most of which is already on the public record. In this way, I intend to avoid the use of hearsay evidence and subjective opinion, although I anticipate that when I answer questions the situation might change.

It is probably best if I outline from the very beginning the framework or the foundation of my submission so that there can be no doubt whatsoever about my position in relation to the scenarios that I intend to raise. I should point out that the only aspect of my ideology that has changed since 1978 is that these days I am much better informed from a theoretical perspective. There is some contradiction in my position. I suppose being a member of the Council for Civil Liberties and working as an undercover and intelligence operative in the New South Wales Police and the New South Wales Crime Commission is one of the first that becomes obvious. However, when I left school in 1967 my lack of qualifications meant that I had very few options in relation to obtaining what I considered was meaningful employment. I am a working-class male who, prior to recent years, had no academic qualifications. In 1978 I used a trade qualification to enter the New South Wales Police, where all I desired was job satisfaction and job security.

In this submission, my initial point is to revisit a transcript from the Wood royal commission which contains partial evidence from a witness, KR5, who said this in relation to a boys brothel in Sydney named Costello's:

But it was an amazing place, there were lawyers there, judges.

At this point, KR5 was interrupted mid-sentence by counsel assisting, Paddy Bergin, who is now Justice Bergin. She said, 'Just pausing there.' This conversation was never revisited, and

the issue of who the patrons of Costello's were was never answered. Apparently, inquiries as to when these allegations would be dealt with were met with the following response:

We've decided not to revisit any of that because the public would lose confidence in the judiciary.

I have referenced that comment.

CHAIR—Who said that?

Mr Kennedy—I do not know who said it, but it was in response to an inquiry as to why they never revisited it. I have referenced the comment and where it came from—the *Courier-Mail*. This initial point is not simply about Justice Bergin, Justice Wood, Justice Finnane, John Agius, Nigel Hadgkiss, Jim Shevlin or even the media and marketing arm of the royal commission, through journalists Kate McClymont or Ray Chesterton. In fact, it is not about anyone who was part of the royal commission in any way, shape or form; it is about the structure of these types of organisations.

My point is about human rights and civil rights, or civil liberties, and when I refer to them I will talk to them in broad terms, which would include due process. I do not have to explain to this committee what those rights are, because most of you would agree in principle about the importance of those rights within our society. But human rights are universal or they are nothing. If we maintain a class divide within the criminal justice system whereby those rights are denied to any group, including the police, on the basis that they are undeserving, then the human rights we are talking about are nothing. It is on this basis that I would argue that the structure of royal commissions in our criminal justice system makes it impossible to support the concept of universal human rights. In my submission I say that some of the administrative elites from within the royal commission contributed to the amplification of this human rights dilemma. In my view, some of these people should be required to explain their actions and the actions of their subordinates, in a public forum.

Without going into the detail of what others have already submitted, during the Wood royal commission there were too many deaths. There was too much public humiliation of innocent people who included members of the public, police or ex-police and their various family members, many of whom will be on medication for the rest of their living days because of the state sanctioned abuse of human rights which was standard operational procedure during the Wood royal commission.

Some of the problems with this idealistic and at times elitist pursuit of misconduct by police, who are predominantly rank and file police, is very evident in the reaction by other watchdog and investigative type organisations in response to calls for assistance made by ordinary police who believe they are being unfairly treated. Many of these watchdog and special investigative type organisations have become somewhat of a Club Med for opportunists and careerists within the broader Australian criminal justice system. This corrosive combination of careerism and opportunism is also eating away at the Police Service and the legal community. I do not think I am being unfair by saying that it also impacts greatly on our party political system. I am only brave enough at this point to raise the One Nation group as an example, but I am sure that you would agree that this corrosiveness of careerism and opportunism exists throughout the party political community.

I begin my submission by talking to you about the inadequacy of any system presently in place to assist rank and file police to deal with their junior and in some cases senior counterparts who may be discriminatory or engaging in misconduct to the point that it is criminal. In any event, what I am talking about are the administrative elites in the police hierarchy who make up the structure that shapes the organisation and the values of the people within it.

As a brief example, I present information that relates to a very senior police officer who is no longer a member of the service. I make this point not to focus on the issue of misconduct, which others have already dealt with, but rather to talk about how police who have a lot to offer but are difficult to manage can be allowed, once they are members of the hierarchy, to do almost whatever they please. However, once they become a liability they are sacrificed. This is about the collateral damage which these people engage in and, once they are gone, it is never addressed. It is about the inability of an organisation to manage people who are far from mediocre yet difficult to deal with.

In relation to that issue I refer to annexure A. It covers a newspaper article by David Humphries. He explains that, in 1997, Mr Ryan had put in place a code of conduct for the New South Wales Police. The article states:

The police were to: always act within the law, never commit corrupt or unethical acts on duty, report corrupt/unethical conduct, avoid financial/other conflicts of interest, never act outside legal limitations of authority, protect confidential information, comply with rights of citizens, not harass/discriminate against any person, not solicit/accept gifts or benefits ...

The rest of it is in front of you. The next part of the annexure is a letter I wrote to the Ombudsman's office in relation to that senior officer as a result of my time in civil liberties. A number of police came to me and complained that they were being stood over by that senior officer; they were being bullied in relation to the promotion system. When they came out to see me about another matter, I took the opportunity—in about early 1999—to complain. I heard nothing about it.

The next letter is from the New South Wales Ombudsman. In a reply on 2 August, which is the third part of annexure A, he said:

Generally speaking, the Ombudsman does not usually become involved in matters concerning recruitment and selection processes within the Police Service, however, your concerns are duly noted.

In the next letter that I received from Internal Affairs Command, New South Wales Police Service, they said they had received my letter and had decided not to investigate the matter. The letter stated:

Since your complaint falls into this category, this office will take no further action regarding the matter.

My next letter was from the Police Integrity Commission. Mr Sage said:

When the Police Integrity Commission was established ... it was required to concentrate on serious police misconduct, an example being allegations that police officers are involved in ... drugs.

He went on to say:

I note that the NSW ... Ombudsman has dealt with this matter previously, and I suggest you contact that Office directly if you have any further concerns ...

As you can see, none of these people were concerned about it. Then Assistant Commissioner Scipione took over from Assistant Commissioner Brammer. I knew Scipione. I wrote a letter and attached these other letters. I said, 'All I need is confirmation from Mr Ryan that he approves of this sort of behaviour and we will back off and will not say any more'.

Of course, Mr Scipione sent me a letter saying, 'I am writing to acknowledge the receipt of your letter regarding the allegation of misconduct, and the issues you have raised are currently receiving consideration.' Eventually, that senior officer was dismissed. I am not going to go into a name or anything else. She was a good officer and she had a lot of ability. Had the organisation been bothered to do something about her early days, she would have been an asset. Instead, there was this musical chairs between the investigative bodies that should have looked at it. None of them was interested in it. That is just the beginning of the example.

CHAIR—It is very difficult to follow what you are saying, without your saying what the complaint was.

Mr Kennedy—The complaint was that this senior officer was sitting on a promotion review committee and standing over police to withdraw from their promotion appeals, and telling them that, in the hearing, she would reduce them to nothing.

CHAIR—This is in relation to the promotion system, and nothing to do with the evidence that we heard in regard to Dolly Dunn and those issues?

Mr Kennedy—No, nothing to do with that. I was not here for that evidence. I am aware of it, but I am just talking about it from this perspective.

CHAIR—You are just talking about that, not P16s or whatever?

Mr Kennedy—No. I am saying that some senior officers are very gifted, but they are difficult to manage. And this is the way they are managed: they just let them do what they want until they become a liability, and then they get rid of them. She would have been an asset; she was not frightened; she had a lot to offer. I do not know what was offered before—I am talking about in relation to this issue. The second scenario that I want to talk about is contained in the details of letters 8 and 9 in annexure A.

CHAIR—To go to those letters, you have given us the letter from PIC. In other words, it is the same story. As we have just heard in great detail from Mr Fenlon, here is a complaint about corruption of the promotion system in that someone sitting on it has been telling people, 'Get out of there; I want my preferred person to come up.'

Mr Kennedy—Has been manipulating the system.

CHAIR—Has been manipulating it. And everybody is refusing to look at it.

Mr Kennedy—Yes. It is documented there in letters.

CHAIR—I am just reading some of them.

Mr Kennedy—The second scenario is contained in letters 8 and 9 of annexure A—letters from Irene Moss and from the Ombudsman, Bruce Barbour. This complaint is a complaint I put in while I was in Civil Liberties. Basically, the letter I put in related to the fact that during the Wood royal commission the New South Wales Crime Commission allowed the Wood royal commission to use its telephone intercept facilities, which they were not supposed to do.

CHAIR—Could you tell us more about that? They were not entitled to do that?

Mr Kennedy—The telephone intercept facilities of the New South Wales Crime Commission are restricted to New South Wales Crime Commission targets that are approved by the body the runs it. The New South Wales Crime Commission telephone intercept facility was used by the Wood royal commission and it should not have been. The Wood royal commission targets were not approved by the Crime Commission. That is a technicality but nevertheless it was a reality.

CHAIR—Is it a legislative requirement that they must be approved?

Mr Kennedy—Yes, I believe so. The target selection committee has to approve of the target in order for the telephone intercept requirements of the Crime Commission to be met.

CHAIR—By whom must it be approved?

Mr Kennedy—What happens is that the Crime Commission puts up a target, the target selection committee of the Crime Commission approves it, and then they can use their telephone intercept facilities to record.

CHAIR—This is a safeguard against anyone just going in and putting a tap on anybody's phone?

Mr Kennedy—It is a safeguard against the manipulation of the system. The problem was that the Wood royal commission did not have telephone intercept facilities, so they simply used the Crime Commission facilities without getting proper approval. I was asked to draft a letter to ICAC about it, which I did. I do not have a copy of the letter I sent. However, after some time I received a letter from the Commissioner, Irene Moss, basically saying that they had forwarded the complaints on to the Ombudsman's office and, sometime later—my letter from Ms Moss was in January—

Ms JULIE BISHOP—What date was the letter from Irene Moss?

Mr Kennedy—May 2001. The letter from the Ombudsman's office was on 28 August 2001. Basically, Mr Barbour explained that all he could do was perform an oversight role. The end paragraph of his letter stated:

Apart from my compliance inspection functions relating to telecommunications interception and controlled operations, I have no jurisdiction to investigate the conduct of officers of the Crime Commission. The staff of the Police Royal Commission were likewise beyond my jurisdiction.

I should add that there is not even a parliamentary committee that oversights the Crime Commission. These complaints just go nowhere. Nothing is done about them; they just stay in limbo. I continue to quote from the letter:

This correspondence relates to allegations of illegal telephone intercept practices during the Wood royal commission whereby the Crime Commission used its resources to intercept royal commission targets. The replies of 8 and 9 on Annexure A indicate the total lack of accountability of investigative bodies similar to the state crime commission which, considering its ability to conduct secret inquisitorial hearings and conduct electronic surveillance, is quite concerning.

The last paragraph of the reply from Ombudsman Bruce Barbour contains the salient fact:

Apart from the compliance inspection functions relating to telecommunications interception and controlled operations, I have no jurisdiction to investigate the conduct of officers of the Crime Commission. The staff of the Police Royal Commission were likewise beyond my jurisdiction.

Even more concerning is that organisations such as the Crime Commission are not bound by the Public Sector Management Act 1988, regarding the appointment of the staff. So not only are they not accountable but they can employ who they like. The opportunity for these organisations to engage in a Hooverous type activity—I am referring to the activities of J. Edgar Hoover, who I am sure you are all familiar with, during his reign at the FBI—

CHAIR—He had very good files, I understand.

Mr Kennedy—Yes, he kept files—‘the Lord of the Files’, I think they called him.

CHAIR—He used that to control all sorts of people.

Mr Kennedy—It is very real, and some critics within the legal community would suggest it has already happened. What makes this even more dangerous is the fact that in some instances senior management who were appointed outside the Public Sector Management Act are part of the steering committees and target selection committees that include other watchdog organisations. There is a committee that oversees the state crime commission, the Ombudsman’s office and ICAC, and they are all on each other’s committees. I am sure it is the same in the Commonwealth as well.

CHAIR—We have parliamentary committees that oversight them, and they have to come in and answer to them.

Mr Kennedy—There is not one in New South Wales.

CHAIR—Would it be a good idea to have that there?

Mr Kennedy—I think they normally have them. I do not know why they do not have one for the Crime Commission.

CHAIR—So there is not a New South Wales parliamentary committee overseeing the New South Wales Crime Commission?

Mr Kennedy—No.

CHAIR—We, of course, have one in the federal parliament that used to look at the old National Crime Authority and now looks at the new commission.

Mr Kennedy—Let me tell you how much that impacts. The man who is in charge of the Crime Commission is Phil Bradley. He was in charge of the Australian Crime Commission and he was one of the people who decided who would be the next senior investigator at the Australian Crime Commission. When I am talking about this situation, it is about a bureaucracy that is getting more powerful than the political parties.

CHAIR—So you are saying their power to appoint—

Mr Kennedy—He can appoint who he wants—he does it outside the Public Service Act; he is unaccountable—and then he sat on the NCA while Gary Crooke went away or did whatever he did. It is interchangeable between state and federal. Who do they answer to? I am not suggesting they are doing anything wrong, but how do we know? There is a complaint here about the use of telephone intercepts. How do we know? The complaint comes in and we do not know.

CHAIR—That is something we will certainly look at strongly and refer to the committee that oversights the Australian Crime Commission.

Mr Kennedy—Another brief scenario involving the New South Wales Ombudsman is contained in annexure B, which begins with a newspaper article by Andrew Keenan. It outlines how, back in 1988, the Federal Police had acknowledged serious problems within its Sydney drug squad office. It says:

As the *Herald* has reported previously, one officer from the unit has resigned and another has been suspended ...

The officer who resigned in the middle of being interviewed on suspicion of being involved in drug activity within a short time of resigning from the Federal Police managed to get himself a job as an investigator with the New South Wales Ombudsman's office. They even armed him with a nine millimetre pistol because he said that there were people threatening his life—and I don't doubt that there were. I don't doubt it at all.

Ms JULIE BISHOP—Could you please explain that to me again?

Mr Kennedy—Back in 1988, an officer from the Federal Police was interviewed in relation to corruption activities and he resigned halfway through the interview. He said: 'I've finished. I'm not working. There's my gun. There's my badge.'

CHAIR—Was that the Harrison inquiry?

Mr Kennedy—It was raised at the Harrison inquiry, but that has the lid on it—

Ms JULIE BISHOP—So he resigned and then was appointed—

Mr Kennedy—Within a couple of years he got himself a job as an investigator with the New South Wales Ombudsman's office. Complaints were put in about it. You can see in annexure B in letter 2 a complaint to the New South Wales Ombudsman's office. I put in a complaint about it. I have mentioned the person—

Ms JULIE BISHOP—What was your concern?

Mr Kennedy—He resigned in the middle of an interview with the AFP over the fact that he was dealing in drugs. The AFP put nothing on his file. The Ombudsman's office recruited him as an investigator, knowing full well that he had just walked away. This man was then going to interchange between the Ombudsman's office and ICAC. Everybody knew what he had been up to. Yet, when I complained about all of this—his name is in the letter at paragraph 1; I am not going to raise it now—I got a letter back—

CHAIR—Is this bloke—whom we will call Mr P., if you like—still there?

Mr Kennedy—No. They became aware of an allegation that he was dealing drugs in the Ombudsman's office and they readvertised his position. A friend of mine actually got the job, and he obviously did not get it. He left the Ombudsman's office—he resigned and did not get his job back when it was readvertised—and he worked in a brothel for a bit of a time after that as a bodyguard.

Ms JULIE BISHOP—How long was he at the New South Wales Ombudsman's office?

Mr Kennedy—I think he was there for a couple of years, or 12 months at the least. He had access to all of their secret files. Like I said, he was even given a nine millimetre pistol to protect himself and I have no doubt that he needed it. He had a lot of enemies.

Ms JULIE BISHOP—So he resigned in the middle of an investigation into his conduct while he was at the Ombudsman's office as well?

Mr Kennedy—The way they dealt with it was that they just readvertised his position—kept it all quiet—and when he applied for his position he did not get it, obviously.

CHAIR—So they quietly moved him on but did not do anything about prosecuting him.

Mr Kennedy—I am quite confident that everyone there knew about it, because you will see in the letter which is just over the page that the way they deal with it is to say:

This Office has never had any jurisdiction to investigate the possible corrupt conduct of a Federal police officer.

I never suggested they did. I said, 'He works for you.' They go on to say:

The conduct of—

this man—

after he left this Office is, again, not a matter which this Office has jurisdiction to investigate.

Ms JULIE BISHOP—What does 'after he left this office' mean?

Mr Kennedy—They do not have jurisdiction over his conduct after he left.

CHAIR—Meaning the Ombudsman's office?

Mr Kennedy—Yes. I do not dispute that, either—they cannot do that. But while he works there, they do have an obligation to investigate. They just shuffle around it and move around it. They simply don't address the issue.

CHAIR—Did this matter end up in the royal commission?

Mr Kennedy—No, of course not. I tried to raise it, but, unfortunately, they would not let me give evidence at the royal commission.

CHAIR—Do go ahead; you are the second person who has said they were not allowed to give evidence. What happened to you?

Mr Kennedy—Do you have 10 years?

CHAIR—Tell me how you tried to give evidence, what the evidence was about and what happened.

Mr Kennedy—It is part of my submission, which I am going on with. I do not want to lose my place. What I will say to you is that I tried desperately to give evidence. They even interviewed me. I welcomed them into my house and said, 'I cannot wait to get there.'

CHAIR—Who interviewed you?

Mr Kennedy—A fellow called McGinlay came out to see me. Another time a fellow called Stevens and a woman came—I forget the woman's name. I will get onto that.

CHAIR—We have heard of Mr McGinlay before.

Mr Kennedy—I did not have any issue with him—he treated me quite well, because I was willing to go there. I said, 'Why can't I get a seat down there?' He said, 'Because Mr Agius said that you are a loose cannon.' I said, 'Well, I am a loose cannon.'

CHAIR—Who is Mr Agius?

Mr Kennedy—He was one of the senior lawyers at the royal commission. He is now a senior lawyer in Western Australia. He has just finished as senior lawyer at the building royal commission in Victoria.

CHAIR—Haven't they just changed that royal commission in Western Australia?

Ms JULIE BISHOP—Can you just clarify your reference?

Mr Kennedy—The royal commission into the police in Western Australia. He is senior counsel over there, I believe.

CHAIR—Didn't they just change that yesterday or the day before?

Mr Kennedy—I have no idea.

CHAIR—So he was assisting the royal commission in Western Australia as senior counsel when you last heard of him?

Mr Kennedy—Yes. He moved on from the royal commission into the building industry in Victoria.

CHAIR—And he would not hear evidence from you, because you were a loose cannon?

Mr Kennedy—Yes. I know him—if I got into the witness box, the first person I would have pointed at would have been him.

CHAIR—I see.

Mr Kennedy—And he knew that, because I had worked with him. So it is one of those things. I doubt that Justice Wood knew about this. I am not making any inference.

CHAIR—I am sure he did not know.

Mr Kennedy—I have already submitted to the committee a comprehensive set of documents that include, in the front portion of the document, a statement by Dr Griff Spragg. That is in the thick document that I submitted. In the front portion of that—I think it is after about page 13—there is a lengthy statement by Dr Griff Spragg. He is a psychiatrist. I was an undercover officer in the New South Wales police and I was sent to see him. The report by Dr Griff Spragg to John Taylor from the Commonwealth Ombudsman's Office is dated 1998. This statement is in reply to remarks by Mr Harrison, which I will get onto a bit later, in his 1997 report on the AFP to the Commonwealth parliament. I should point out at this point, and I will probably repeat myself, that Mr Harrison interviewed none of the witnesses that I referred to. I am led to believe that he did not even have the coercive power or resources to deal with hostile witnesses, unlike the Wood royal commission. He couldn't force anyone to attend. He couldn't force them to answer questions. He didn't interview anyone's witnesses—or he didn't interview mine. So I do not know how he came to a conclusion, but he did.

CHAIR—This is the Harrison committee?

Mr Kennedy—Yes, the Harrison inquiry.

CHAIR—Who is Mr Harrison?

Mr Kennedy—Ian Harrison was appointed to investigate allegations of corruption within the Federal Police.

CHAIR—But who was he? What was he?

Mr Kennedy—He is a senior counsel, I think. He is not a criminal lawyer, I can tell you that. He does civil stuff.

Mr MURPHY—Did you say allegations into corruption in the AFP?

Mr Kennedy—Yes, those that arose during the Wood royal commission.

Mr MURPHY—What happened to those?

Mr Kennedy—I do not know—the lid is on it. It has been held down in the parliament in Canberra.

Mr MURPHY—In federal parliament?

Mr Kennedy—Yes. The present Attorney-General put the lid on it. But probably, again, I think it is the beaurocracy that advises him.

Mr MURPHY—We have been concentrating on New South Wales. I would like you to tell this committee what you know about nothing being done at a federal level by the Howard government in relation to those allegations.

Mr Kennedy—I am happy to go along with that. That is part of my submission—

CHAIR—Keep going.

Mr Kennedy—I will lose my place if I—

Mr CADMAN—Yes, go through it systematically.

Mr Kennedy—The initial pages of my submission contain some details of my earlier dealings with the AFP—Nigel Hadgkiss, Dennis Pattle and others. On page 13 of that submission is Griff Spragg's statement, because that says everything that I want to say. I am not going to repeat it all. There is a more detailed explanation by Dr Spragg in which he outlines the numerous events and incidents which went together to make up AFP Operation Twig.

Mr MURPHY—Can you point me to that part of Dr Spragg's report that you are referring to? You said it was on page 13 but in my copy his report only goes to page 11.

Mr Kennedy—Yes, you are right: it is on page 11.

Mr MURPHY—Is it on page 11? There is only one sentence on it.

Mr Kennedy—It is the whole report by Dr Spragg. It goes right through a series of events.

CHAIR—But who is Dr Spragg?

Mr Kennedy—He is a psychiatrist that I was sent to when I was an undercover policeman. I told him the full story and he documented it.

Mr MURPHY—Could you summarise that for us and the connection to the AFP, to make it a little bit easier for the committee?

CHAIR—So Dr Spragg is a psychologist.

Mr MURPHY—No, he is a psychiatrist.

Mr Kennedy—Yes.

CHAIR—Where does he practise?

Mr Kennedy—He is retired now.

CHAIR—What was he then?

Mr Kennedy—He was a clinical psychiatrist at St Ives.

CHAIR—St Ives where?

Mr Kennedy—New South Wales.

CHAIR—You were sent to him as an undercover policeman to do what?

Mr Kennedy—What happened was that—and I am going to go into it—I was charged by the Federal Police with falsely accusing members of the Joint Drug Task Force of being corrupt in 1988. I was convicted because I pleaded guilty. I was absolutely done over. That is what my thing is about. Those people from the Joint Drug Task Force were all exposed in the Wood royal commission as being corrupt. The man who charged me was Nigel Hadgkiss. The man who revealed them years later was Nigel Hadgkiss. I have still got the conviction. Now that I am an academic these days, the conviction is neither here nor there; it matters nothing. I am a bit to the left as well, so the sort of people I mix with don't care less about it, and it is about falsely accusing members of the Joint Drug Task Force of being corrupt.

Ms JULIE BISHOP—What year was that?

Mr Kennedy—1988, years before the Wood royal commission.

Ms JULIE BISHOP—Sorry, what year were you convicted?

Mr Kennedy—1989.

Mr MURPHY—So tell us about the communications in relation to this matter with the federal authorities and the fact that nothing has happened. Could you focus on that for a moment?

Mr Kennedy—I can focus on it for the rest of my submission. That is what I am about to do.

Mr MURPHY—Okay, go for your life.

Mr Kennedy—In supporting what is contained in my submission and Dr Spragg's statement, I present four newspaper articles—annexure C. One is by Warnock in 1989, and it explains the trial that I was engaged in and what happened from a public relations point of view but it is

reasonably accurate. The second one is from Slee. It talks about justice without fear or favour. That outlines the fact that I was an undercover operative, so I that I can verify to you—

Mr CADMAN—What years were these when you were an undercover operative?

Mr Kennedy—The 1980s. The second one is about how, when I was an undercover operative, I was paid money to bribe Judge Shillington as a policeman. It was part of an operation. We arrested a man, he was convicted, and it was a dreadful ordeal for me. To be quite frank with you, I wish I had taken the money; I would have been better off.

Ms JULIE BISHOP—What year was this?

Mr Kennedy—The trial took place in 1994. This incident took place in 1988. It was the most horrific ordeal I have been through.

CHAIR—I am getting totally confused.

Mr Kennedy—It is just to verify what I am saying.

CHAIR—You were charged by Nigel Hadgkiss in 1988 and you pleaded guilty to falsely naming people?

Mr Kennedy—Falsely accusing members of the Joint Drug Task Force of being corrupt AFP officers.

CHAIR—Then you came to trial in 1989.

Mr Kennedy—Yes.

CHAIR—And you were sentenced.

Mr Kennedy—Yes.

CHAIR—What did you get?

Mr Kennedy—A 12-month bond and, of course—as all whistleblowers get—to seek psychiatric help.

CHAIR—So you were a whistleblower.

Mr Kennedy—I was a detective. I was doing my job. I was not a whistleblower. I was an honest policeman just doing his job.

CHAIR—What evidence did you have, as an undercover policeman, that caused you to say that these people were corrupt?

Mr Kennedy—That is part of my submission. I have statements from Rahme, Younan, Wise and Chantler. It is all contained in there—how these people were stood over by Federal Police. I

have named police and what they were involved in. I named operations they had been doing. It was very difficult. I was friends with some of these people and it worked out in the end that they were working against me.

CHAIR—I know, but, irrespective of what is in your submission, just give me a simple, one sentence answer. You were an undercover policeman?

Mr Kennedy—Yes.

CHAIR—In the course of your being undercover, were you wired up for sound?

Mr Kennedy—Sometimes.

CHAIR—In the course of that, you say you obtained evidence that some members of the joint—

Mr Kennedy—Some members of the Federal Police—state police as well—and the Joint Drug Task Force in particular—

CHAIR—The Joint Drug Task Force was corrupt how? Dealing in drugs, fitting people up—what?

Mr Kennedy—They were standing over witnesses. They were involved in distributing drugs. They were taking money. They were doing everything that those types of organisations that are allowed to do whatever they want do. They were doing everything that those types of organisations would do. They were doing it blatantly. It was in your face. Everybody knew about it. It was terrifying.

CHAIR—Why did you plead guilty?

Mr Kennedy—Because they stood over my witnesses—there are statements in my submission. It was dreadful. They wiped certain portions off certain taped evidence against me, which I will go into. There was a fellow called Pattle who did a lot of this. Pattle was a good friend of mine. Eventually it came out in the Wood royal commission that the reason Pattle had silenced me and done me over and done the bidding was that by my exposing corruption I was in fact exposing him. I did not know that.

Ms JULIE BISHOP—Who was he?

Mr Kennedy—He was a Federal Police officer.

CHAIR—Where is he now?

Mr Kennedy—He resigned. He is in Queensland doing something or other. He was one of the Joint Drug Task Force police. During the Wood royal commission I believe he was JTF11. He admitted in the Wood royal commission that they stole \$200,000. I think he had something to do with verballing a man called Landini. There was a whole range of things that he did. In relation to Pattle, in the early days Nigel Hadgkiss had charged me and Pattle was working with

Hadgkiss. When it was revealed that Pattle was corrupt and was probably going to blow the whistle on them all, Hadgkiss quickly went up to Queensland during the Wood Royal Commission, with no-one else, and interviewed Pattle on his own. He got him back down to Sydney, presented him before Justice Wood and said, 'This is the only act of corruption the man has ever committed', and he was allowed out, with immunity, through the back door. He still has the Rolex watch he bought with the money, as far as I know, that he took.

CHAIR—Out of his share of the \$200,000?

Mr Kennedy—He had a Rolex watch; how can a policeman afford a Rolex watch? I cannot afford one; I never could. He said he got it when he was on his way back from Vietnam. He still has it today, as far as I know. He was just scooted straight out through the back door. Hadgkiss knew that, if Pattle was to give evidence and pressure was put on him, Pattle would tell Justice Wood what Hadgkiss has done to me. I had lodged a complaint with the royal commission about Hadgkiss, who was their senior investigator, and I tried to get something done about it. I was interviewed by a fellow called Phil Stevens and a female lawyer—Burrows. Joan Locke, from the Council for Civil Liberties, was with me when I was interviewed. Dear Joan died the day before yesterday; it is very sad. Anyway, she was with me. I gave them a full account of what had happened. I asked them to go to Queensland to speak to a superintendent called Ray Cooper. They never did. I gave them boxes and boxes of documents to read about Hadgkiss and about what had happened. They did not speak to a single witness; they did not even take the seals of the boxes. I got them back 12 months later. Mr Croke sent me a letter saying that there was no evidence that Hadgkiss was corrupt. Of course, they had not opened the boxes and they had not spoken to witnesses. I do know that, after my complaint, Mr Hadgkiss very quickly left the royal commission and went back to the AFP. I doubt that he would have left the royal commission of his own volition. I could be wrong, but I cannot see it.

CHAIR—So who is this Mr Croke?

Mr Kennedy—He was the senior counsel at the royal commission, but I am not suggesting for a minute that Croke did anything wrong. What I am talking about here are senior police that have been manipulating the system. They have been playing off both sides of parliament. They have established themselves in an absolute power block. Most lawyers are too ambitious, and I do not mean that in a derogatory sense. They are far too ambitious to engage in that sort of petty stuff. I cannot imagine Mr Croke engaging in that. I do not have to like him, but I do not think he was engaged in it.

CHAIR—You just do not think he looked at the stuff.

Mr Kennedy—I do not know how they were expected to look at all of it. I think he is relying on advice and they are relying on advice, and the truth is not filtering up to where it needs to filter. It is certainly not getting to you people.

Mr MURPHY—And you are saying that is at both a state and federal level.

Mr Kennedy—I am saying that it is particularly at the federal level, because no-one denies the New South Wales Police Force has got problems, even today. The problem is that the Federal Police are portrayed as being this wonderful organisation.

CHAIR—So what we are talking about here is the year 1994 or 1995?

Mr Kennedy—From 1988 until the royal commission.

CHAIR—From 1988 to the royal commission, which was established in 1995.

Mr Kennedy—Yes, 1995. It finished in about 1997, I think.

CHAIR—It went through until 1997.

Mr Kennedy—Yes.

Mr MURPHY—And you are saying that in relation to the AFP there are things still sitting there with the federal government and nothing is happening.

Mr Kennedy—The people who were in charge of the operation, where I was charged with falsely accusing members of the AFP of being corrupt, went on to be the directors of the National Crime Authority. I cannot be any more specific than that. One of them is still there—

CHAIR—When did they become the directors?

Mr Kennedy—I think in the last two or three years.

CHAIR—Who is this we are talking about?

Mr Kennedy—Whiddett, Peter Lamb, Nigel Hadgkiss.

Mr MURPHY—We will come back to that.

Mr Kennedy—I did not want to actually name them. I am not suggesting they were placed there—

Mr MURPHY—Mr Kennedy, can I just say that to date there has been a lot of evidence given to this committee with regard to allegations against the New South Wales Police. You are saying things about the—

Mr Kennedy—It is not just the New South Wales—

Mr MURPHY—Just leave that to one side, because we can be here bashing, on one side of politics, the New South Wales government, and I could start bashing the federal government in relation to what you raised. I want to foreshadow that what I offered Mr Fenlon at the end of his evidence here today was: what do you think we can do? I would like to think positively that we could get an outcome, that we could move forward and address the shortcomings both federally and at a state level. I think that would be a good thing.

Mr Kennedy—Do you want me to answer that now?

Mr MURPHY—No.

Mr Kennedy—Take control of the criminal justice debate.

Mr MURPHY—Okay. We will get to that at the conclusion, because I will ask you what you think we can do, but I will let you continue.

CHAIR—I think if we look at all the evidence that is coming before us in terms of what you have to say and if we take it dispassionately, then we will all do a lot better. So if you will proceed.

Mr Kennedy—Warnock's article has to be understood in the context of Dr Spragg's statement to John Taylor. Dr Spragg's statement mentions my involvement with the Lebanese community, which is further explained by John Slee in the newspaper article. He outlines my legitimate role as an undercover detective dealing with a man who owned brothels in Sydney and Canberra, and that was the issue involving Judge Shillington.

CHAIR—Who owns the brothels?

Mr MELHAM—Is this the Taouk matter?

Mr Kennedy—Yes. I did not want to mention his name.

Mr MELHAM—That is on the public record, isn't it?

Mr Kennedy—Most of it is on the public record but—

Mr MELHAM—There have been newspaper articles about it.

Mr Kennedy—Yes. There is one there about it—Slee—that is why I included it.

CHAIR—It is very hard to follow.

Mr Kennedy—Yes, it is very complex; I appreciate that.

CHAIR—You have given us this matter. We have not received this additional—

Mr Kennedy—This is not additional. This explains the thick document that I have given you.

CHAIR—We have already authorised for publication what is contained in your supplementary submission, which contains all those letters.

Mr Kennedy—Yes.

CHAIR—So the people who are named in these documents are already on the public record, as we speak. Whether you choose to use them makes no difference because it is already on the public record—we have done that.

Mr Kennedy—I do not relish coming here. If there was an opportunity to do it another way, I would have done it. This is not my scene.

Mr MELHAM—Are you saying that you would have been happy to give evidence without it being a public hearing?

Mr Kennedy—I would have been but the problem is that every time I have given evidence at a private hearing nothing happens.

CHAIR—It is a mistake.

Mr Kennedy—I do not want to come here to a public hearing. I want to remain anonymous out there, but what other choice have I got?

Mr MURPHY—In light of your evidence, both in relation to the state and federal police, I am very keen for you to finish your submission.

CHAIR—Can we just let him go?

Mr MURPHY—That is right, I want him to go through and finish his submission. Then we can ask him any questions we like.

CHAIR—The chair gives the directions; you can ask the questions. Please proceed.

Mr Kennedy—During my trial at 302 Castlereagh Street on 7 December 1989 it was revealed that several tapes, one that was made on a plane journey from Sydney to Darwin, were in fact blank. Notwithstanding that the AFP did not obtain any warrants to record my conversations in Darwin or in New South Wales, the blank tapes were explained, in cross-examination by Nigel Hadgkiss, as white noise and electronic interference. Hadgkiss maintained that this always occurred when recordings were made on planes.

CHAIR—Really! What about black boxes?

Mr Kennedy—The Nagra recording device was in fact attached to Dennis Pattle and, as his corrupt and criminal behaviour whilst at the JDTF was documented in the royal commission evidence under code name JTF11, Pattle had more than sufficient reasons at the time in 1988 to destroy evidence that would incriminate him or corroborate my allegations about the JTF. What is more disturbing, however, is the evidence by Hadgkiss that the tapes contained white noise due to electronic interference. After becoming aware of this, after I pleaded guilty—this only happened during the hearing—I contacted the manufacturer of Nagra tape recorders. In a letter from Nagra of 1990, which is at annexure D (1), (2) and (3), Mr Berger explained that a magnetic field of 1,000 gauss could destroy a tape and create white noise. Mr Berger also explained that white noise can occur if microphones are not connected, which could also explain the event where the tape could have been deliberately recorded over.

In a letter from Australian Civil Aviation Authority in 1990, Mr Allerding explained that a magnetic flux density of 1,000 gauss would not normally occur outside an aeroplane, let alone inside one. In fact, the earth's magnetic field has a normal strength of 0.5 gauss, which means that it is impossible that the white noise was on the tapes without it being deliberately done. Unfortunately, my hearing was already over and I pleaded guilty. It was due to a combination of factors, including instances similar to this, that I made a plea of guilty in court in 1989. At the

time in 1989, I realised what Pattle, Hadgkiss and others had done and that there was nothing I could do about it. But it went even further than that. In their attempts to discredit me, Hadgkiss and the group orchestrated a media campaign and attempted to destroy my name and my career, and they even attempted to destroy my marriage, which pretty much were the tactics used in the Wood royal commission by the same people.

Yet, as far as I know, Dennis Pattle still owns his Rolex watch, which I said he purchased with his share of the \$200,000 he got in the early eighties. When I questioned Pattle years earlier about how a cop could afford a Rolex watch, he claimed that he purchased the watch in Singapore after serving as a soldier in Vietnam. In 1999 I complained to the Commonwealth Ombudsman about the manner in which Operation Twig was conducted and I complained about the criminal and illegal activities of Hadgkiss, Pattle and others. As a consequence, Peter Donaldson of the AFP was charged with matters that related to a woman called Michelle Wise and the distribution of heroin. The problem is that these charges were not made using New South Wales legislation; they were heard in a closed federal court by Justice Foster. Most of the witnesses, including myself, were not allowed to speak and, as a consequence, Justice Foster dismissed the charges against Donaldson due to the lack of evidence. Subsequently, the Ombudsman's investigation into Hadgkiss and others, including Pattle, was conducted by Commander Worthy. That came to nothing. Yet, years later, the Wood royal commission was able to reveal many of the corrupt activities that I had initially raised.

It is at this point that I want to discuss Nigel Hadgkiss, who was the senior investigator at the Wood royal commission. In 1995, as a result of a letter forwarded to all New South Wales Police, signed by Minister Whelan, Commissioner Lauer and Commissioner Wood—which I have as part of the annexures—I took the opportunity of contacting the royal commission. I complained to the royal commission that in 1988 evidence obtained against me by Nigel Hadgkiss in Operation Twig had been fabricated by Hadgkiss, Pattle and others. I reiterated that my witnesses were abducted and fed heroin. The statements that corroborate this allegation—from Wise, Chantler, Rahme and Younan—are contained in my initial submission. These statements also outline the criminal activity of Pattle, Donaldson and others in fabricating this evidence and threatening witnesses. I stress that, as officer in charge of Operation Twig, Hadgkiss simply refused to investigate the misconduct and criminal activity of AFP officers under his control. This is despite the fact that he was told over and over again that his actions and the actions of his subordinates were corrupt and criminal.

Mr MURPHY—Can I just interrupt for a moment. What document are you reading from?

Mr MELHAM—What page are you on, Mr Kennedy?

Mr Kennedy—I am on page 10.

Mr MURPHY—Of your own submission?

Mr Kennedy—Yes.

Mr MURPHY—I just want to check that I have not missed anything. Have you read everything from that statement?

Mr Kennedy—Pretty much.

Mr MURPHY—Okay, keep going.

Mr Kennedy—One example of a recorded conversation between me and Hadgkiss, which he recorded on a warrant and used as evidence against me, is contained in the document that you have. It is in the last portion of the thick document that you all have. It is a full transcript and it goes on for some 45 pages. In fact, he used that transcript to charge me with a criminal offence. Hadgkiss was again reminded of his own misconduct and that of his subordinates in Operation Twig by Detective Sergeant McNamara on 1 November 1988. I will read out what McNamara said to him. It forms part of the annexure you have; it is a record of interview. I will not read all of it, but this is what, in part, McNamara said:

I would call on the Federal Government to hold a Royal Commission into allegations of corruption and criminal behaviour by certain members of the Sydney Drug Unit. I would only be too willing to hand over the information and give evidence to a properly convened judicial inquiry. It would appear from enquiries that I have made that Australian Federal Police have deliberately set about to discredit both myself and Detective Michael Kennedy. Not only do I believe that the motivation to discredit us is corrupt in the extreme, but certain members of the Australian Federal Police under your command, Mr Hadgkiss, for which you must accept responsibility, have engaged in criminal behaviour. It is my belief that offences have been committed against the laws of New South Wales. I am not satisfied that the Australian Federal Police is committed to excising corruption from its ranks, as evidenced by your lack of resolve to investigate allegations made to you last year of frequent drug use by members of the Sydney Drug Unit. Your propriety in handling this investigation should be reviewed by your senior officers. The deliberate leaking of material to the Chairman of this Commission and to senior officers of the New South Wales Police Force is a shabby attempt on your part to discredit both Detective Kennedy and myself. Your behaviour is reprehensible and is indicative of the lengths your organisation will go to cover up corruption.

Whether you believe all of that or not, Hadgkiss was well and truly put on notice that there were problems within the Federal Police and his own staff, and he was told who the individuals were.

Mr MURPHY—What year was that?

Mr Kennedy—It was in 1988, way back before the royal commission. I reiterate that, during the Wood royal commission, Hadgkiss took credit for exposing the corrupt activities of the same Federal Police and Joint Drug Task Force people that he had refused to investigate in 1988 when he was challenged by McNamara and me. In fact, his response to us was that he charged me with falsely accusing him.

As a result of my letter to the royal commission, investigators Stevens and Burrows interviewed me some time in 1996 in the chambers of Joan Locke. I gave Stevens and Burrows several large sealed boxes of documents and made a detailed statement, almost identical to Dr Spragg's report, about the activities of Nigel Hadgkiss, Dennis Pattle and many others from the Joint Drug Task Force. Stevens and Burrows gave me the undertaking that they would speak to the witnesses whose statements are contained in my submission: Wise, Chantler, Younan and Rahme. They promised to contact Superintendent Ray Cooper from the Australian Federal Police. Despite this, no-one was spoken to, my boxes were returned sealed about 12 months later and subsequently I received a letter from Gary Croke which indicated that my allegations were not sustained. However, shortly after that correspondence Nigel Hadgkiss finished his secondment with the royal commission and returned to the AFP organisation. A letter from Gary Croke, which follows the record of the interview with McNamara, explains that.

About this time I renewed my complaint about Hadgkiss to the Commonwealth Ombudsman and cited the evidence gathered during the Wood royal commission. They had complained earlier that they did not have any. I said, 'Well, now you have; it is in the Wood royal

commission,' which, although worthy, had been unable to be substantiated by the Commonwealth Ombudsman earlier. In August 1996 I received a letter from the Commonwealth Ombudsman's office which outlined the announcement of a ministerial inquiry, the Harrison inquiry, into the conduct of the AFP, and I offered to forward my complaints about the inquiry.

CHAIR—What was the date of that?

Mr Kennedy—That is annexure H, under the name of Taylor. It was 16 August 1996.

CHAIR—Was that the Harrison inquiry?

Mr Kennedy—That was the Harrison inquiry. It had been set up about then or was being set up. Subsequently, I replied to Mr Crooke from the royal commission and outlined my disappointment that royal commission investigators, Stevens and Burrows—

CHAIR—Slow down a minute. So on 16 August 1996, the Harrison inquiry was announced?

Mr Kennedy—I believe it was announced about then, and I was asked to make a submission.

CHAIR—By whom? Who announced the inquiry?

Mr Kennedy—I don't know. I got a letter from the Ombudsman on 16 August. The letter is part of the annexures that I have given to you.

CHAIR—But who appointed Harrison?

Mr Kennedy—I believe that Justice Wood recommended that he should be head of the inquiry. I think it was a Commonwealth thing.

CHAIR—So Justice Wood made a recommendation—

Mr Kennedy—I believe.

CHAIR—to federal government that they appoint an inquiry into the things that were raised in the Wood royal commission?

Mr Kennedy—And other things that had appeared.

CHAIR—Going back to all the names of people that you have been mentioning, the letter that you wrote to me that was received by us in November 2002 has a paragraph that says—

Mr MELHAM—Which paragraph?

CHAIR—It is page nine; it starts on page nine. You talk about the Joint Drug Task Force.

Mr Kennedy—That is right, yes.

CHAIR—This seems to be the main crossover point, is it—the Joint Drug Task Force?

Mr Kennedy—Yes.

CHAIR—In the second paragraph on the second page, you talk about Taciak, Hadgkiss, Lamb and Clive Small. You say:

I am told that NSW Policeman Clive Small was mentioned amongst many; it's possible that Hadgkiss and Lamb were also mentioned.

You were saying that this was in the Harrison inquiry. But then you go on to say:

... it becomes more complicated but makes more sense when one becomes aware that Nigel Hadgkiss had also previously worked at the Joint Drug Task Force.

Mr Kennedy—Yes, he had.

CHAIR—You continue:

I am also led to believe that Peter Lamb from the AFP also worked at the JDTP as did NSW Policeman Clive Small.

Mr Kennedy—Yes.

CHAIR—You have gone on to talk about those people. You talk about Bob Bottom, you talk about writing a book and you say information was leaked to him. You say:

At the Royal Commission many of Hadgkiss's old colleagues from the AFP were exposed ...

Were they the ones in the Joint Drug Task Force?

Mr Kennedy—That is exactly right, yes. They were his colleagues.

CHAIR—And this all goes back to the theft of the \$200,000?

Mr Kennedy—Most of it does, yes.

CHAIR—And that was divvied up among the members of the Joint Drug Task Force?

Mr Kennedy—Amongst other things, yes.

CHAIR—When did that theft take place?

Mr Kennedy—In about 1983 or 1984, I believe. It was called a Christmas club. It was about then.

CHAIR—What you are saying is that the people who were part of that Joint Drug Task Force back in 1983 or 1984—whenever it was—remained in the network?

Mr Kennedy—The network of the Joint Drug Task Force was a network that had extended from the old narcotics bureau that was supposed to have been disbanded, and yet the narcotics bureau people were allowed to move into the Australian Federal Police, and automatically people were already discredited.

CHAIR—What was the name of that man, the narcotics task force—that is going back to the late seventies.

Mr Kennedy—Yes.

CHAIR—Who was that—what was that name?

Mr Kennedy—I cannot help you.

CHAIR—I can: Harvey—Harvey someone.

Mr Kennedy—Wasn't he the assistant Customs commissioner?

CHAIR—Wasn't it all exposed by Don Chipp when he was minister?

Mr MURPHY—Mr Kennedy, who was Harrison?

Mr Kennedy—Harrison was a senior counsel appointed by the federal government to investigate corruption—

Mr MELHAM—Was that Ian Harrison?

Mr Kennedy—Yes. He is not a criminal lawyer.

CHAIR—Do you know him, Daryl?

Mr MELHAM—I know him at the bar. He has got a good reputation.

Ms JULIE BISHOP—He is a Sydney QC.

Mr Kennedy—I am not disputing his reputation. But it is like asking a carpenter to do the job of an electrician. Joan Locke, who is a good friend of mine, said he is a terrific fellow.

Mr MELHAM—That is right.

Mr MURPHY—And that was in August 1996?

Mr Kennedy—About 1996, yes.

Mr MURPHY—August 1996. According to the letter you received—

Mr Kennedy—About August-September it was announced.

Mr MURPHY—Okay. An inquiry into the conduct of the AFP—

Mr Kennedy—I think that came as a result of a *Four Corners* program with Alan Taciak. It was not that they were not prepared for it, because they were. It was just that it became public then and they had to do something about it.

Mr MURPHY—What was the outcome of the Harrison inquiry?

Mr Kennedy—It is still buried down there in Canberra. I do not blame the Attorney-General for that. The bureaucracy that would have advised him—

Mr MELHAM—He has got enough trouble holding this government in line on a number of other areas. He has got a bit on his plate.

CHAIR—Can we just go back to the Joint Drug Task Force and its behaviour in the early eighties. Nothing happened to those people—they all went along doing their stuff.

Mr Kennedy—And anyone, including me, who tried to expose them got done over, well and truly.

CHAIR—So you tried to expose that?

Mr Kennedy—Absolutely. I was charged because of it.

CHAIR—You pleaded guilty.

Mr Kennedy—Falsely accused.

CHAIR—Okay. And you discovered evidence of this while you were undercover—that is what you are saying to us?

Mr Kennedy—Absolutely.

CHAIR—Okay. Then nothing happened until the Wood royal commission.

Mr Kennedy—I should point out there was no secret about it. Everybody knew how rotten they were.

CHAIR—But nothing happened—

Mr Kennedy—No.

CHAIR—until the Wood royal commission?

Mr Kennedy—The Wood royal commission.

CHAIR—And presumably some former members of the Joint Drug Task Force rolled over and went to—

Mr Kennedy—Trevor Haken was their prize at the royal commission—he was the big roll-over man. I do not think Hadgkiss expected him to roll over, and he did.

CHAIR—As did Taciak?

Mr Kennedy—Yes. I had nominated Taciak as being corrupt—it is in my transcript—back in 1988.

Mr MELHAM—But, in your view, Taciak was—

Mr Kennedy—I do not like the man. We do not have anything in common. But we do agree with each other that nothing was done about anything.

CHAIR—So they gave evidence to the royal commission but they had code numbers so we did not know who they were?

Mr Kennedy—I know that Pattle is JTF11. That is all I know.

CHAIR—Pattle was one. Did he roll over?

Mr Kennedy—Absolutely, because Nigel Hadgkiss took a private visit up to Brisbane and spoke to him privately. He resigned—

Mr MELHAM—Madam Chair, can I suggest that, if people have suppression orders and code names, it is not appropriate for names to be connected to them. I am concerned that, if there are suppression orders from the royal commission, it is not appropriate for people's names to be mentioned. I do not mind code names being used. I think we need to be careful.

CHAIR—I have no problem with that point, except it all went to air, as I understand it, on *60 Minutes*.

Mr MELHAM—It might have been put to air on *60 Minutes*. I am concerned that, if there is an existing suppression order, that suppression order remains. If *60 Minutes* aired it, that is a matter for them.

CHAIR—Absolutely; I take the point. If there is a number in the royal commission evidence—

Mr MELHAM—Then let us stick to that.

Mr Kennedy—We will stick to the numbers.

CHAIR—That does not stop us talking about people that you have mentioned in your submission. What we will not do is connect a name to a number.

Mr Kennedy—I understand.

Mr MELHAM—I do not want to breach suppression orders.

CHAIR—Let us go on. Nothing happened until the royal commission?

Mr Kennedy—Right. I replied to Mr Crooke in 1996 and outlined my disappointment that the royal commission investigators Stevens and Burrows had failed to speak to witnesses, including Superintendent Ray Cooper from the AFP, and that I had received a reply that there was no misconduct, notwithstanding that there was now enough evidence to substantiate a ministerial inquiry into the AFP.

CHAIR—Okay. Let us take it one step at a time. Nothing happened about these people who had been in the Joint Drug Task Force until—

Mr Kennedy—Then they were exposed in the royal commission.

CHAIR—they turned up at the royal commission. Some people rolled over and gave evidence.

Mr Kennedy—Yes.

CHAIR—What happened then—nothing?

Mr Kennedy—It was all so cloak and dagger that no-one knew who was rolling over and who was not. Some people maintained, ‘This is the only thing I’ve ever done wrong.’ One of the people was the best man at the wedding of John Agius, who was the senior counsel at the royal commission. There were relationships there that were totally inappropriate; there were conflicts of interest. John Agius was investigated over it internally at the royal commission.

CHAIR—Going back to Pattle, are you saying that he actually admitted to accepting part of the \$200,000?

Mr Kennedy—Absolutely.

CHAIR—But he said, ‘It’s the only thing I’ve ever done wrong,’ and he was let off.

Mr Kennedy—I actually have a newspaper article by Kate McClymont on 29 September 1995. It says:

On Tuesday, JTF 11 spoke of the torture that his one act of corruption caused. This single act was the Christmas Club incident of 1983, where the police split \$200,000 they found in a search.

Clearly, that was not the case, because there are statements in here that he stood over anyone who was going to threaten him, including me.

CHAIR—So he stood over you?

Mr Kennedy—Yes.

CHAIR—And you tried to give evidence to the royal commission?

Mr Kennedy—Yes.

CHAIR—And you were interviewed by—

Mr Kennedy—I was interviewed by Burrows and Stevens, who did not interview any of the witnesses.

CHAIR—You said another name earlier.

Mr Kennedy—But then McGinlay came out to see me for some other reason—I do not know what it was. Anyway, I did not have an issue with him and I said, ‘When can I get a chair down there? I’ve got lots to say.’ He would not even talk inside the house. He took me outside the house and said, ‘You can’t come down. Agius said you’re a loose cannon.’ I said, ‘Yeah, well I am.’

CHAIR—So you were not to be called.

Mr Kennedy—So I would not be called.

CHAIR—So the next thing that happened was that Taciak went on *60 Minutes*—

Mr Kennedy—Yes, *60 Minutes*—that is right.

CHAIR—and told the story.

Mr Kennedy—Yes.

CHAIR—He was then charged.

Mr Kennedy—I do not know whether he was charged before or after. I have no idea. I know he went to jail—I am aware of that.

CHAIR—Everyone who talked at the royal commission got indemnity, didn’t they?

Mr Kennedy—Pretty well, yes.

CHAIR—All right. So we are up to there—go on.

Mr Kennedy—In a reply dated 26 August, Mr Crooke attempted to explain that he was unable to respond as to who was and who was not spoken to by Stevens and Burrows, due to the statutory obligation of the commission. Mr Crooke also raised the limited time and resources available to the commission. I should add that this limited capacity did not appear to affect their efforts in relation to rank and file police in New South Wales.

In my reply dated 25 November, I outlined again my concerns and pointed out that it appeared the Commonwealth Ombudsman had forwarded the original inquiry conducted by Worthy to the royal commission. Notwithstanding all of the evidence about the Joint Drug Task Force and that they had contradicted the initial inquiry findings, the New South Wales royal commission agreed with the initial Ombudsman’s report that there was no evidence of misconduct by Hadgkiss. Yet Hadgkiss had worked amongst all of these corrupt JDTF police.

He had supervised them and he had later supervised Operation Twig, which was supposed to investigate them. It appears neither the Office of the Commonwealth Ombudsman nor investigators at the royal commission were able to understand the concept of top-down accountability when it applied to Hadgkiss or others in the power bloc that they had established.

CHAIR—You are saying that the federal Ombudsman cleared Hadgkiss?

Mr Kennedy—Yes.

CHAIR—But you do not believe he was given all the information?

Mr Kennedy—No. What they did was start up an inquiry or a task force and, if it was not going the way they wanted it to go, they formed another one and replaced the leader. Then they formed sub task forces. So, when you in the parliament ask for the results of the task force, all you get is a narrow concept; you do not get all the stuff on the edges. That is the way Peter Lamb has been operating forever. You do not get the meaty—

CHAIR—What position does he hold now?

Mr Kennedy—He is no-one now, but he was one of the directors of investigations at the National Crime Authority for years, he was at ICAC for years and he was an assistant commissioner in the AFP.

CHAIR—Where did he come from originally?

Mr Kennedy—The AFP.

CHAIR—So he came from the AFP but then went over to ICAC—when?

Mr Kennedy—Yes, in 1988, 1989 or 1990. He was a friend of Gary Sturgess, I think. Then he moved on from there to the National Crime Authority and took a heap of people with him when he went. They all went there as investigators. Then all the investigators were reintroduced into the Federal Police.

Mr MURPHY—Mr Kennedy, to the best of your knowledge is Mr Peter Lamb an assistant commissioner in the AFP at the moment?

Mr Kennedy—No.

Mr MURPHY—Where is he now?

CHAIR—Nowhere; gone.

Mr Kennedy—I believe his contract with the NCA all of a sudden was not renewed.

Mr MURPHY—When did that conclude?

Mr Kennedy—About last year.

Mr MURPHY—That is good.

Mr Kennedy—He left at about the same time that Gary Crooke left the NCA, I believe.

CHAIR—How long were their contracts, usually?

Mr Kennedy—I have no idea. I have never been fortunate enough to secure one myself.

CHAIR—It is just that we have heard that four-year contracts are being used.

Mr Kennedy—I do not know. During this time, a friend of mine, Dr Richard Solomon, wrote to Mr Harrison, who conducted the ministerial inquiry into the AFP. Dr Solomon received a reply wherein Mr Harrison said:

The Commonwealth Ombudsman has provided me with several files held in her office which relates to Mr Kennedy. Examination of these files reveals that several matters relating to Michael Kennedy had been examined already.

They had been—it was said there was no corruption—but at the same time the Wood royal commission had said that there was. It appeared that there was an inability for people to cross-reference anything. He then said:

I am presently considering the question of whether or not these matters require or warrant further investigation ...

The difficult thing to understand in this letter is that the initial Ombudsman inquiry by Commander Worthy indicated that, apart from the matters involving Donaldson—who was the senior policeman charged under the Australian Federal Police Act, although no-one was allowed to go to the hearings so subsequently Justice Foster said there was insufficient evidence—it appears that there was no evidence of misconduct or criminal activity by Hadgkiss, Pattle and others; yet in 1996, while a senior investigator at the Wood royal commission, Hadgkiss himself contradicted this report by revealing the high level of corruption in the Joint Drug Task Force.

CHAIR—So Hadgkiss gave evidence?

Mr Kennedy—Hadgkiss exposed Pattle, Taciak, Dent, Allan, Treacy and others.

CHAIR—Where is that in your statement?

Mr Kennedy—It is on page 12. These were the same people who, years earlier, he had maintained I had falsely accused of being corrupt.

CHAIR—And you were charged for it?

Mr Kennedy—I was charged for it. If it sounds confusing, it is, because it is totally contradictory. In early 1997, I gave evidence at the Federal Police inquiry, and I was accompanied by a friend. I was interviewed by Mr Harrison in the company of two detectives from Tasmania. I am led to believe these police were from the Victorian office of the National Crime Authority and had been selected by Director of Operations, Peter Lamb—does that make sense?

Mr MURPHY—Yes.

Mr Kennedy—He was a close friend of Nigel Hadgkiss and other senior federal police. At this point in time, Lamb himself had recently been an assistant commissioner in the AFP. Lamb had also oversighted Operation Twig in 1988. While I was giving evidence, Mr Harrison indicated that he knew of my background in Barnardo's homes—I grew up in Dr Barnardo's—and that he had grown up next to a Dr Barnardo's home in Ryde or Carlingford. I gave evidence to Mr Harrison of an identical nature—bearing in mind the difference in time—to that I am giving today.

I asked Mr Harrison to speak to various people who had been intimidated and threatened during Operation Twig—again, Wise, Chantler, Rahme and Younan. Their statements are in my original document. I requested that he speak to Ray Cooper and Dr Spragg. I know that Ray Cooper gave evidence that he had been threatened and intimidated by senior police when conducting his inquiries into serving and ex Joint Drug Task Force police. Mr Harrison interviewed me on tape and he said words to the effect, 'I intend to make a favourable recommendation in relation to your evidence.' After the hearing, I felt rather optimistic and in fact wrote him another couple of letters—they are contained in the annexures—but with further information. In the same time frame, solicitor John Marsden from the Council for Civil Liberties—

Mr MELHAM—Are those the annexures that you have given us copies of today?

Mr Kennedy—Yes. John Marsden and I do not have much in common, I have to point out, but one thing that we did have in common was that we did not like what certain people were doing at the royal commission. John Marsden asked me whether or not it would be useful for him to write a letter to the New South Wales royal commission about the concerns of Hadgkiss and others that impacted on the royal commission investigation. I agreed that it would be appropriate, so he drafted a letter and forwarded it to Mr Crooke. That is part of the annexures that I have provided to you. It is about halfway through, and it is on one of his letterheads.

Mr MURPHY—Roughly what page is it on?

Mr Kennedy—I do not know.

Mr MELHAM—Is it on his letterhead? Is that the one dated 10 February 1997?

Mr Kennedy—It is dated 18 February.

CHAIR—Mr Kennedy, what page are you up to?

Mr Kennedy—Page 13.

Mr MURPHY—That is the Marsden letter, 18 February 1997?

Mr Kennedy—That is the one, yes. On 4 March, I received a letter from the royal commission in relation to Mr Marsden's letter. Mr Crooke said:

The position concerning the Royal Commission decision whether to undertake inquiries or to call evidence in public is accurately stated at the commencement of page 2 of your letter.

My letter had said:

... the decision as to whether matters go into the public arena or not, is a decision for the Royal Commission and is to be exercised at the discretion of the Royal Commission.

Mr Crooke said:

It is not appropriate for the Commission to be expected to reveal the reasons for any such decisions, nor to disclose its proposed course of action ...

And they did not disclose it. I waited for some time for the outcome of my evidence in relation to the Australian Federal Police inquiry conducted by Mr Harrison. On 8 June, I forwarded an email to Mr Taylor of the Commonwealth Ombudsman's office and requested some feedback. In September 1997, I received a reply from Mr Taylor—and it is part of the annexures. I sent a fax to him, because the Harrison inquiry fax number had dropped out; they were no longer there. In September 1997, I received a reply from Mr Taylor which goes to the very heart of my submission to this committee. Mr Taylor explained:

.. there were no outcomes following Mr Harrison's interview with you other than his conclusion that 'there is no basis for recommending that a further inquiry or investigation takes place'.

Mr MURPHY—Was that the letter dated 16 September from Mr Taylor?

Mr Kennedy—Yes, that is correct; September 1997.

Mr MURPHY—Can you assist me by indicating where in that letter he said those words—'there were no outcomes'—because I cannot find it.

Mr Kennedy—It is in the third paragraph:

I think you will have already gathered from our conversation in June that there were no outcomes following Mr Harrison's interview ...

Mr MURPHY—Thank you.

CHAIR—This, again, is your allegation with regard to the corruption of the people involved in the Joint Drug Task Force.

Mr Kennedy—Who had already been exposed as being corrupt.

CHAIR—And had been exposed in the royal commission?

Mr Kennedy—Yes.

CHAIR—You said, I think, somewhere along the line, that the Wood royal commission made a recommendation to the federal government?

Mr Kennedy—I believe Justice Wood made a recommendation to the federal government that Harrison should be appointed.

CHAIR—So it is not in the report?

Mr Kennedy—I remember reading it in a newspaper article—that is the best I can do. Apparently, Mr Harrison reviewed Operation Twig—

CHAIR—What was Operation Twig?

Mr Kennedy—Operation Twig was the operation against me in 1988 by the Joint Drug Task Force; they called it Operation Twig, because I had twigged to what they were doing. Apparently, Mr Harrison reviewed Operation Twig without speaking to any of the victims who had reported Federal Police misconduct—again, Wise, Chantler, Rahme, Younan. The statements are in the thick document I have given to you. Mr Harrison at no stage spoke to Dr Griff Spragg, the psychiatrist to whom I was referred to by the New South Wales Police. Although Mr Harrison did speak to Superintendent Cooper, he obviously separated what Cooper had to say in relation to Operation Twig—because Cooper worked on another operation that was later renamed ‘Operation Twig’. That is what they did—they separated issues. So Harrison probably did not even know that what Cooper was doing was part of the same thing.

Cooper was the officer in charge of the investigation into the conduct of various AFP officers attached to the Sydney drug unit and the JDTF. This was named Operation Twig after Peter Lamb or Adrian Whiddett replaced Cooper with Hadgkiss. It appeared that senior AFP officers had simply renamed operations and investigations in an effort to separate the activities of their investigators in the event of a review or an inquiry. They did it very successfully. Mr Harrison, apparently, stated in his report:

On any view Mr Kennedy’s behaviour in Darwin was extraordinary. Mr Kennedy had protested his innocence to this Inquiry and elsewhere that whilst in Darwin he was under great strain, ‘at the end of his tether’, and was in fear of his life. Why this should have been so is not entirely clear. On one view Mr Kennedy’s particular fears were irrational, as was his conduct in general.

That was quoted by Justice Newman when I gave evidence in the Taouk matter—and that was prior to the royal commission—because Justice Newman simply could not come to grips with—

CHAIR—Which matter?

Mr Kennedy—Taouk.

CHAIR—Yes.

Mr Kennedy—what I was saying about the Joint Drug Task Force prior to the royal commission, because they were everyone’s favourite. But what was not put in there was that Justice Newman said after that comment in his report that I was a witness of truth; that was left out. Had Mr Harrison bothered to speak to Dr Spragg, or indeed any of the witnesses, he would have understood why I was under great strain. Had Mr Harrison bothered to examine the royal commission evidence in relation to Pattle, Dent, Treacy, Allan or Taciak, he would have appreciated why at times I was in fear for my life. But Mr Harrison did not speak to any of these

people. On page 10 of Dr Spragg's report, in the thick document, he makes the following observations about Mr Harrison's comments. Dr Spragg explains:

I would address two statements to Mr Harrison in this regard:

1. "On any view Mr Kennedy's behaviour ..." It is not the view of experts in the field that his behaviour was extraordinary.
2. That Mr Harrison cannot understand why Mr Kennedy should have been in fear of his life suggests that he has based his opinion on a different set of data from that obtained by me.

I truly do not think that Mr Harrison understood.

CHAIR—Where did Dr Spragg say this?

Mr MURPHY—At the bottom of page 10. I should think Mr Kennedy would want to read the final sentence of what Dr Spragg said about him as a witness.

CHAIR—But where did he say it?

Mr MURPHY—At the bottom of page 10 of his report of 12 February 1998.

CHAIR—I see.

Mr MURPHY—He said at the finish:

I trust that something can be done to rectify this gross injustice to this exemplary citizen—

referring to you, Mr Kennedy. So he too thought you were reliable.

CHAIR—So when you say 'Dr Spragg explains,' you are really referring to a letter that he wrote.

Mr Kennedy—He wrote a letter to the Ombudsman's office as a consequence of Mr Harrison's remarks.

CHAIR—So it is in his letter.

Mr Kennedy—Yes. Mr Harrison did not call Dr Spragg. I asked him to, because I knew they would try—they do it with everybody who tries to do this—to portray me as being mad.

CHAIR—Was Mr Harrison's inquiry a public, open inquiry?

Mr Kennedy—No.

CHAIR—It was all behind closed doors.

Mr Kennedy—Yes. He had no resources; he had nothing given to him. It almost began and ended in a month. He had two detectives from Tasmania, who would not have even remotely understood the situation in New South Wales.

CHAIR—You are not casting aspersions on Taswegians, I hope.

Mr Kennedy—I think they are nice people; I just do not think they are very good investigators in New South Wales. Despite my constant pleas of innocence, Mr Taylor suggested:

... the fact remains that you were convicted after pleading guilty ...

Well, of course I did. Mr Taylor's suggestion indicates a complete inability on his part to understand the concept of witness intimidation and police misconduct whereby witnesses are threatened, provided with drugs, abducted and generally stood over. In the same letter Mr Taylor states:

History has shown that your allegations in relation to some AFP members were correct.

So at last the Commonwealth Ombudsman had conceded in a letter—

CHAIR—Which ones was he alluding to? Did he name them?

Mr Kennedy—No, no; they do not go that far.

CHAIR—Okay.

Mr Kennedy—Mr Taylor went on to say:

... the Ombudsman does not have the resources—

much the same as Mr Crooke said—

to conduct formal investigations unless there is a substantial basis for doing so.

The Harrison inquiry into the Federal Police was never made public, and the document is not available to the public. Despite the fact that Mr Harrison failed to speak to any of my witnesses, he supported the initial Ombudsman's investigation by Commander Worthy. Commander Worthy said there was no evidence of misconduct; the Wood royal commission said there was. It was revealed by the Wood royal commission that numerous AFP officers whom I had nominated were in fact corrupt. This type of contradiction is something that occurs repeatedly in relation to any allegations about Federal Police—or even state police—corruption amongst the administrative elite. I supplied Mr Taylor with further evidence to support my allegations, and he replied:

Bearing in mind that we are talking about events that took place in 1988 and most of the AFP personnel then involved are no longer in the AFP, I believe little that would be achieved by investigating the matter any further.

He said that notwithstanding the fact that the people who had shaped the people that had left and had shaped the organisation were in very high positions at that stage; it did not seem to dawn on them. The Harrison inquiry maintained that there was no systemic corruption in the AFP; this was despite the fact that 10 AFP officers at ranks as high as superintendent had been implicated before the Wood royal commission of having taken as much as \$60,000 in drug bribes. I refer to a Ramsey article in 1996.

Mr MURPHY—Who is Ramsey?

Mr Kennedy—Alan Ramsey wrote an article.

Mr MURPHY—Okay.

CHAIR—Where are we now in your submission?

Mr MURPHY—On page 16, paragraph 2.

Mr Kennedy—Within six months of the Harrison inquiry being released to parliament, numerous other officers had resigned after a representative of the AFP hierarchy had visited them. I am led to believe that this was the way they dealt with it; it was all dealt with very quietly. There are about 2,700 AFP officers in Australia. There are some 14,000 officers in New South Wales. As a consequence of the Wood royal commission, 52 New South Wales officers were charged with offences, three were found guilty by judge and jury, nine officers have pleaded guilty and, in 2001, three were yet to face charges.

CHAIR—Where is that in your submission? That is not on my page 16. Would you read that bit again about how many people were charged?

Mr Kennedy—Many of the more than 40 officers who were adversely named but not charged have been sacked or resigned.

Mr MELHAM—That is in the middle of page 16, Madam Chair.

CHAIR—Yes, but where are those figures he was giving?

Mr MELHAM—The second sentence of that paragraph reads:

There are some 14000 officers in New South Wales ...

CHAIR—I mean those other figures that Mr Kennedy was giving.

Mr Kennedy—Of the officers who were charged with offences, only three were found guilty by judge and jury, nine officers have pleaded guilty and, in 2001, three were yet to face court.

CHAIR—That is not in the copy of the submission that I have. Can you say those figures again? It is just not here.

Mr MELHAM—It is on page 16 of what was just handed to us; it is in the middle paragraph.

CHAIR—But the nine people you are talking about are not there.

Mr MELHAM—It says: ‘nine officers have pleaded guilty’.

Mr Kennedy—I have written ‘nine’, rather than put the number 9.

Mr MELHAM—It is there: ‘nine officers’.

Mr Kennedy—I am a sociologist not a lawyer.

CHAIR—Okay.

Mr Kennedy—Many of the more than 40 officers who were adversely named but not charged have been sacked or resigned. However, some have been reinstated. On this basis, it is difficult to understand why one organisation can have systemic corruption and the other does not. If one has systemic corruption on the figures, so does the other one—in fact, more so—but that is not what is being said.

On 18 April, Attorney-General Daryl Williams, received Mr Harrison’s report into allegations about the Australian Federal Police. Attorney-General Daryl Williams, announced that Mr Harrison’s extensive examination had found no evidence of systemic corruption within the AFP. He also identified that in the relatively short time that AFP Commissioner Mick Palmer has occupied his present position he has instituted and sponsored a large number of wide-ranging reforms and anticorruption measures in the AFP.

Within the power elite investigative arm of the criminal justice system, a bloc has established itself, which is, for all intents and purposes, almost as powerful as the two political parties. The problem is that the public cannot vote this bloc out of office. These power elites are adept and skilled at dangerously manipulating the party political system, in much the same way as J. Edgar Hoover was. In the main, these people are motivated by careerism and opportunism. In 1996, when writing about the relationship between the government and the Federal Police, Alan Ramsey said:

Ironically, it is just 13 months since the previous Labor Government was telling us what an “excellent record” the AFP had as a force untainted by corrupt practices. Duncan Kerr, the then Minister for Justice in the Keating Government, said so in a letter, dated 30 June, 1995, to the president of the NSW Law Society, Maurice Stack. Yet, three months later, Kerr had to recant after 10 AFP officers, at ranks as high as superintendent, had been implicated before the Wood royal commission in having taken drug bribes of as much as \$60,000 over the years. It was those revelations that led to Kerr introducing legislation, in October, to make it easier to sack corrupt Federal police.

I am not suggesting that Mr Kerr did anything wrong in that. What I am saying is that he had the wool pulled over his eyes as well by these people. This is what they are doing to the parliamentary system. Less than two years later the same bureaucracy—I am talking about what happened to Duncan Kerr—convinced Attorney-General Daryl Williams that there was no systemic corruption within the AFP. Consequently, the Harrison report was not publicly released. In 1998 I wrote to the Minister for Justice and Customs and asked for my complaint to be reviewed on the basis that none of the crucial witnesses in my matter had ever been interviewed. I received a reply from Dr John Nation, who said:

... I am advised that the matters you have raised have been subject to close scrutiny over a number of years by the AFP, the Commonwealth Ombudsman and the inquiry into the involvement of members of the AFP in corrupt practices conducted by Mr Ian Harrison SC. I understand that investigations into your complaints have been unable to produce evidence to substantiate your claims. I have been advised that the Commonwealth Ombudsman and the AFP do not intend to conduct further investigations ...

In fact, the AFP have not conducted any inquiries into my allegations since Commander Worthy conducted the initial inquiry in about 1990—that was eight years earlier. At that time he

maintained there was no evidence of corruption, despite the later findings by the Wood royal commission. However, considering that my allegations impacted upon the competency and the integrity of Assistant Commissioner Nigel Hadgkiss, the manager of operations at the NCA and ex-Assistant Commissioner Lamb, Commander Peter Donaldson or Assistant Commissioner Adrian Whiddett, there should be no surprise that the AFP hierarchy refused to investigate any of the allegations.

CHAIR—Who was Commander Worthy, what was his inquiry in 1990 and where is his report?

Mr Kennedy—I was never given a copy of his report.

CHAIR—Does it exist?

Mr Kennedy—Pardon?

CHAIR—Was it ever made public?

Mr Kennedy—I was never even told that it had been completed. I was never communicated with. I just knew from word of mouth. He spoke to me and interviewed me, and he then ran around and interviewed a few other people. Back in 1990 I received no other information, and that was the way police were treated back then. We were told nothing.

CHAIR—But he interviewed you?

Mr Kennedy—He interviewed me, yes. I explained to him, like I have just explained to you today, exactly what had taken place.

CHAIR—But there was never a report?

Mr Kennedy—I have not been given one. I have no doubt there is one. One of the allegations I made was in relation to a briefcase. Around the same time as the money was stolen by the JDTF, a briefcase was located, and Peter Lamb said that it had been stolen from him. It contained about \$14,000, and it was found by New South Wales police at Dee Why.

CHAIR—I think it was Manly.

Mr Kennedy—Over at Manly. During that investigation there were great efforts by the AFP to stop the charges going forward. Bruce Onley went to the court to try to withdraw them. Lamb tried to make out there was some national secret at stake, and I could not get anywhere with it at all. I do not know if he is corrupt; I do not know if he is not.

In relation to the AFP, these things and Dr Nation's reply, Mr Taylor from the Commonwealth Ombudsman's office had in fact stated, 'History has shown that your allegations in relation to some AFP members were correct.' He also said 'the Ombudsman does not have the resources to conduct formal investigations unless there is a substantial basis for doing so'. He then said, 'Bearing in mind that we are talking about events that took place back in 1988 and most of the

AFP personnel then involved are no longer in the AFP, I believe that little will be achieved by investigating this matter any further.'

I can only reiterate after this that human rights are universal or they are nothing. It would appear in this state of New South Wales, in this nation's state, at this point in time that human rights are nothing. There is a crisis within our criminal justice system whereby the bureaucrats and administrative leaks are the dominant group. There is an urgency that our elected representatives should take control of this debate and deal with those who have reduced our criminal justice system to simple and plain Hooverism. That is my submission.

CHAIR—Thank you very much for that. We will now go to questioning. However, I have to excuse myself for a moment. Under the rules in which we are operating, we are a subcommittee and the standing orders require that, if I leave the chair, the subcommittee must elect a deputy chair in my place. If members are in agreement, I propose that Julie Bishop take my place for the short time I have to excuse myself.

Mr CADMAN—Certainly.

CHAIR—I will be back very shortly.

ACTING CHAIR (Ms Julie Bishop)—Mr Kennedy, you have mentioned a lot of names and a great many events and issues over the past few hours. Can I encapsulate things in one question, and I am sure there will be more questions from the members of the committee. In your role as a whistleblower—even though you do not call yourself one, that is essentially the role that you have assumed—what do you think could be done to improve the process for those who seek to expose corruption within the New South Wales Police Service? What could be done to improve the position of people who find themselves in the position that you have found yourself in?

Mr Kennedy—I should clarify that I am not really concerned about it from my own perspective. I am an academic. I am writing a thesis. This is all grist to the mill.

ACTING CHAIR—I understand that. I am asking for your views on what you would say to others who have been through it.

Mr Kennedy—I would say that our elected representatives take control of this debate.

ACTING CHAIR—What do you mean by that?

Mr Kennedy—That the bureaucrats doing these things are obviously not feeding information to our elected representatives. They are misleading them and being dishonest with them and they are doing so for the purposes of careerism and opportunism. That is one thing amongst politicians, because it is dealt with internally and quite effectively. Amongst bureaucrats, it is another thing, because it means that they engage in a political process and they are not supposed to. It becomes difficult because they move between parties wherever the carrot is being dangled. They do whatever has to be done in order to move themselves forward. I do not believe that either party is interested in that happening—but it is happening.

ACTING CHAIR—This is your concern at the bureaucratic level. What about at the police force level? How would you summarise the type of corruption that you tried to expose in 1998?

Mr Kennedy—I can summarise it like this. This is the most recent thing that has happened. I have a copy of a listening devices warrant that has, I think, 106 names on it because of the way that they are going about these things—a whole heap of people.

ACTING CHAIR—At whose request is that warrant issued?

Mr Kennedy—This was issued during the Olympics because of this purging effect going on that has a total disregard for people's rights. I am not being critical of the justice that signed it. We should be looking at who took the information to her.

Mr MELHAM—Was that warrant challenged?

Mr Kennedy—I believe it has been challenged.

Mr MELHAM—At the time?

Mr Kennedy—I believe it has been and one of the authors—

Mr MELHAM—Because of its breadth?

Mr Kennedy—Because it is just driftnet fishing.

Mr MELHAM—Are you aware what happened in relation to the challenge to that warrant?

Mr Kennedy—I believe at the Police Integrity Commission the person who oversights it stated that there were irregularities in it.

Mr MELHAM—Thank you.

Mr Kennedy—In relation to the same author—

Mr MELHAM—Is that publicly reported?

Mr Kennedy—I do not know. If it has been, I will take your word for it.

Mr MELHAM—I do not know.

Mr Kennedy—I do not know, but I can tell you one of the authors has been recently criticised as using his position to settle personal disputes. That is exactly what—

ACTING CHAIR—I am sorry, I am losing the plot here. We have a warrant.

Mr Kennedy—This is what senior police are doing.

ACTING CHAIR—Just give me a break here. I am just trying to follow this.

Mr Kennedy—Senior police are engaging in a process where they are using their position to settle personal disputes. They are continuing on with the royal commission method of doing things of using their power and abusing it.

ACTING CHAIR—Okay, but—

Mr Kennedy—This is the example.

ACTING CHAIR—we have a process in place whereby police cannot just issue warrants. They have to go through a process in order to get one. I think the point Mr Melham was making is: has that warrant not been challenged in the normal course to ensure that the sort of fishing expedition that you complain of does not go on?

Mr Kennedy—The fact that it has happened at this time after the royal commission is what is at issue. It should never have happened.

ACTING CHAIR—Let us come back to my question. What was the type of corruption that you were trying to expose in 1998 in the AFP-New South Wales joint task force?

Mr Kennedy—It related to drug distribution amongst the police. Then it related to the cover-up by the hierarchy. I am not suggesting that the hierarchy were dealing in drugs, although some of them might have been—I do not know—but they were covering it up in order to protect their careers and their position.

Mr MELHAM—I would like to clarify something so that we are not at cross-purposes. I do recall some public discussion about this. There were a number of people named in that warrant, and there was no suggestion that they were all involved in criminal behaviour. They may well have had innocent associations with others who could have been associated with criminal behaviour. I just wanted to clarify that. There is not a suggestion that everyone named in that warrant, notwithstanding its breadth, was engaged in criminal behaviour.

Mr Kennedy—The wording of the warrant suggested exactly that, Mr Melham.

Mr MELHAM—I have not seen it.

Mr Kennedy—Maybe the spirit of it does not but the wording of the warrant suggests exactly that.

Mr MELHAM—That is my understanding; I have spoken to some people in relation to that. I do not want there to be any misapprehension here. The breadth of the warrant, as I understand it—as I have been told—is that names were put in there because they could have had innocent contact. The names may relate to incidents where that evidence is required to fill in the chain. I just put that on the record. It is not a question for debate. I understand that this has been the subject of a challenge and a question on the breadth of the warrant—a whole range of things.

Mr Kennedy—The reality is that it allows people's private conversations to be recorded—people who have done nothing wrong.

ACTING CHAIR—What is the date of this warrant?

Mr Kennedy—During the Olympics—14 September 2000.

ACTING CHAIR—Can we come back to 1998, which is when your concerns were first raised. Can you comment generally on the circumstances under which you pleaded guilty to falsely accusing federal police officers of corruption?

Mr Kennedy—My solicitor was a personal friend of the Joint Drug Task Force police. I had to use him because the Police Association told me to use him. He did not believe what I was saying—well, maybe he did; he was quite a decent fellow but he was quite intimidated by them. He had worked in the Joint Drug Task Force himself. My witnesses were being stood over by these same people I was accusing, and they were too frightened to come to court. There are statements in the attachments. Some of them were fed with heroin. Some of them were put in witness protection and forced to withdraw their statements. It was an orchestrated attack. Tapes against me had been doctored, which I have already explained to you.

ACTING CHAIR—You say you were not guilty of the charge to which you pleaded guilty?

Mr Kennedy—I was abandoned by my own organisation—because that is what happens, everyone is too frightened to have anything to do with you.

ACTING CHAIR—That is what you are telling me: you are not guilty of the charge to which you pleaded guilty.

Mr Kennedy—No. I will go further: I was never sacked from the New South Wales Police as a consequence. I was promoted whilst I was still in there. The organisation knew what had happened to me. I lodged an appeal. They said, ‘If you withdraw your appeal we will leave you alone.’

Mr MELHAM—You did, however, Mr Kennedy, in the first instance enter a plea and plead guilty. Is that right? I have been there and done that; I am just trying to get the facts correct.

Mr Kennedy—I could not afford to plead not guilty. It is as simple as that.

Mr MELHAM—You are not Robinson Crusoe as someone who has pleaded guilty before the court but is not guilty. I just want to clarify that. That was a plea that was entered. You say that you entered it notwithstanding the fact you believed you were not guilty.

Mr Kennedy—Definitely.

ACTING CHAIR—I know the record speaks for itself; I am just trying to ascertain the facts.

Mr MELHAM—It just had not come out that a plea of guilty had been entered.

ACTING CHAIR—I understood that to be the situation.

Mr Kennedy—Under duress.

Mr MELHAM—I am not disputing that, Mr Kennedy.

ACTING CHAIR—And that he received a 12-month bond.

Mr Kennedy—And I was forced to seek psychiatric treatment—which is part of everything.

ACTING CHAIR—I understand that. After that you were promoted?

Mr Kennedy—Years later I won a sergeant's position.

ACTING CHAIR—From what position?

Mr Kennedy—Detective senior constable to detective sergeant. Before I took it up I resigned.

ACTING CHAIR—Ultimately you resigned?

Mr Kennedy—I resigned in 1996.

ACTING CHAIR—What led to your decision to resign from the Police Service?

Mr Kennedy—I was sick of it. I was tired of it. I wanted to make a difference. I could not do anything within the force. It was frustrating. I had been there for 18 years. They said, 'If you stick it out another two years you will get a pension.' I said, 'If I stick it out another two years I will need a pension.' So I resigned. I wanted my money. I did not want a pension. I went to uni, and I will be Dr Kennedy at the end of this year. Frightening, isn't it?

ACTING CHAIR—Do not attribute those thoughts to me.

Mr Kennedy—I chose to move out of the arena. I had simply had enough.

Mr CADMAN—I am fascinated by reading some of your submission. The difficulty I have is the fact that you have been involved in such a complexity of relationships that to establish where everybody sits is pretty difficult. I take it from having read this that you worked with John McNamara a lot—

Mr Kennedy—He was my supervisor. I was an undercover operative and an intel operative. I was not a typical detective per se.

Mr CADMAN—What is not typical about—

Mr Kennedy—I snuck around. I spied on things. I did all the things that a civil libertarian, which I was, should not have done. That is why I have said the contradiction was there. I did undercover work. I bought drugs. We tried to focus on the top of the organisation. We tried to do something about the top. If you read through it, I was not concerned about drug addicts. In fact, I had a lot of empathy for them. We tried to push the idea that drugs should be legalised. There is all that sort of stuff. We tried to do something about the serious stuff. I was just out of my depth, basically. I was naive but I was streetwise. That was another contradiction.

Mr CADMAN—I notice here that there is a pretty detailed account about relationships with members of the Lebanese community. It seems to me from the way you have spoken that you have had a fair bit of empathy for them.

Mr Kennedy—I do. I got along very well with the Lebanese community. I worked at Bankstown in the community and then I went to the Crime Commission. The community was targeted by the Crime Commission, as were other communities, because of various problems. I found out that the Lebanese community were just being absolutely stood over by certain police. You have three generations of Lebanese that came here. A lot of them came from devastating circumstances and simply wanted to get on with their lives and survive. I have been to Lebanon. I actually gave a paper there, in Beirut, and I understand why these people come here looking for an opportunity and engage in whatever they can to insulate themselves from any further poverty or whatever. We tried to do something about that. At the same time, we did not abrogate our responsibility of dealing with Lebanese members of the community that were committing serious crimes.

Mr CADMAN—Was Peter Donaldson one of those people that wanted to get you out of the way?

Mr Kennedy—Yes.

Mr CADMAN—Why?

Mr Kennedy—I do not know. I have very fond memories of Peter Donaldson. He was an ex-soldier, an ex-counterintelligence officer. He was just doing what he was told to do. It is as simple as that. I think he was just a gun for hire. I asked him many years later, ‘Why have you done what you have done to me?’ He said, ‘Mick, the die was cast by the time I got on board.’ I do not think that he could do much about it. He is a careerist, and I think that others had put in place something that was going to happen that he had no control over.

Mr CADMAN—So you are almost proposing that somehow there is a plan of operation that, even if you are part of the organisation, only some people understand. Is that what you are saying?

Mr Kennedy—That is the whole concept of vocations like teaching and policing. There is an internal understanding of it and there are various branches within. There are understandings, there are low-level functionaries, there is a hierarchy—

Mr CADMAN—Would you call yourself too much of an individualist to really be part of a system?

Mr Kennedy—I was not part of anyone’s gang or group. And that was a problem. I got on well with my bosses, but I was an undercover operative—I ran around on my own, I ran my own race. They were happy with what I was doing, so they left me alone. The minute I got into trouble I was disposable. That is what they do.

Mr CADMAN—Would you call Donaldson one of the white knights that you refer to as writing to Bob Bottom for his books?

Mr Kennedy—Not so much Donaldson over that. That is mainly Lamb and Hadgkiss that were involved with Bottom. You read his books, and it is all about what the JDTF has done and how good they are, and all the rest of it. It is just rubbish. They did some good work but they did a lot of—

Mr MELHAM—It is self-serving?

Mr Kennedy—Yes. Donaldson was the senior investigator down at the building royal commission, trying to do over the CFMEU. I do not have much sympathy for him at all. He has bought into the political area of things, so he has to either survive or sink on his own. I have an axe to grind against what he did to me, but I do not see him as a bad fellow. He just got caught up with it all.

Mr CADMAN—So your main axe to grind is what? What would you like to see changed?

Mr Kennedy—Like I said, my axe to grind is that this is all grist to my mill. I am doing a thesis on a class analysis of policing.

Mr CADMAN—So this is going to form the basis of your thesis, is it?

Mr Kennedy—Mr Cadman, I am a Marxist. I do not believe that much is going to be changed. That is the bottom line.

Mr CADMAN—My question is what you would like to see changed. It does not matter whether you think it will be.

Mr Kennedy—I would like to see our elected representatives take control of the criminal justice debate. I would like to see royal commissions stopped. They are unfair; they are discriminatory. They are not fair at all, the way they are run.

Mr CADMAN—But you can see from our questions that we are not well equipped to deal with crime.

Mr Kennedy—Sir, with due respect, there are too many people that think you are. The situation is that the people that have taken control of this debate are not doing anything for the greater good or in the public interest. It is self-serving for them.

CHAIR—When you say ‘don’t have royal commissions’, I take it that your concern is with what happens—not with the royal commissioner per se, but with what happens down at the lower levels about who can give evidence, who cannot, what is brought forward. Is that what you are concerned about?

Mr Kennedy—It is the media marketing side of it. It is the destroying of people’s lives when they cannot defend themselves. It is the suicides that we know globally are associated with these things.

CHAIR—Yes, we heard evidence from Mr McGann about that. What I am asking is: is that where the problem lies for you?

Mr Kennedy—Where the problem lies for me is that the real people are never exposed. Some of them are, but the low-level functionaries get done over. The people that are shaping society or the Police Force, and shaping the values of society or the Police Force, are not being—

CHAIR—What about the Fitzgerald royal commission in Queensland? Did that clean it up?

Mr Kennedy—That was a bit different, wasn't it?

CHAIR—I do not know. You tell me.

Mr Kennedy—I think it was.

CHAIR—What was different?

Mr Kennedy—The difference is that they looked at everybody. Politicians went to jail. The commissioner went to jail. Low-level functionaries went to jail. Gangsters went to jail. In the Wood royal commission—

CHAIR—So what was different between that and the Wood royal commission?

Mr MELHAM—A former Premier should have gone to jail, but for the National on the bloody jury.

Mr Kennedy—What was different with the Wood royal commission was that it simply reinforced the class relations that exist within the criminal justice system. That is what happened.

CHAIR—What was different? Was it that Fitzgerald was different from Wood? Was it the way it was structured? You have just told me that the Fitzgerald royal commission did clean things up and the Wood royal commission did not. What was the difference?

Mr Kennedy—I think there is a crisis within the criminal justice system. I think all parties—

CHAIR—Nobody is going to deny that.

Mr MELHAM—You are harassing the witness, Madam Chair. Let him answer.

Mr Kennedy—I think all parties have to accept their responsibility.

CHAIR—I am not denying that. I want to know the difference between the two.

Mr Kennedy—Let me explain, because I do not think it is simple. I think that the legal community saw a perfect opportunity to get the spotlight off themselves and onto the low-level functionaries, the police.

CHAIR—Where?

Mr Kennedy—At the Wood royal commission. And I think—

CHAIR—Which legal people?

Mr Kennedy—The legal community.

CHAIR—Why would they want to do that?

Mr Kennedy—That is the big ideological question: why?

CHAIR—The legal community was not a problem. The Wood royal commission was set up because there were questions about police corruption.

Mr Kennedy—The thing is that police are the coercive arm of the state. They cannot do anything by consent. There is this myth around that somehow or other police can engage in their activities by being nice. They cannot. Their job is to do dirty work; it is a dirty old job. I think—

CHAIR—I accept all of that. But what was the difference? You said first of all, ‘Get rid of—

Mr MELHAM—Madam Chair, I hope you are not trying to harass the witness.

CHAIR—Excuse me just a moment.

Mr CADMAN—This is very important.

CHAIR—This is a very important question.

Mr MELHAM—I know it is very important.

CHAIR—I said at the beginning—

Mr MELHAM—Let him answer the questions. You keep going over the top of him.

CHAIR—Mr Kennedy, at the beginning you said, ‘Get rid of royal commissions’, and I said that the Fitzgerald royal commission in Queensland seemed to clean things up. You said it was different from the Wood royal commission.

Mr Kennedy—Yes, I take your point.

CHAIR—I want to know how it was different.

Mr Kennedy—I do not think there are enough parliamentary guidelines on royal commissions. I do not think there is enough accountability for people in royal commissions. They seem to have immunity. Anyone who complained about the Wood royal commission found their complaints went nowhere because no-one had the jurisdiction to look at what they did. That was the big problem.

CHAIR—We found out last week there is an express prohibition in the legislation establishing the Wood royal commission that prevents complaints being made against any of the people there.

Mr Kennedy—Yes.

CHAIR—One of the people who were complained about in other evidence came from Queensland, and one came from South Australia. They are surely still accountable to their own home bases. Given that I do not know if there was such a provision in the Fitzgerald royal commission—

Mr Kennedy—I do not know.

CHAIR—We will have to have a look at the act.

Mr Kennedy—Mr Fitzgerald seemed to evenly distribute the blame, and no-one seemed to have a big axe—well, some people did—to grind about the unfairness of it, because everyone just took on board that everyone had to pay their dues.

CHAIR—Are you saying the difference was in the person who was appointed to head up the royal commission?

Mr Kennedy—No, I think it was the structure of the royal commission in New South Wales.

CHAIR—So how was it different?

Mr Kennedy—I think, for example, John Agius should not have been senior counsel. He was far too close to the members of the Joint Drug Task Force; he had known them for years. He had prosecuted all the Joint Drug Task Force work. He should not have been a counsel there. He had a vested interest. The best man at his wedding was one of the people who was given immunity.

CHAIR—So you are saying there were problems with the way it was established right from the word go?

Mr Kennedy—Yes. I think it was part of that—for want of a better word—legal Club Med that has established itself in this state, where people go from ICAC to the Ombudsman, to PIC, to the royal commission and to the DPP. They just move around and they do not seem to be accountable anywhere.

CHAIR—You think it is a revolving door?

Mr Kennedy—Yes.

Mr MELHAM—I hope you are not trying to put words in the witness's mouth, Madam Chair. I am conscious of the fact that your conduct is a little different from earlier, with other witnesses.

CHAIR—Not really. I am asking the same sorts of questions.

Mr MELHAM—I know it is appalling conduct, but it is different.

CHAIR—For heaven's sake, Daryl, grow up.

Mr Kennedy—I do not think Nigel Hadgkiss should have been appointed. He was a member of the very task force that he was trying to expose. The problem was, as I said earlier, I do not think the people who appointed him were aware of what was happening. This group had already established a power bloc before the royal commission. This group had already established itself as having a reputation beyond reproach. They had also made sure that most of the work they did was at arm's length and they were unaccountable. And yet they are bureaucrats.

I will give you a good example. A solicitor from the National Crime Authority was charged. She went down to the Ombudsman in Canberra to complain about Peter Lamb but she did not mention his name. The Commonwealth Ombudsman said, 'Come back this afternoon. We'll tell you what we can do.' When she came back they said, 'Hmm—there's nothing we can do about the National Crime Authority; we do not have the jurisdiction. But we have a coordinator with the National Crime Authority who would be more than happy to talk to you. His name is Peter Lamb. He's a very good man.' That is exactly what has been happening.

Mr CADMAN—That is pretty helpful, that sort of stuff.

Mr Kennedy—That is exactly what has been happening. I mentioned your Mr Kerr. He was in the same position. He is quite an intelligent man but I think he had the wool pulled over his eyes as well. These people are doing over both sides of the parliament. They are doing over Labor and Liberal whenever they are in positions of power. They are a bloc of people who need to be dealt with.

Mr CADMAN—Are you saying that the people who are appointed to process and conduct the inquiries, whilst they appear to be at arm's length, are too close to the action?

Mr Kennedy—Take, for example, John Agius: he should not have been at the Wood royal commission but, as a consequence of him being there, he went down to a commission of inquiry in Tasmania, then he moved to Victoria, now he is over in Western Australia because of the reputation he has gathered of being a counsel in royal commissions. He should never have been a counsel in the Wood royal commission in the first place, but he was.

CHAIR—Give me the reason again why you think he should not have been appointed?

Mr Kennedy—He was personal friends with all members of the Joint Drug Task Force.

Mr CADMAN—Personal friends?

Mr Kennedy—Personal friends. One of the members of the Joint Drug Task Force that resigned from the Federal Police and was given immunity—

CHAIR—I am sorry, I was interrupted. Could you say that again?

Mr Kennedy—One of the members of the Joint Drug Task Force that resigned from that task force as a result of corruption allegations—he is one of the JTF1 to 12s or whatever—was the best man at Agius’s wedding. They have been personal friends for years. He knew all of the police because he prosecuted most of the Joint Drug Task Force matters. He had a conflict of interest at the Wood royal commission.

Mr CADMAN—So he had a working relationship through the court processes with those Joint Drug Task Force members?

Mr Kennedy—Yes, for years and years, because the Commonwealth DPP used counsel from outside—private counsel—and Agius was a private counsel that did most of their work.

CHAIR—So the DPP selected him?

Mr Kennedy—Yes. He then got chosen, because of his experience, to work at the Crime Commission. This is where I met him.

CHAIR—That is the New South Wales Crime Commission?

Mr Kennedy—Yes. That is how come I know that he knows these people, because he was there; I know him myself. I did not have an issue with him, but I think there was a conflict in relation to his appearances at the royal commission.

Mr MELHAM—Madam Chair, with your indulgence, if I could just make a short statement and ask one or two quick questions because I have other commitments to go to—I cannot stay much longer.

CHAIR—If you can keep it very quick because we have all got time constraints.

Mr MELHAM—Yes, I will. I appreciate that. I should just point out for the record that, in my service as a legal aid solicitor and public defender, I did have regular contact with Mr Agius when he was prosecuting matters and, in terms of my dealing with him, I have nothing but the highest respect for him in terms of his professional conduct. I think it should be put on the record, Mr Kennedy, that in all my dealings with Mr Agius he was nothing but professional and fair in the way he prosecuted matters on behalf of the DPP. Certainly he was a vigorous advocate. I should just point out that I did have that contact with him.

On another matter, Mr Kennedy, can I confirm that the first time you spoke to me was outside the hearing today, a little while ago?

Mr Kennedy—Yes.

Mr MELHAM—I should put that on the record because you did communicate with me by email.

Mr Kennedy—I have tried to communicate with you.

Mr MELHAM—Yes, I accept that, but no—

Mr Kennedy—There was none.

Mr MELHAM—There was no verbal communication. I did respond in a quick reply to you, acknowledging you, and I did attempt to speak to you on your mobile phone and got an answering machine. I just want to put it on the record that the first time we actually spoke was today and it was just very casual and not in relation to the evidence.

Mr Kennedy—I am a member of the Labor Party, Mr Melham. I tried to communicate with you—I do not want to be here.

Mr MELHAM—I do not care what party you are a member of. The point I want to put on the record is that there had been an attempt to communicate with me and it only happened today.

CHAIR—Daryl, in relation to that, it would not have mattered if you had.

Mr MELHAM—I know, but I do not want it said—

CHAIR—If you want to put that on the record, that is fine.

Mr MELHAM—I have asked a number of earlier witnesses whether they had communications with members of the committee. I think it is also appropriate that I put on the record what communication I have had with witnesses. There is nothing wrong with the communications that Mr Kennedy had with me; there is nothing wrong with him being a member of the Labor Party.

CHAIR—Nor being a Marxist—we are very tolerant.

Mr Kennedy—Thank you very much. I am very reassured.

Mr MELHAM—And I would not care whether he was a Marxist or a Callithumpian. I just wanted to put that on the record. I am sorry, Mr Kennedy, but I have a commitment at 6 p.m. for the 50th anniversary of the East Hills Girls Technology High and I am due to speak, otherwise I would stay and listen to the rest of your evidence.

Mr Kennedy—I was looking forward to being cross-examined, Mr Melham. I am disappointed.

Mr MELHAM—Thank you.

Mr MURPHY—I am available.

Mr Kennedy—That is good.

Mr MELHAM—I will defer to Mr Murphy.

CHAIR—I think we are coming to the point where we are going to have to wrap up, because we will lose our quorum soon.

Mr MURPHY—I need to say something because, like Mr Fenlon, I think that Mr Kennedy has been very sincere in what he has said here today. I am very concerned about the information he has provided to this committee in relation to the Harrison inquiry and the Commonwealth Ombudsman's failure, in his eyes, since 1996, to deal with the very serious allegations that he has brought before this committee. Against the background that we are running out of time and we have had no opportunity to ask him any further questions because it is late in the day—and I am not necessarily asking that he come back tomorrow—I want to ask Mr Kennedy if he would be prepared to come back to the committee, if required, to answer questions.

Mr Kennedy—Of course. That is a condition of being here.

CHAIR—Absolutely.

Mr MURPHY—That is fine. I want to put that also in the context that this morning, for example, we had Mr Fenlon who, as I keep saying, was sincere in his very serious allegations, which reflect poorly on the New South Wales Police Service. At the end of that inquiry, I will ask you again, for my purposes, to say what you believe we might be able to do about it, because you have painted, Mr Kennedy, a very grim picture for the public with regard to how both sides of politics deal with these very serious allegations of corruption and the failure of the parliamentary parties and governments, and indeed oppositions, to address those serious issues. Doubtless that could be some further fodder for your PhD thesis that you are working on at the moment.

I would like to make this observation about royal commissions, because there is another royal commission that I will mention. On Monday this week a report was handed to the Governor-General from the Cole royal commission into the building industry. The politics of that committee, like the politics of this committee, are potentially that, based on the issues raised in that report, the government will focus on the irregular practices in relation to the evidence given to the commission about the unions.

CHAIR—I think we had better wait until we see the report.

Mr MURPHY—Equally, there was other evidence given which reflects very poorly on the directors of the so-called phoenix companies in the building industry, thousands of them, which suddenly disappear overnight and deny the workers their rightful entitlements because the company goes to the wall. Of course, the principal creditor is the taxation commissioner and, because of the way those companies have been set up by corrupt members of the legal profession, those same directors set up another company the following week and then offer those jobs back to the very workers who did not get their entitlements—and the company did not pay any tax. That is probably a very worthwhile royal commission. I would ask you, as someone who is not terribly confident in royal commissions, to have a look at what the government does, and equally the opposition, about those irregular practices in relation to the evidence given regarding the unions and also regarding the lawyers who set up these phoenix companies and did not pay any tax or pay workers their entitlements.

CHAIR—With respect, Mr Kennedy, you are giving evidence in accordance with your submission on the terms of reference here. Whether or not you go out and read somebody else's royal commission report is a matter for you. That is not pertinent to what we are hearing here today.

Mr MURPHY—Yes, but I am making the point because you talked about the Fitzgerald royal commission, Madam Chair.

CHAIR—Just a minute. You are out of order, if you do not mind, Mr Murphy. I just say that whether you do that is a matter for you, Mr Kennedy, but we are grateful for the evidence you have brought forward to us today; you have given us a lot more material to work on. We would be grateful if you would be available to come back and talk to us again.

Mr Kennedy—Of course. That was a condition of coming to give evidence.

CHAIR—We would be pleased by that. You have given us an enormous amount of information today. With regard to the supplementary submission that you read to us today, and the attachments to that, we might receive that as evidence in a confidential manner, because you have chosen not to use names but names are used in a lot of this. So we would like to go through it first and then we might talk to you about releasing it publicly subsequently.

Mr Kennedy—I accept whatever you decide.

CHAIR—Would somebody move—

Mr MURPHY—Madam Chair, could—

CHAIR—that this be received as confidential evidence to the inquiry?

Resolved (on motion by **Mr Cadman**):

That the supplementary submission be received as confidential evidence.

CHAIR—If Mr Murphy wants to complete his remarks and they are relevant to our inquiry, that would be in order.

Mr MURPHY—Depending on what happens tomorrow, are you prepared to reconvene this committee, if required, to bring Mr Kennedy back—

CHAIR—I just made that perfectly clear.

Mr MURPHY—before the state election?

CHAIR—The state election seems to be a great preoccupation for you and for Daryl, I must say.

Mr MURPHY—It seems to be a great preoccupation for you, going by the timing of these hearings.

CHAIR—No. I might say that these hearings were scheduled for last December, but you successfully aborted that. That is why they are being held now.

Mr MURPHY—That is right, but they are still before the state election.

CHAIR—You think there is something nasty that has to be shut up before the election. I do not understand you.

Mr MURPHY—It is because what—

CHAIR—Because what?

Mr MURPHY—It is because of what Mr Kennedy has raised—and you know exactly what I am saying, Madam Chair.

CHAIR—I wish I did.

Mr MURPHY—He has raised very serious issues in relation to the inaction of both the Commonwealth Ombudsman and the Attorney-General in relation to the Harrison report, and he is not satisfied. If you are genuine in wanting, in the spirit of bipartisanship, to get a good outcome for this committee and stop the politics, you will say—and put it on the *Hansard* record—that, if required, we can bring Mr Kennedy back before the state election on 22 March.

CHAIR—But the state election has nothing to do with what Mr Kennedy has had to say. We are delighted to have you back at some—

Mr MURPHY—That is your opinion, Madam Chair—

CHAIR—Yes, it is.

Mr MURPHY—because you are taking—

CHAIR—I am going to rule you out of order.

Mr MURPHY—You can rule me out of order as much as you like, but you are playing politics right til the death.

CHAIR—Your evidence was very useful to us and we will be following up the very serious matters that you have raised. We will be delighted to have you back at a subsequent time to deal with some of those issues.

Mr Kennedy—Thank you.

Resolved (on motion by **Mrs Bronwyn Bishop**):

That this subcommittee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Subcommittee adjourned at 4.33 p.m.