

ROYAL COMMISSION INTO WHETHER THERE HAS BEEN
ANY CORRUPT OR CRIMINAL CONDUCT BY WESTERN
AUSTRALIAN POLICE OFFICERS

COMMISSIONER: G.A. Kennedy AO QC

PRIVATE HEARING

Held at Perth on the 30th day of August, 2002

(Commissioner Hammond of the Corruption & Crime Commission made an order on 20 September 2005 to vary an order to allow publication of this transcript)

Counsel Assisting

Mr S. Hastings QC
Mr S. Hall

In Attendance

Mr L.M. Levy appeared for Mr Lewandowski
Mr M.J. McCusker QC appeared for R. and P. Mickelberg
Mr C. Randazzo appeared for DPP

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AT 9.45 AM HEARING COMMENCED:

COMMISSIONER: Yes, Mr Hastings?

MR HASTINGS: Commissioner, I propose to have a private hearing to call some evidence from Mr Lewandowski. Perhaps we might commence by making the usual orders in relation to the hearing. It is envisaged that present will be Mr McCusker of Queen's Counsel, Mr Randazzo of the Office of the Director of Public Prosecutions, and Mr Laurie Levy, solicitor for Mr Lewandowski.

COMMISSIONER: Yes. Yes, thank you. Well, I direct that this hearing of the Commission shall be a private hearing, and pursuant to section 12(1) of the Royal Commission (Police) Act 2002 I further direct that the evidence to be given at this private hearing must not be published except in such manner and to such person as I shall specify.

Yes, Mr Lewandowski. Can I have your full name, please?

MR LEWANDOWSKI: My full name is Antony Lewandowski.

COMMISSIONER: Yes. Thank you. And do you have any objection to taking an oath on the Bible?

MR LEWANDOWSKI: No, I don't.

COMMISSIONER: Yes. Thank you. If you could take the Bible in your right hand and read the oath aloud, please.

ANTONY LEWANDOWSKI sworn:

COMMISSIONER: Yes, thank you. Sit down, please.

EXAMINED BY MR HASTINGS QC:

MR HASTINGS: Mr Lewandowski, can I commence by asking you some general questions about your career in the West Australian Police Service?---Yes.

According to my records you joined on the 4th of May 1970; would that be correct?---Possibly. I was a cadet before I was a policeman.

Right?---But I resigned and travelled to England with my wife and then came back and joined as a police officer. But I think it would be right to say that I became a police officer on that date.

Do you remember what year you went overseas and then returned?---I'm sorry, sir. I couldn't remember.

MR HASTINGS: In any event, I think what is reasonably clear is that you terminated your career on the 12th of April 1989, did you not?---Yes. I was in the police force for 20 years, including being a cadet for about 18 months.

Without going into all the detail, what did your career involve? Where did you serve?---Well, I basically came out of the Police Academy and went directly to the Palmyra Police Station. I never walked the beat. I did have a good grading in the police college, so I didn't go to, like, Central or Fremantle and walk the beat. I went straight on to general duties. Then I went into plain clothes, Liquor and Gaming, and then I went to the CIB, and I spent most of my - -

Do you remember when the - - do you remember when you went to the CIB?---I don't want to be - - sound like I'm avoiding things, but I've got a terrible mind for dates. But I think it would have been about - - it was about 5 years after I joined the police force.

Right. Were you designated a detective?---Yes.

When was - - was that before or after you went to the CIB?---No. No. Well, you are a detective when you go to the CIB.

Right. And you were still - - well, you were in the CIB in 1982 when the Mickelberg investigation took place. Had you served there continuously from the time when you were transferred there?---Yes, I was.

You had an accident I think - a bad accident - in 1981, did you not?---Yes.

Were you off work for long then?---About 6 months.

I think you indicated in your evidence later that you resumed on light duties, did you not?---Yes.

Were you still on light duties in 1982 when the Mickelberg investigation occurred?---Yes. I was duty sergeant.

Was that seen as a light duties post, was it?---Yes. Well, basically I - - I was the eyes and ears for the hierarchy[?] of the CIB; what they should know - - -

WITNESS: - - - they should know. It came through me, and I would advise them what they should do, and then advise my superiors what had happened and what was going on.

MR HASTINGS: If I can just take you through to the end of your career, after the Mickelberg investigation in 1982, did you continue in the CIB for long after that?---No.

Where did you go next?---I went to uniform.

Where was that?---In Perth. Central.

Where after that?---I resigned in 89.

I think at some stage you were at Fremantle, were you not?---Yeah, I was at Fremantle, yeah.

And you were at the rank of sergeant when you resigned in 1989?---Yes.

When you went to the CIB, at the beginning, which would have been around 1975-ish, on the estimates you've given, who was the superintendent then?---(No audible response).

Or is it easier to work back? If we go to the 1982 era, Mr Hancock - -?---I think Jim Kirkman was in charge when the Mickelberg inquiry was on.

Was Mr Walker superintendent during your time there?---I think so.

All right. Well, if I can move, then, to the Mickelberg matter, you've sworn an affidavit this year, on the 5th of June 2002 - -?---Yes.

- - in which you've made various admissions concerning the conduct of yourself and Mr Hancock during that inquiry. Can I just go back, then, to a little of your history of your involvement in the Mickelberg investigation. You've already indicated that at the time you were on light duties, carrying out the role of duty sergeant at the CIB. The fraud took place on or about the 23rd of June 1982, and after that a team was established within the CIB to investigate it, was it not?---Yes. Basically, the operations room was next to the duty sergeant's office and normally I would have two junior detectives in my office the whole time, in case I needed them to go and do something urgently, and if there was not a lot going on, I would go into the operations room and I would just - - just for interest, assist there by cross-indexing, writing out serials which means information what came in, to hand them out to certain detectives to go and investigate or inquire into that little matter, and then get them back and see what result was and you know, that sort of thing. So it was mainly

a matter of interest for me, for something to do. Because for some time, I was on crutches when I was in there. And I just wanted something to do.

MR HASTINGS: So when the Mickelberg investigation team was established, were you formally allocated to it?---No. No. Never.

Right?---No, I was never formally a member of the team.

But the team commenced its investigation, did it, and you became involved in the way that you've described, by - -?---Yes.

- - filling in your idle moments by assisting where you could?---Yes.

Prior to the 26th of July, the day when the interviews of the three Mickelberg brothers took place at Belmont and headquarters, had you had any active role, in an investigative sense, in the investigation?---I think once I went out with - - I think it might have been Detective Round, just to speak to some guy who had an interest in the Jandakot Airport, which was of no significance.

Had you been generally following the progress of the investigation, prior to the 26th of July?---Oh, yes. I - - I read all the serials, which we call serials, which were allocated numbers. People would ring up and say this, this and this, and I would type them up and then give them to certain officers - - -

WITNESS: - - - to certain officers to go and investigate, and then I would read them, see if there was anything in it; you know, that sort of thing.

MR HASTINGS: Well, Mr Hancock was the leader of the team, was he?---Yes.

Did he have daily briefings or another process by which he would keep the team up to date - -?---Yes.

- - on what had happened?---Every morning.

Did you attend those, to keep yourself informed?---Most mornings, I did, if I wasn't tied up in the duty sergeant's office.

Insofar as you looked at the serials and allocated them to detectives to follow up and assess their value, did that involve you in reasonably close collaboration with Mr Hancock in the progress of the investigation?---Well, if there was something I thought was pertinent or important or needed looking into, I would discuss the matter with him.

Some charges were laid on the 15th of July, I think, were they not, in relation to the ancillary activities? But as at the 26th of July, no charges had been laid in relation to the fraud itself. Do you recall that?---No. I'm very sorry, sir, but - - I'm not trying to avoid any questions whatsoever. It's just that I've been a chronic alcoholic for quite some now and my mind's sort of - -

That's all right. I'm just trying to assist you by establishing the context of the 26th of July, because what I wanted to ask you was whether, on this day when the interviews were conducted, there had been some prior discussion with Mr Hancock as to the state of the investigation and what was to happen that day?---Do you know what the charges were?

I can assist you in a minute, but it probably doesn't matter greatly. The point I'm really taking you to is why the decision was made on the 26th of July to call the Mickelbergs in for an interview as a result of which charges were laid against them later that day?---That wasn't the main charges.

Well, I'm asking about the 26th of July when the interviews took place?---What, at Belmont?

Yes. What was it that caused Mr Hancock to have the Mickelbergs brought in that day for interviews, at the end of which they were charged?---I think he just thought "Well, the time's come." I think the fingerprint analysis had come back by then, the handwriting analysis, and he said "Well, we'd better do it."

MR HASTINGS: Before the interviews at Belmont, you'd been to Midland, I think, had you not, with Mr Hancock?---That's right. Yeah, we went to see an ex-soldier who wasn't there when we - - because he was living in a hotel, and he wasn't there when we got there. So on the way back Mr Hancock wanted to see a - - Bob Kucera over some gold which had been stolen from a plane or - - or the airport, or somewhere, and Bob Kucera had the inquiry.

Mr Kucera was working out of Belmont at that stage?---Yes.

Right. And at some point in that process, the message was sent to other officers to effectively round up the Mickelbergs, was it not?---No, before that.

Right. When did that happen on this day?---In the morning, before we left the office.

Heading for Midland?---Yes.

Right. And had the direction then been - if they were located - to bring the Mickelbergs to Belmont?---No, because we were on the third floor and that had general squad, which was the biggest squad, and we only had one - - -

WITNESS: - - - only had one small interview room there, and we couldn't interview them in the operations room because we had all, like, posters and, you know, like - -

MR HASTINGS: Charts and so forth?--- - - charts and all this sort of thing around, so it was just a place that - - and Bob Kucera said, "Well, I won't be here for the rest of the day. You can use our office if you like", and Don contacted someone and got papers brought over and got Peter brought in first.

Now, there's been a suggestion about that Mr Hancock and yourself may have chosen Belmont deliberately because it was out of the way and may have limited the ability of the Mickelbergs' lawyers to establish contact with them. Is there any substance in that?---No. It was a pure case of - - as I said there, the general squad who would deal with shoplifters and car thieves and minor sort of crime, and there was only one interview room for the whole floor.

And do you remember when it was in the journey to Midland and back to Belmont that news was received that officers had located Peter Mickelberg?---I think it was when we were at Belmont.

And were arrangements made then for Peter Mickelberg to be brought to Belmont?---Yes, yes.

And do you remember what happened once Peter Mickelberg arrived at Belmont?---Yes.

Perhaps can I just set the scene a bit. Were there other people present at Belmont Police Station when he arrived? ---I think Bob Kucera had left by then.

Was the station otherwise empty?---The CIB office was, yes, but the police station was manned.

Where was the police station in relation to the CIB office, or is the CIB office in the police station?---Probably from here to the other wall. There was, like, a lunch room in between.

And what happened when Peter Mickelberg arrived in the CIB office?---We strip searched him.

Where did you take him in the - - is it one office or - - ? ---No.

- - a series of offices?---He - - I don't know whether he was handcuffed when he was brought to the office. I can't recall. He was strip searched - -

By removing his clothing?---Yes.

MR HASTINGS: For how long was he - - ?---To see if there was any listening devices.

For how long were his clothes removed?---Not very long.

Did that involve removing all his clothing?---Yes.

Including his underwear?---Yes.

Right. Can you give an estimate of the time during which he was unclothed?---Maybe 10 minutes.

Right. Was it a matter of hours as has been suggested?
---No. No, no, no. No, not a matter of hours.

And was he then given his clothes back or allowed to - - ?
---Yeah, we found a note in his pocket about - - I think it was from Ron Cannon saying that if they should be apprehended to contact his solicitor, which we did not do.

Was that the document you refer to in your affidavit of the 5th of June this year which Mr Hancock called "Cannon's joke"?
---Yeah. That wasn't actually said; that's something which has come out of Peter's head, because Peter doesn't let the truth ruin a good story.

Well, it is in your affidavit?---Yeah.

In paragraph 10 where you said:

"I went through his clothes and found a letter written by his solicitor, Ron Cannon, which we just chucked aside because Don called it "Cannon's joke'."

WITNESS: No, that wasn't actually said.

MR HASTINGS: What was said when the letter was found?---Just stuffed it back in his pocket or something like that - - -

WITNESS: - - - or something like that.

MR HASTINGS: Did Peter Mickelberg say anything about it when you produced it?---Yeah. All Peter said during our whole interview was that he wanted to speak to his solicitor and he wanted to speak to his brother, Ray, and he would talk to us. And he made no admissions of guilt whatsoever.

Well, was there a discussion then about the letter from Mr Cannon?---No. No, that was just superfluous. That was - - no.

Once Peter Mickelberg had his clothes back on, what happened after that?---I hit him around the left side of his face a couple of times.

With what?---Like that.

With an open hand?---Yeah. And - -

With force or - - ?---And pushed his - - back in the chair.

You're indicating with your hand to his throat?---Yes. To - - to unnerve him.

Did you hit him hard?---Sorry?

Did you hit him to the face with force?---No. Not - - not to cause any damage. But he ended up on the floor, not through me but - - I don't want you to think that I'm putting the blame on Don because he's dead and he can't answer these questions, but when he was on the floor Don started to kick him, and I pulled Don off him, because I've never kicked a person in my life and I never would, and I thought that was, you know, like - - you know, going overboard.

And in what context did the blows that you applied to Peter take place? Had you been interviewing him for some time before that happened?---Oh, yes. A couple of minutes. And we knew we were getting nowhere with him. All he wanted to do is speak to his solicitor and speak to Ray.

And was that when you - - having - - after he said that, was that when you struck him in the face?---Yes.

And was there an interval of time before you held him by the throat in the manner that you've indicated, or did that all - - ?---I just pushed him in the throat.

And then did something else occur before he was on the floor with Don Hancock kicking him?---I don't know. I can't remember now how he ended up on the floor, but he ended up on the floor and he ended up getting kicked.

MR HASTINGS: And apart from the two actions that you've described that you did, did you do anything else to him?---No.

In your affidavit in paragraph 11 you said at different times, "I would grab him and push him back in his chair and into the wall." Did you do that?---I can't recall. I really can't recall. I find that now I've told so many bloody lies through this whole episode that I find it hard to work out fact from fiction.

And in the affidavit you speak of "Don". Perhaps I should quote it:

"Don then went up to Peter and gave him two or three quick punches in the solar plexus."

Did that happen?---Yeah.

It did?---Mm.

You haven't mentioned in the affidavit - - ?---He was also kicked as well.

You said in the affidavit:

"Throughout the time that he was there, about 4 hours, he" - that is Peter Mickelberg - "never really said anything other than he wanted to talk to his brother, Ray, and then he would talk to us."

First of all, was he there for about 4 hours altogether?---Yes. I would be at least, yeah.

And is it correct that he never really said anything more than that he wanted to talk to Ray?---He made no admissions of guilt whatsoever.

What happened for 4 hours?---We were just talking.

To each other or to him?---No. Well, talking to him, trying to basically - - well, I don't know whether the word is correct, but tried to con him into making a confession. We talked about people who would be looking for them if they knew that they had the gold - - -

WITNESS: - - - that they had the gold; you know, other criminals.

MR HASTINGS: Did you refer to the "toe-cutters"?---Yeah.

And throughout this, he remained firm, did he, by not making any admissions or concessions?---He made no admissions or confessions whatsoever.

Throughout this process, did you take any notes?---I started to scratch down some, but they were just - -

Just what?---Just nothing, because he was making no admissions whatsoever.

Insofar as you later concede - - well, you conceded that later, notes were fabricated?---Yes.

Did you start that process then, or was that entirely left until after?---That was after the Yellow Rose of Texas.

How much writing did you do at the time, when you were speaking to Peter Mickelberg that day?---Not much.

A few lines or - -?---Yeah.

- - a few pages or - -?---Maybe a page, but it was just nothing. There was no admissions. He never made any denials. He never made any admissions. He just said he wanted to speak to Ray or his solicitor.

And did you ever read those notes back to him?---No.

Finally, was a decision made that enough was enough and the process was terminated?---We were getting nowhere. So - -

Were arrangements then made to take him to headquarters?---Yeah.

By then, I think Raymond Mickelberg had been located too, had he not?---Yeah.

He'd been brought to Belmont, had he?---Yeah.

Did you then go through a process of interview with him?---Yes.

And what happened during that activity?---He made no admissions whatsoever. In fact, we spoke about general subjects a lot of the time, but he made no admissions whatsoever.

Did you make any notes during the time that you were talking to him?---No.

MR HASTINGS: Did you use any force - -?---No.

- - on Raymond - -?---No.

- - Mickelberg?---No.

Did Don Hancock use any force?---No. No.

How long did you speak to him for?---Maybe a couple of hours.
It's a long time ago now and - - maybe a couple of hours.

And at the end of that, he'd made no admissions at all?---No
admissions whatsoever.

And I think you went back to the CIB offices to speak to Brian
Mickelberg, did you not?---Yes.

Did you conduct an interview with him?---Yes.

That is, you and Mr Hancock?---Yes.

What happened during the interview with him?---He made no
admissions either.

Did you use any force?---No.

Did you take any notes?---No.

At the end of that process, the Mickelbergs were charged, were
they not?---Yes.

Did you have a discussion with Mr Hancock about the charging
of them?---Yes.

You refer in your affidavit of the 5th of June this year to
the fact - - in paragraph 7 you said:

"However, at the time when they were charged with the
offences on 26 July 1982, I said to Don Hancock that I
didn't believe we had enough evidence and he said to
me, 'Don't worry, it will get better'."

Was that said?---Yeah.

Did you - - did he explain to you why they were being charged
then, without there being a particularly strong case?---Don's
a pretty strong man, and he's the type of guy what will say
something and he will do it, and he said, "The brief will get
better." In other words, more evidence will come forward, you
know, which will prove their guilt.

It would seem unusual to charge persons with what was quite a
notorious matter by then, without a great deal of evidence.

Do you know why Hancock decided at that point that they should be charged---He just made up his mind and from that day forward every day I thought about it and I worried about it, to the stage where I just completely lost everything. I lost my family. I lost my wife. I lost my house. I lost my business. I left the CIB because I couldn't face my fellow officers any more.

MR HASTINGS: Well, let's not move ahead too quickly. I'm only at the 26th of July, which is the day when the charges were laid, and I'll come to those other matters in due course. When Mr Hancock said "Don't worry. It will get better" and you thought he was referring to more evidence - -?---Yeah.

- - coming, did you understand then that that would be because of fabricating evidence or did you - -?---No, no.

- - expect then there'd be legitimate evidence?---That legitimate evidence would be - - would come forward, because someone rang us up one day and said "You've got the Mickelbergs. Go and find Brian Posey" because he was involved.

Right?---And his house was raided and we found photographs of the Yellow Rose of Texas, which is about the only thing significant which did really get better.

Right. Well, that was on the 2nd of September 1982, some 2½ months after the charging - -?---Yes.

- - of the Mickelbergs. By that stage, was there some concern then that further evidence had not been obtained to bolster the case?---(No audible response)

You're shaking your head. You'll have to say something to be recorded?---Yes, because the night they were charged the team went down to the canteen and had a few drinks and I just sat in the operations room looking at Don Hancock, thinking "What the hell have we done?" Because there's no way in the world, if we would have given true evidence, that they would have been convicted. I don't believe so.

Had you had further conversations with Mr Hancock after that about your concerns about the inadequacy of the brief?---Yeah.

Leading up to the 2nd of September when the Yellow Rose of Texas photographs were discovered, had you had any plan that you'd formed with him as to how the brief was to be improved?---No, not really. No. I think it was afterwards that we had certain evidence from the Yellow Rose of Texas which implicate them in the Mint business. So we incorporated evidence we got from the Yellow Rose of Texas into the Mint business.

MR HASTINGS: Yes. And can you just take us through the conversations that you had with Mr Hancock following the discovery of the photographs of the Yellow Rose of Texas being manufactured, which led to the fabrication of the admissions by the Mickelbergs?---Well, Don wrote out the evidence.

Before you started that process, did you have a discussion with him that that would be done, and why it would be done, and how it would be done?---He just expected me to do it.

The photographs of the Yellow Rose of Texas were found - -?---Yeah.

- - as you've said in your affidavit, which seemed to be the trigger for fabricating the admissions. Did you have a discussion with Mr Hancock at that time, which formed the plan to go ahead with the fabrication?---No. He just expected me to do it.

Where did the fabrication take place?---In the operations room. We were the only two people involved in it. Everybody else was kept out of it, for obvious reasons - - -

WITNESS: - - - for obvious reasons. The other officers involved - their evidence was only simplistic. It was of no real significance. We were the only persons guilty of misconduct.

MR HASTINGS: I follow that but how did it happen? How did it - - how on this day when - - ?---Well, Don wrote out the evidence, he had it typed up, like, you know, a hand-up brief.

A statement?---Yeah.

Right?---And just said, "Tony", you know, "make some notes."

I see. Had you been with Mr Hancock when he prepared his statement with the false account in it?---I was in the duty sergeant's office at the time and he was the only one in the operations room because it had basically finished so it was only him and I who were left to sort out the evidence.

Were you with him when he typed out the statement with the false - - ?---No, he didn't type it. He wrote it and had it typed up.

I see. Were you with him when he wrote it out?---No.

So at some point or other he handed to you, did he, the handwritten or the typed version of the statement?---No, the typed version and told me to make, you know, like, notes.

Right?---You know, like, what could I say, abbreviated.

As if they were - - ?---As though I was talking to you and just abbreviating what you were saying but the main context of the story.

As if they were original notes taken at the time of the interview?---Yes, yes.

Before he gave you the statement so that you could write out these notes did you know that he had sat down and fabricated - - ?---Of course I did.

Had he talked to you about what would go in the false version?---I at that time had a lot of respect for Don Hancock, misguided it might have been, but we became in a position that it was the only way out.

And did he tell you that he would sit down and make up some notes to pad out the brief or make a statement to fill in the brief?---He said he would do the - - he'd do the notes. Well, do the evidence.

MR HASTINGS: "Verbal" is a vernacular term to describe invented admissions. Did he say something like, "We'll do a verbal on them" or how did he express the intention to sit down and invent some evidence?---That he would just do the evidence, he'd write it out.

Right. What was your reaction when he handed to you the statement which contained the false evidence which you were meant to substantiate by producing some notes?---I wasn't happy about it at all but I'd got myself in a position where I was either going to put both of us in gaol or try to get away with it.

You were aware of the implications of what you were doing, were you?---Of course I was, yes.

It was a criminal offence, for a start?---Yes, a very serious criminal offence.

Yes. Was it the first time you had been asked to do something like that?---No. I've never had one complaint made against me in 20 years of my career apart from the Mickelbergs.

My question was whether it was the first time you had been asked to falsify evidence like that?---No.

It was not?---No.

Had you done it before?---No. I didn't have to because normally we would have property - - I was never in such a serious inquiry. You know, I - - you know, we got the odd TV and stereo and, you know, that sort of thing, but never - - -

WITNESS: - - - sort of thing, but never to that extent.

MR HASTINGS: The statement of Mr Hancock is a quite voluminous document, of many pages. I think 56 in total. The interviews with the Mickelbergs on the 26th of July go from about page 19, and for many pages thereafter. Your task of producing the notes to accompany the statement must have taken some time, did it?---Oh, not really. Probably only - - less than 2 hours.

And it was your job, was it, simply to sit down there with the statement on one side and your blank paper on the other and write out what was intended to appear as - -?---Yeah, as - -

- - original notes?---Appear as a short copy of notes.

We have on our system a copy of the notes for Peter Mickelberg. They're barcoded D1003791. They're not particularly legible, but I'll ask - -?---Thank you very much.

You might just have a look at them, for the purposes of explaining how the process unfolded. While it's coming, was Mr Hancock with you, or did he simply leave you to your own devices, to come up with some notes?---He wandered in and out of the room, on occasions.

Do you have on your screen - - it's probably coming now. It's not very legible, but can you see your handwriting on - -?---Yes. That's my handwriting.

- - these notes? My copy's not very legible either, but it is clear enough to indicate that this is - - it's headed, "26.7.82, interview between D.S. Hancock and Peter Mickelberg at Belmont CIB office." Then it purports to be in an "I said, he said" format from then on. This is one of the sets of notes, is it, that you produced in the process that you've described?---Yes. Yes.

Thank you. The same process applied for each of the Mickelberg brothers, did it not?---Yes. Complete fabrication.

You've said that this was not something which was broadcast amongst the team?---No.

However, would not other members of the team have become surprised at the sudden emergence in the brief of admissions by the Mickelbergs some months after their arrest?---Well, obviously some people would have thought that it was quite rare for an ex-SAS soldier to come into an office and just give in. And I was very, very surprised that we got away with it.

MR HASTINGS: My point, however, was that this had been a team investigation - - ?---Yes.

- - and no doubt in accordance with the briefings that Mr Hancock was giving, the members of the team were acquainted with the progress of the investigation - - ?---Yes.

- - and the gathering of the evidence. Wouldn't it have come as a surprise to them to find out some months after the arrest of the Mickelbergs that in fact they'd made admissions on the 26th of July?---Well, no, because they had - - -

WITNESS: - - - because they had the utmost trust in Mr Hancock and they were just happy that the crime had been solved, and they went down to the bar at Police Headquarters soon as we locked them up and Don Hancock and I just sat there for about 10 minutes and just looked at each other and thought "What the hell have we done?" I just couldn't believe it, and from that day on there was one not - - for 20 years I felt like I was being screwed in the stomach because I worried about it every day.

MR HASTINGS: Had any other members of the team shared your concerns about the inadequacy of the evidence after the arrest on the 26th of July?---No, they wouldn't. No. It's a case of - - that they would not approach us on things like that. They - - they wouldn't - what could I say? - test our integrity. So they would not come and say "Hey, you've done this. You've done that." No. They said "That's your business. You've charged them." They never charged them. We did.

But there were some quite astute investigators involved, along with yourself and Hancock, were there not - Messrs Tovey - -?--Yes.

- - Gillespie, Round and so forth - -?---Yes.

- - who are experienced detectives?---But they're people of integrity and wouldn't have been involved in anything like this whatsoever.

But my point is: would they not have also shared your concern that the brief was a bit light?---I - - I couldn't speak for them, but they could have. They may not have. They may have just thought "Well, okay. They've done their job and they've charged them" but I know that the other members of the team did not know what had happened. Not once did we have a conversation with anyone about what had happened.

Nobody came up and said "This is the first time we heard of admissions" or raised some query about the sudden emergence of admissions by the Mickelbergs on the 26th of July, some months later?---Whether it was a case of not wanting to know or getting involved, I don't know, but they certainly didn't know. They were never informed. In fact, after they were charged, we broke up pretty quickly.

The team, do you mean?---Yeah.

Right. I suppose an alternative suggestion might be that they were so accustomed to fabrication of admissions that it didn't strike them as unusual?---Well, I couldn't go along with that because I have always worked in a suburban environment where we were dealing with, say, the odd break and entering, car

thefts, stuff like that, where it was never the case. You know, you - - you had them. You know, like - - and it wasn't - - and that's what upset me from when they were locked up for 20 years. I left the Police Force because I couldn't look my fellow officers in the face any more. I started my own business. I lost all my self-esteem. I couldn't work. I became a chronic alcoholic. My wife left me. I went into a mental institution on two occasions this year. I'd just had enough and I had to - - I had to make - - try to make some good out of the bad I'd done - - -

WITNESS: - - - bad I'd done; and Don Hancock wasn't alive any more so I couldn't jeopardise his life. I'm the only person who can be hurt now.

MR HASTINGS: Can I just ask you one final question about the form of the fabricated admissions? In a way they're quite clever because they're not a straight out bald admission of criminal conduct but often are an admission by either silence or a reference to not - - wishing to help but not saying anything until Ray gave permission. Did you have a discussion with Hancock about the form in which he fabricated those forms of admission?---He did mention to me before that, "We've got to put a certain amount of truth into it." Like, he just didn't come out and say, "Yeah, look, yeah, we can't - - 'the car is there but you'll never find it'" and all this sort of thing, and that was after the car was found anyway.

Well, you gave that example in your affidavit of how some of the matters in the fabrications were based on subsequently ascertained facts?---After the Yellow Rose of Texas and after the car was found.

The car was located on the 16th of - - or 12th of August, I think it was. Well after the 26th of July. Had you been aware of Mr Hancock fabricating admissions before this? ---No, because the only time I worked with him before was on a murder inquiry in Kwinana when I was stationed at Rockingham and although we thought we knew who the murderer was he was never charged so there was no, you know, fabrication or anything like that and that's the only other case I was involved with him.

You, I think, then prepared a short statement, did you not, to go with Mr Hancock's lengthy statement in which you adopted his depositions from pages 19 to 55? Do you remember that? I can probably refresh your memory by taking you to a document which is barcoded D1003786. Could that be brought up, please? ---But whatever I've said in there about Mr Hancock's statement is untrue anyway.

Yes. 3786. Yes, I'm just reminding you that you made a short statement to accompany Mr Hancock's which in effect adopted his?---I did say to Mr McCusker and Mr Cocks that if I was allowed to leave the country I would come back on their request and give evidence to the best of my ability and that's what I've done and that's what I will do.

Good. Thank you. Can you see on the screen in front of you the document which I suggest is the short statement that you made to accompany the long statement of Mr Hancock - - ? ---Yes.

- - which set out the admissions?---Yes.

MR HASTINGS: Thank you?---That's my signature.

Thank you. Then, of course, you had to give evidence at the trial and you gave evidence in accordance with the false statement of Mr Hancock and the false notes that you had made yourself?---Yes.

And from time to time when giving your evidence at the trial you were granted leave to refresh your memory and you in effect read from your notes when you were giving your evidence in front of the jury?---Yes.

Of course, your evidence was false, was it not?---Yes.

Had you had a discussion with Mr Hancock before the trial about how you would adhere to the false account which had been prepared in his statement and your notes?---Well, basically, I was told to go home for about four days and just go through every page of evidence I ever gave to get it through my head

- - -

WITNESS: - - - to get it through my head so that it would be the same as I'd given before.

MR HASTINGS: Well, I was just asking you about the first time, really, the trial in 1983; before you gave evidence in the trial before the jury, did you have any discussion with Mr Hancock about how you'd adhere to the false version?---Just get it through your head.

Those were the days when you had to learn your statement - -?-
--Exactly.

- - did you not, and endeavour to get it from memory?---You'd go through - - it was like poetry. You would get it through your head and after a while, the - - you didn't know fact from fiction because you'd read, you know, your purported evidence and it got to the stage where you believed it yourself. And that's what I think how we got away with it, with the judges and the jury and things like that, that we were so schooled in what we were doing that people did believe us.

And in 1986, Raymond and Peter Mickelberg appealed. Do you remember that?---Oh, I've had so many appeals and I'm no good on dates, but - -

Well, you can take it from me that happened?---Yes.

And by then, there had been a suggestion that you had been indiscreet and had mentioned to somebody else that there had been a fabrication taken place in relation to the evidence?---No, that - - that is wrong. I will deny that.

A Mr Walsh?---No. He is a - - anti-police. He was a policeman kicked out of the Melbourne Police Force for corruption, and he tried to set me up, and also Mr Ron Cannon. You filed an affidavit responding to his assertions. Do you remember that?---Yeah.

In the course of that affidavit - - well, perhaps I'll show you the first page. That's barcoded D1003790?---There's a lot of people who tried to jump on the bandwagon, who were sort of arch-enemies, to try to create some, you know, problems over the whole thing, but if I was going to talk to anybody, it would have been my mother and she - -

Did you ever tell your mother what had happened, until recently?---No. I haven't even told her. I said that I did make some mistakes over the Mickelbergs and I'm going to make it right, so she doesn't know.

You see that document in front of you now?---Yes.

MR HASTINGS: That seems to be an affidavit that you swore on the 21st of August 1987, in the context of the then appeal by Raymond and Peter. If I can just go through to the fourth page? You'll see just at the last few lines of the affidavit, you maintain the lie, so to speak, by saying, in the last three lines:

"Allegations that the Mickelbergs were convicted for crimes they did not commit, or on the basis of fabricated evidence, are untrue."

That, of course, to the extent that you denied fabricated evidence was a false affidavit, was it not?---Yes.

You then gave evidence in the appeal in 1987, do you remember, in relation to the Walsh incident, and generally you were cross-examined about fabrication. Mr Sewell in particular was asking you questions on that occasion. Do you recall that? Mr McKechnie was for the Crown and - - -

MR HASTINGS: - - - was for the Crown and Mr Searle - - ?---
I'm sorry, sir, but I've gone through so many appeals and
hearings that I wouldn't know which one was which.

In any event, you maintained the false account, did you not,
in the first - - ?---Yes, I did. On all accounts I told total
untruths.

Then you might remember there was another appeal in 1998 by
which time the reports of Mr Radley and Dr Baxendale had
emerged in relation to aspects of the compilation of the
notes?---Yes.

Did you have a discussion with Mr Hancock after their reports
emerged casting some doubt on the veracity of your notes?
You're nodding. I take it you agree?---Oh, sorry. Yes, I
did.

What did you and Mr Hancock discuss about that?---How we were
going to get over it.

What was said?---That I was just going to say, "Well, I don't
know. I was moving papers around and writing on top of this
and writing on top of that and anything could have happened.
And I could have written on things afterwards." And it was
left fairly - what could I say - flimsy, you know; like, no
one could really put a finger on anything.

Did Mr Hancock make any suggestions about what explanation you
should give about the reports of Hadley[?] and Baxendale?---No,
not really. I just said, "Well, I was the one who stuffed up,
and I'll just say that I was writing here, writing there,
changing papers around and I could have written something
afterwards of what come through." And just ambiguous.

You then put on an affidavit, did you not, responding to the
Radley and Baxendale reports? Do you remember that? Perhaps
I can remind you if I show you a document which is barcoded
D1003793. You'll see that's the front page indicating you
swore an affidavit the 23rd of January 1998.

If we can have the next page, please?

(TO WITNESS): You'll see the heading, Radley and Baxendale,
and in paragraph 4 in particular you refer to writing on loose
sheets of paper?---Yeah.

And then I'll just take you to paragraph 8 at the bottom of
the page:

"Once Hancock had finished asking questions I read
through the notes I'd made and had difficulty in
deciphering some of the words written in the first few
pages."

Then if we can go over, please?
(TO WITNESS): Nine:

"I'm unable now to recall exactly which pages of the notes contained words that were difficult to read other than that they were within the first few pages."

Ten:

"On reading the notes it was apparent that it would have been difficult for anyone, including myself, at some time later to understand some of what I'd written in the first few pages."

And 11:

"In the presence of Hancock and appellant, Peter Mickelberg, I rewrote the parts of the notes which I had difficulty in reading."

Those paragraphs and others dealing with the topic were false, were they not?---Yes.

MR HASTINGS: And then you might remember you gave evidence in the appeal in 1998 about which you were cross-examined in some length about your notes and other aspects of the investigation, and you continued to assert that the notes were genuine and the admissions were genuine?---All the evidence I gave was lies.

The lies were repeated in other aspects as well, were they not? In particular, for example, in the defamation proceedings that you commenced against Mr Lovell in which you filed an affidavit in response to matters which he'd raised in his book. And again, in that affidavit you asserted that the admissions were genuine and the notes were authentic, and that was incorrect?---Yes.

Can I just take you then to the roles of some of the others who were involved on the 26th of July 1982 at Belmont and later in the CIB? You've indicated with Peter Mickelberg you made a few notes but realised the futility of the exercise because he was not making any admissions?---Exactly.

And you didn't read them back to him - - -

MR HASTINGS: - - - back to him. I think you've said with Raymond, you didn't bother taking any notes at all?---I can't recall taking any.

I just would like to ask you how what you say now was the truth of what happened on that day fits in with, for example, the evidence given by Mr Kucera about what happened on the 26th of July. You mentioned him earlier as being the person at Belmont who Mr Hancock wanted to talk to about the other gold theft?---Yes.

And later of course, Peter Mickelberg turned up and you dealt with him as you've described. Was Mr Kucera there throughout that process?---No.

He did come back at some point, did he, or - -?---Yeah, only for a matter of moments.

I think you suggested at some point he came and asked whether somebody wanted something to eat?---Yeah, and he did buy us some hamburgers.

From Hungry Jack's across the road or somewhere?---That's it.

And came back with the food?---Yes.

Was that the only occasions upon which he was present when you were speaking to either Peter or Raymond Mickelberg?---Yeah, and I also was - - I believe Mr Kucera - - I've never worked with him ever, but he's always enjoyed a - - a good character in the Police Force, and I believe him to be a man of integrity and I've never ever ever worked with him in my life, and when he did come in I was reading something. Whether it was Peter's notes - - because Peter had notes of armoured car visits and how many guys were there and what time they turned up and things like this. I didn't take a statement off Mr Kucera. Whether Don did, or Don rang him and said "Oh, was Lewie writing - - reading something when you walked in?" And if he was, he was conned.

He was - - I'm sorry?---If he said "Yes", but he wouldn't have had a clue because he was only there for a matter of moments. He didn't come in and like, sit down or listen or do whatever.

What was happening when he came in the first time?---We were just setting up the table and I was going through some notes which Peter had. He had notes on armoured cars and all sorts of interesting things.

Do you recall at what time of the day it was that Mr Kucera came in?---No. I'm sorry, sir.

MR HASTINGS: This is the occasion when he asked whether somebody - - anybody wanted anything to eat?---Yeah. He just came in and - - initially when we were there, he says "Oh, well, you know, you can use my office because I've got no other guys working today." And - - you know? And as I said, it was a place of convenience. It wasn't a place of trying to hide someone, because you know, that would come out later with Ron Cannon and Brian Singleton and - -

I'm just asking about the time; if you can remember approximately what time it was that Mr Kucera came in and asked whether you wanted something to eat? He says about 3.00 or 3.30. Would that seem to be correct?---Sir, I wouldn't know. I - - whether it was lunchtime or 3.30, I couldn't say.

In any event, he came back, did he, with some hamburgers?---Yeah. He just dropped them off and went.

After the 1998 appeal had been lodged and the evidence emerged from Messrs Radley and Baxendale, Mr Kucera put on an affidavit which was filed in the appeal in 1998. Do you remember that?---No, I don't, sir.

It was prepared by the Director of Public Prosecutions - - -

MR HASTINGS: - - - Director of Public Prosecutions and in the affidavit Mr Kucera said that he had been at Belmont and spoken to Detective Sergeant Hancock, following which Detective Tovey turned up with the appellant, who was Peter Mickelberg, and then he left the Belmont CIB office and returned at about 3.00 to 3.30 pm. He then says this:

"When I returned Detective Sergeant Hancock was talking to the appellant in my office and Sergeant Lewandowski was writing what appeared to be notes of the conversation."

Could that be correct?---I was either reading some stuff Peter had or I could have been writing something down. Look, I - - it's so long ago and, as I said before, I've got facts and fiction completely integrated.

I think the evidence generally is that Peter Mickelberg came to Belmont around or at least before midday. Do you remember that?---Yeah, I'd say it would have been before lunch-time.

And insofar as you said that you made some attempt to write down what was being said, was that at the beginning - - ?
---Yeah.

- - before you realised that it was a waste of time?---Yeah.

So that by the time 3.00 or 3.30 came around any attempt to write down what Peter Mickelberg was saying was something you had abandoned, I'd assume?---I could've been doing anything at that time. Like - -

But certainly not writing down what Peter Mickelberg was saying?---No. Definitely not.

Mr Kucera's affidavit goes on in paragraph 13 saying:

"I then asked Detective Sergeant Hancock if he wanted anything to eat and he asked me to get something for all three of them. I left and I returned at about twenty to thirty minutes later with some hamburgers."

That bit seems to be correct, does it not?---Yeah, he came back with some hamburgers.

He then says:

"I left the hamburgers with them. Detective Sergeant Lewandowski was then reading from some handwritten notes to the appellant. I then made them some coffee and took it back to them and then I left. When I left Detective Lewandowski was still reading out aloud."

MR HASTINGS: Can that be correct in view of what you've said today about what happened?---I can't remember the coffee, it's such a long time ago, but I know Bob Kucera was only in the office for seconds. He wasn't there hanging around listening to what was going on and - -

But according to what you've said today you never read from handwritten notes to Peter Mickelberg?---I did read notes which were from Peter.

But not handwritten notes?---Yeah, written by him.

I see. Right?---He had notes about armoured cars and where they stopped and who was in it and where they went to and - - but Bob Kucera was a complete innocent party in this business. The only person alive at the moment who's got anything to worry about is me.

All right, although when Mr Kucera was cross-examined by Mr McCusker during the appeal he seemed to retreat a bit and said this:

"Can I just say I can recollect that Lewandowski appeared to be reading something, something to the accused - - to the appellant, Peter Mickelberg."

He was then asked:

"And that is all you can really say. Whether it was notes of the interview or something else you just don't know."

He said:

"I can't say that. No."

What do you say about that?---I did have papers from Peter which were to do with armoured cars and the Yellow Rose of - - well, we didn't know at that time. To sell something in America and I was reading things to him and Kucera was only in there for moments and he enjoys a very good reputation in the WA Police Force - - -

WITNESS: - - - WA Police Force and he's a man of integrity, and he certainly wouldn't get involved in this crap. For what?

MR HASTINGS: Do you recall whether Mr Hancock spoke to Mr Kucera before the 1998 appeal, to ask him to back up your account of taking notes?---No, I wouldn't know. I didn't take a statement off Mr Kucera or speak to him. I think I might have had a coffee with him when we first went in there to speak about the gold from the plane, and that was about it. I've never had anything to do with Mr Kucera. But he certainly wasn't a party to this conspiracy.

Can I ask you, then, about Detective Sergeant Round?---Yes.

He was a member of the team, was he not?---Yes.

He gave some evidence at the trial in 1983, that he had spoken to Peter Mickelberg later, after your conversations with Peter Mickelberg at Belmont, and according to his evidence, he said to Peter Mickelberg, later on the 26th of July 1982:

"Yes, I said to the accused, 'What have you told Sergeant Hancock?' He said, 'I haven't told him where the gold is, but I have certainly told him a lot more than I intended to.'"

And he says:

"Peter won't be happy about that."

But in fact he later corrects himself and says:

"Raymond won't be happy about that."

He goes on in his evidence to the effect:

"I said, 'Why don't you tell us where the gold is, Peter, and help us clear this up?' And he said, 'Look, I can't. I have to talk to Ray. If Ray says it's all right, I'll tell you. You know what it's like, being brothers and that, I can't say anything.' I said, 'Did you tell them where the car is?' He said, 'Not exactly. I told them it had been burned and dumped, but I didn't tell them where.' I said, 'Where is it?' He said, 'I can't say anything. I can't tell you.'"

Now, in the light of what you've said about what happened during the interview with Peter Mickelberg at Belmont during which Peter Mickelberg made no admissions at all, it would seem to be incorrect for Peter Mickelberg later to be saying:

"I have certainly told him a lot more than I intended to."

Would you agree with that?---Yes.

MR HASTINGS: Similarly, insofar as Detective Sergeant Round, as he then was, attributed to Peter, the statement:

"Not exactly. I told them it had been burned and dumped, but I didn't tell them where."

Again, because of your evidence that he made no admissions at all, that statement would also seem to be incorrect, would it not?---Yes.

Do you know why - - well, on the face of it, it would seem that Detective Sergeant Round has backed up the fabrication to complement the Hancock version. Do you know whether he did that deliberately?---I never spoke to Sergeant Round about it at all.

Did Mr Hancock say that he'd better go and talk to a couple of the other boys to make sure they back him up, or tell similar stories?---No?

But, certainly, that - -?---It was kept very, very quiet.

The version which Detective Sergeant Round attributed to Peter Mickelberg must be wrong, must it not, in view of what you've said today about Peter making no admissions?---Yes.

Detective Sergeant Tovey, as he then was, has also been criticised for his role in the investigation. Do you have any knowledge of him giving any false evidence, or fabricating evidence?---No, sir.

And may we take it from what you've said, that in relation to any other officer involved, you have no knowledge of them participating in any fabrication?---It was kept very, very quiet between Hancock and myself - - -

WITNESS: - - - between Hancock and myself.

MR HASTINGS: I suppose the other person who might come under question is Detective Gillespie, because he gave the same evidence as Detective Sergeant Round?---John Gillespie would be one of the straightest guys you'd ever meet in your life.

But it follows, I suppose, that if Detective Sergeant Round's evidence is incorrect and Detective Sergeant Gillespie, or Detective Gillespie gave the same evidence, he must be similarly tainted, would you agree?---But I'm the leading party in all this. The remaining party - - I think if anybody should go down over this it should be me.

I'm not asking you for your assessment. I'm only just trying to obtain your assessment in relation, or assistance in relation to the facts. And I suppose generally it comes down to the question of whether you have any knowledge of Mr Hancock recruiting others to support the fabricated version?-- -I - - I don't know. I really mean that. I had conversations with Mr Hancock and - - but never in respect to other members.

I'll just go back a bit to the Yellow Rose of Texas, which became the subject of charges as well. You prepared or you referred in your affidavit to Mr Hancock's statement about that matter. Was the evidence which was obtained and led in respect to the charges over the Yellow Rose of Texas legitimate, or was that similarly - - ?---No.

- - fabricated?---We had photographs, we had start to go from the map to the wax to the moulds to the - - with Ray, Peter, Brian, every - - you know, like, it was a case where we didn't really have to speak to them. And Pozzi. Because someone rang the office one day. They said, "You've got the Mickelbergs for the Mint swindle, and also Brian Pozzi was involved as well. You want to go and check him out." And we found the photographs at his house. And it was a case of - - with mum getting off the plane with a big nugget in her arms saying, "Oh, I've found this nugget. My husband's looking for another one now." There was just no way could they plead not guilty to that. So they had to cop it sweet.

Had you received the Pozzi information before you went out to interview them on the 26th of July, or did that come up later?---Oh, no. This is after they were charged.

Right?---Probably about a month after they were charged.

I might just get you to look at the annexure to your affidavit, which is barcoded D1003605. You remember that annexed to your affidavit of the 5th of June was the statement of Mr Hancock about the Yellow Rose of Texas charge. In that

statement part of it refers to a conversation which took place on the 26th of July, the day of the interviews about the Mint fraud. I think we can go over about six pages, I believe. This is part of the annexure to your affidavit of this year, and you'll see that Mr Hancock refers to a conversation which took place in your presence with Peter Mickelberg at Belmont CIB office on the 26th - - ?---Yeah.

MR HASTINGS: - - of July 1982?---Yeah.

Which, in a sense, contains - - -

MR HASTINGS: - - - a sense, contains a form of admission. Is that part of the statement true or similarly, fabricated?--- There's a bit of truth in that because we did have a note from Peter in his property about selling something in America, but we didn't know what it was at the time. So there is a bit of truth in that.

Is there? Well, the conversation is imprecise in the sense that the statement attributed to Mr Mickelberg simply is "We were thinking of selling something in Texas"?---Mm.

Do you think that might have been actually said, or something similar?---Yeah, something similar, because we had notes of Texas and this, that and the other, and we didn't know what it was all about at the time, until we found the Yellow Rose of Texas.

And in the notes - - or the statement, rather, Mr Hancock says:

"I said `Selling what?' He said `Oh, it's not important. It's got nothing to do with this.'"

Is that true or not true?---That would be very close to the truth - that we did have notes at the time where it implicated them in trying to sell something in America, but we didn't know what it was.

Right?---Until we found the Yellow Rose of Texas.

Thank you. Are you comfortable continuing for another quarter of an hour or so?---Yeah.

By which time I should be able to finish. Can I move on now to the events which led up to you swearing an affidavit this year on the 5th of June 2002, and in particular ask you about your dealings with Mr Lovell? I go back to the affidavit I referred you to earlier. You had commenced defamation proceedings against Mr Lovell in 1985 over the publication of his book, had you not?---Yes.

And needless to say, that had put you at odds with each other?---Yes.

And that was the position which then continued at least through until the late 90s, did it not - -?---Yes.

- - where you were on opposing sides?---Mm.

Because apart from the defamation action, there were other actions swirling around, were there not, in which you or he were parties on opposite sides?---Yeah. We were adversaries.

MR HASTINGS: Yes. Then indeed, I think in 1996 there was a private prosecution of you, instituted more or less at Mr Lovell's behest, was it not?---(No audible response).

Again, you'll have to say something, because we can't record your nod. You're agreeing?---Yes, there was.

Then in 1996 these matters were settled, were they not?---Yes.

How did that happen?---Avon Lovell did a deal with the union.

Were you consulted about that?---It was just one of these union situations where they take it up on your behalf and well, you know, just run for it.

Had your defamation action been financially assisted by the union?---Yes.

And had you been financially assisted in relation to other actions in which you were a party and defending?---On all actions, they were paid for by the union.

All right. I think the appointment or election of Mick or Mike Dean as president of the union had something to do with these matters finally being resolved in 1996, did it not?---Yep.

And had you consulted with him about the need to bring these matters to finality?---No, that was his decision, and it was a case of so much money was being expended through legal costs and one thing and another, that no one was getting anywhere and the matter had to be resolved the best way possible.

The matter was resolved with an agreement to pay Mr Lovell some (... suppressed ...)-odd, was it not?---I don't know what the cost was.

But you knew that a substantial sum of money was to be paid to Mr Lovell?---Yes.

To bring the matters to an end?---Yes.

As a result of the agreement to make that payment, the consideration was that all actions would be dropped - - -

MR HASTINGS: - - - would be dropped. Was that how it went?
---Yes.

And that included your action as a plaintiff in the defamation proceedings against Mr Lovell?---Yes.

And similarly the private prosecution of you which had been instigated at Mr Lovell's behest. Correct?---(No audible response).

Again I'll have to ask you to say "Yes" or "No"?---Oh, sorry.
Yes.

The schedule to the deed of settlement, a large number of actions - some 22 in all, which includes appeals - which are to be discontinued as a result of the agreement - - were you ever shown the agreement?---No, I had nothing to do - - I never even went into the office and discussed it.

Were you consulted about whether you wanted to drop the defamation action?---(No audible response).

Did you want to drop the defamation action?---I just went along with whatever the solicitor said.

Did you have a solicitor who was representing you in the course of these negotiations?---Yeah, it was the - - I forget who it was now.

Mr Quigley, was it?---No, not - -

Was it Mr Quigley?--- - - Quigley. No, it wasn't. It's - - I can't remember who it was now, but I was in a situation that I didn't really want to know anything about anything. I'd just had enough.

The schedule to which I have referred which lists the proceedings which are to be discontinued does not seem to include the private prosecution of you - I was leading to asking you whether there was some separate arrangement about the prosecution or whether that was later included or by what process the prosecution was finally terminated?---I'm sorry, sir, but I don't know - - there was so much paper work flying around at the time that I didn't know what the hell was going on.

In any event, notwithstanding the settlement of all of these matters, it did not exactly bring you and Mr Lovell any closer, did it?---No.

Because that was in 1996 - - ?---Yes.

- - and in 1998 the next appeal was mounted - - ?---Yeah.

MR HASTINGS: - - based on the Radley and Baxendale reports in part?---Mm.

And did you understand Mr Lovell had been one of the instigators which led to their reports being critical of your notes?---Yes.

So the adversarial position between you and Mr Lovell was still current in 1998 notwithstanding the 1996 settlement. Do you agree?---Yes.

Then the appeal, of course, was dismissed in 1999 and at that stage again were you and Mr Lovell still miles apart?---Yes.

Because the appeal had included not only the Radley and Baxendale material but various affidavits of deponents who said that you had talked about stitching up the Mickelbergs and so forth?---Yes.

Had you identified Mr Lovell's hand in the collection of that material?---Yes.

Had you ever had any conversations with Mr Lovell up to that point - that is, at about the end of the 1999 appeal?---No. Never.

Never spoken to him?---I think I had called him a something when he walked through to the court one day but I don't think I should repeat it in court.

Well, the next thing that seems to happen is that on the 5th of June this year you swear an affidavit in which you make admissions about the fabrication of the evidence?---Yes.

And did you do that in consultation with Mr Lovell?---Yes.

What was the process by which you and Mr Lovell came to collaborate on the affidavit?---Mick Buckley, who is a private investigator who I know, spoke to me on a number of occasions and said, "Avon - he's not a bad guy. He would just like to have a talk to you", you know, like, just talk. Not about - - "You know, he won't get into the Mickelbergs or" - - so I had about three meetings with him where we had coffee and I found him - - by that time I'd gone into a mental institution on two occasions, I had two breakdowns, and Don was dead and I thought the only person what could be hurt now is me and I just wanted to clear the whole mess up. So I had three meetings and I quite liked the guy. I thought he was a man of integrity - - -

WITNESS: - - - a man of integrity, that he would be the best person to support me through this. So then we talked about the Mickelberg business and I made the affidavit to him, and then it was produced to Mr McCusker and then to Mr Cocks.

MR HASTINGS: What was the turning point in your discussions with Mr Lovell which caused you to decide to now be frank about what had happened in 1982?---Well, he inferred to me that - - he wasn't saying that the Mickelbergs were not guilty. He was just reporting facts which had been given to him. He made me feel easy. I didn't trust going to the police department, because I know if I did, it would be leaked everywhere in 5 minutes, and the same with the DPP.

What about the Royal Commission? We made contact with you in about April?---Yes, I know you did, but it was on a mobile telephone and I didn't know who the hell was talking to me.

Yes?---So I wasn't going to speak to no one.

In any event, what was it that finally persuaded you that you should - -?---Well, I was going to talk to someone - -

- - finally admit that you - -?--- - - but it was a case of who, and Avon Lovell turned out to be the person who I had the most faith in, and I still do have. He stands up for his rights, even though he might do some silly things every now and again, and - -

Was money a factor in you agreeing to swear the affidavit?---There was no threats, promises or inducements. I wasn't promised any money.

Did you want money for swearing the affidavit?---No. Nuh. No. If I did, I would have gone to a newspaper or someone like that. Avon Lovell hasn't got any money.

What about the Mickelbergs? Did you have any communication with them - -?---No.

- - before you swore the affidavit?---No. Not - - not any connection whatsoever, until I was in Thailand and I - -

Have you ever spoken to any of the Mickelberg brothers before you swore the affidavit?---No. No. Definitely not.

Communicate with them through an intermediary or agent?---No. No, not through any devices whatsoever.

Have they ever made known to you, before you swore the affidavit, that there might be money or other reward available to you?---No. No.

MR HASTINGS: And can you just - -?---Definitely not.

- - describe how the affidavit was created? Where did you produce - - where was it typed and sworn? Who was present, for example?---I think it was at Mick Buckley's office.

Who was present?---Mick Buckley, Avon Lovell and myself, I think, but I can't recall. It could have been done at a coffee shop. I've got a pretty bad memory now.

Who did - -?---I'm not trying to avoid questions.

Who did the typing?---Oh, it was brought back to me somewhere.

Printed?---Yeah.

But had someone sat down in your presence - -?---No.

- - as you spoke, making - -?---Never typed - -

- - a record?---I was asked various questions and I answered them.

And did someone make a note of what you were saying?---Yes, Avon did.

In handwriting?---Yes.

All right?---And then later he met me somewhere. I can't remember where. I can't even remember the places I was in Thailand. I was just completely out of it - - -

WITNESS: - - - completely out of it. But I know the contents of that affidavit and I know that it's true and correct. But there was no monetary inducements.

MR HASTINGS: The affidavit was sworn I think before a justice of the peace, who's shown as a Mr McInough[?], if that's how you pronounce it. Do you have any recollection of swearing the affidavit?---Whereabouts was it sworn?

At Perth. I'm afraid that's the best I can tell you. Have you read it since?---No.

No. It does seem to contain some inaccuracies in the way that I revealed to you this morning, that paragraph 10 talks about finding the letter from Mr Cannon which Don called "Cannon's Joke" which you say in fact didn't happen?---I don't think it was called "Cannon's Joke".

My point is that insofar as your affidavit says that, it seems to be inaccurate. You may need to read it again to see whether it now accords with - - ?---No, that might be an oversight by me, but whether it was called "Cannon's Joke" or it was given him back - - given it back to him, I don't know, but to me that's not a big issue, you know. Like, the big issue was that I fabricated the evidence. I fabricated the notes.

The reason for your inability to recall with any precision is that this was at a bad time of alcohol consumption for you, was it, when you swore the - - ?---And drugs.

When you swore the affidavit?---No. I was - - I was off the alcohol and drugs for 2 days before I did that.

On the topic of money, it has been revealed by documents which have been produced to the Royal Commission already that Mr Lovell entered into agreements with Channel Seven and The Sunday Times for the payment of money in connection with making you available for interviews. Are you aware of that? Again, you're nodding. Would you like - - ?---Oh, sorry. Yes, sir.

Was this a matter which was discussed in the context of swearing the affidavit?---No. No, not at that time whatsoever.

When did the question arise of approaching media outlets for money?---Afterwards, because he wanted to sort of - - he was basically surviving on the bones of his arse at the time. He had no money, and he'd worked fairly hard on the whole situation and he wanted to get some money back just so that he could survive, get his other book printed and one thing and another, and he asked me if I would do the interviews.

MR HASTINGS: You I think went overseas within a day or so of handing over the affidavit - - ?---Yes.

- - to Mr Cock, did you not?---Yes.

Had that been planned with Mr Lovell before you went?---Yes.

Do you know whether the agreements with the media outlets had been reached beforehand?---No. No.

No, they had not?---No.

Were you in Thailand or wherever you went, when that discussion took place about him approaching the media outlets for money?---It must have been, because Alison Fan turned up, and I don't - - I don't think she would have turned up without knowing that she was going to get an interview.

Yes?---But I - - I tried to help Avon as much as I could, mainly because he gave me a lot of moral support - - -

WITNESS: - - - of moral support which I wouldn't have got from anybody else, and I felt I had a moral obligation to him.

MR HASTINGS: Who paid for your trip to Thailand?---Avon Lovell.

Right. And who sustained you while you were in Thailand?---Avon Lovell.

Did you have any funds of your own?---No. It didn't come through Avon Lovell. It come through Mick Buckley. Mick Buckley was given money to look after me.

Mick Buckley accompanied you initially overseas, did he?---Yes.

Right?---Yes.

And he was given the money by Avon Lovell, was he?---I think so. It was by Avon Lovell.

Did you have any funds of your own when you were overseas?---I had not 2 shillings.

Have you worked in recent years?---No. I spent all my money when my marriage broke up, my proceeds of the house. I lost all self-confidence. I had a good business, worked for a lot of solicitors, and I found that I'd lost my self-confidence and I just couldn't work any more. So unfortunately, I just drank all day and drank all night.

The agreements with Channel Seven included provision for payment to Mr Lovell for rights to interview you, which was to - - the payments were to amount to 25,000 initially and 25,000 ultimately. Did you know the terms of that agreement?---No.

Similarly, there was a further agreement whereby money was to be paid for interviews with the Mickelbergs. Did you have any involvement in that agreement?---I've not had any involvement with the Mickelbergs whatsoever, other than the interview when I rang him from Thailand, and that's the only - -

In the presence of Alison Fan. Was that what you were going to - -?---Yes.

Yes. And similarly in relation to The Sunday Times, the agreement seems to indicate that Mr Lovell would get \$7000 initially and another \$13,000 upon an interview with you?---I don't know anything about that whatsoever. I came back to Australia with \$4.50.

MR HASTINGS: So apart from the money which has come to you via Mr Buckley, have you received any share of these payments - -?---No.

- - by the media outlets?---No.

Do you have any arrangement for a share of any other - -?---I have no agreement whatsoever with Mr Lovell for one penny, or with the Mickelbergs for one penny.

Mr Lovell seems to have re-published his book. You don't have any agreement with him about sharing the profits of that?---No. There is no agreement with me, Lovell or the Mickelbergs to receive one red cent. I'm hoping that I can sell my car, if things work out through, you know, the hearings here, to go back to Thailand because I've got no future in Australia. And that's all I've got - is an 87 model Saab, and that's the total - - and a suitcase full of clothes.

All right. Can I move on then to ask you about any other corrupt conduct of which you are aware, or in which you have participated? Firstly, can I ask about yourself? Throughout the balance of your career in the Police Service, did you ever engage in any other form of corrupt or criminal conduct?---Mainly because as I mentioned before, I was a suburban detective. We'd get the odd few cannabis plants. We would, you know, get a TV or a stereo. We weren't in a position to, like - - to be corrupt. We weren't in squads which may - - which may avail themselves to that sort of conduct, but - - -

WITNESS: - - - to that sort of conduct, but I was just a - - and I've never had a complaint, and my file can be checked, other than the Mickelberg inquiry. I've never had one.

MR HASTINGS: A cynic might suggest that the ease and expertise with which you were able to facilitate this fabrication and carry it off in court might indicate that you'd done it before; what would you say about that?---When you're looking down the gun barrel, you can become pretty hard, in respect to getting things into your head, to the stage where you believe it yourself, and that was the case. I would never say, "Oh, that guy stole a television" if he hadn't stolen it. It's just nothing. This is a very important case and when Don said, "Lock them up", the whole business was over.

What do you mean by that?---Well, they were going to go down or we were going to go down.

What about other officers? Have you observed any other officers, apart from Mr Hancock, in this case engage in corrupt conduct or criminal conduct?---No. I've worked with some terrific officers at Fremantle, Rockingham, and when you're at offices like that, we have a lot of probationers who are, like, on probation in the CIB, to see whether they will fit in and one thing and another, and they're with us all the time, and you couldn't afford to do anything like that because if it's been happening, it's happening up there where they're steadfast and they know the rules, not down here. Because it would be far too risky to even try to identify doing something like that.

Well, evidence which has emerged in public before this Royal Commission has indicated, particularly in relation to drug matters, in the nineties, that there was a certain inclination on some officers' part to engage in improper conduct by stealing drugs or stealing money or reducing charges and so forth. Did you ever see anything of that during your time in the Police Service?---No, I was never involved in the Drug Squad or - - I might have seized half a dozen drug plants or something like that, but never sort of heroin or - - because if we had information like that, we would pass it on to the Drug Squad and let them - - because they might be doing a - - oh, sitting off on them or, you know, doing something. So if you got information in respect to a big drug deal, you'd pass it on to the Drug Squad. You wouldn't do it yourself because you might be messing up their act. So - -

How long after the Mickelberg investigation did you go back to uniform?---Oh, about 4 years.

I see. All right. One matter in which you did have a role, which has attracted - - not your role, but the matter has

attracted controversy over the years, is the circumstances of the death of Stephen John Wardle. You had a marginal part in that because you had submitted a statement in connection with the Coronial inquiry?---I gave evidence.

MR HASTINGS: And gave evidence, unlike a number of other officers - - -

MR HASTINGS: - - - other officers, in which you dealt with the circumstances of you taking into custody young Wardle's even younger girlfriend whom you had seen near the Entertainment Centre in a state of distress?---Yes.

I don't want to take you through those matters - which are, of course, a matter of record in your statement and the evidence you gave - but apart from those matters is there anything else that you can contribute to the facts surrounding Stephen Wardle's death?---If I could just briefly go through it. This young lady was wandering around out the front of the Entertainment Centre and sitting on the stairs and guys were coming up and bothering her, and she was either under the influence of drugs or alcohol, so I went and spoke to her with the officer who was with me at the time.

Constable Gould?---Yeah, I can't remember who it was now.

He was the person you named in your statement?---Yeah - and looked through her bag and she had one of these doctor's ear, you know, lights and also she had a pile of drugs.

Prescription drugs?---Yeah.

Yes?---And I thought she might have done a doctor's surgery over or a doctor's bag, so I took her into custody. I took her to the lock-up and I put her in the room directly opposite the desk with the door open and said, "She's not to be locked up" because she was fairly, you know, like - - I wanted to see - - obviously, I couldn't interview her in that condition and I rang up her mother, I think, or her father - -

I think it was her mother you spoke to?---Yes, and I said, "I've got your daughter here. She's under the influence of drugs or alcohol, and come and pick her up" and then I either wrote a brief report or gave the drugs and everything to the duty sergeant and said, "Interview her", you know, "whenever, but this is what was in her bag." I didn't know she was involved with Wardle at all until I think the next day when I came on and I was told that that was Wardle's girlfriend but I never - - but I'm sure Wardle was locked up before she was and I never saw him whatsoever, and what I thought I did was proper by not having her put in a - - in a - - you know, the lock-up.

Yes?---And by advising her mother straight away to come in, that she may need medical attention.

The duty officer until 11 pm I think was Senior Sergeant Ramshaw. Do you remember him?---No.

He was then relieved by Sergeant Kenneth - - Ken Wells. Do you remember him? He came on at about 10.30 pm?---No, I - -

no, I wouldn't remember that, you know, like - - no.

MR HASTINGS: Was there anything about the condition of either of the duty sergeants which was significant? Was either of them affected by alcohol?---(No audible response).

You're shaking your head in the negative?---Oh, sorry. No, no.

Have you previously indicated to Mr Lovell that you had a recollection that one of the duty sergeants had been affected by alcohol?---It wasn't a duty sergeant.

Who was it?---It was Sergeant Seiler.

I see. What did you observe about him?---I believed him to be intoxicated when he came on duty.

And when did you make that observation?---As soon as I saw him.

I'm sorry, it's probably an ambiguous question. Just to put your role that evening into its proper context, it was the night of a big concert, was it not, at the - - ?---AC/DC concert.

The AC/DC concert at the Entertainment Centre, and it was a busy night for police in that there were a large number of youngish people either intoxicated or affected by drugs? ---Yeah, they were all sitting all over the lawn and - - I don't - - look, I could've seen Wardle but, I mean, I could've seen him like I saw someone walking down the street, but - - -

WITNESS: - - - walking down the street, but not knowing who he was. But it was the girl I was mostly concerned with.

MR HASTINGS: The statement you made at the time indicates that you commenced afternoon shift that day at 1500 hours and was placed in charge of Golf 3, in company with First-class Constable Gould; do you remember that?---Yes. I was with another constable, but who he was - -

Your duties, according to your statement, required you to be in attendance at the AC/DC concert at the Entertainment Centre from 1830 hours until 2300 hours that evening?---Yep.

And the observation of the juvenile who you took into your care, according to your statement, took place at 2254 hours; that is, shortly before 11 o'clock. And you then of course took her back to the station and dealt with her in the way that you've described. Do you remember what contact you had with Sergeant Sailer, or Seiler?---I didn't see him after I left the office. In the - - you know, like, when I started. But there was some suggestion by a senior sergeant or someone that he should be kept out of the way.

Your statement is not clear. It says that your duties required you to be in attendance at the concert from 6.30 pm until 11 o'clock. It doesn't then go on to say at what time you actually left the police station to attend to those duties, but consistent with what your duties were supposed to do, may we assume that you did proceed to the Entertainment Centre at about 6.30 pm?---Yeah. I would have gone there and - - yeah.

So your contact with Sergeant Seiler would have been before you left - - ?---Yeah.

- - at about 6.30 pm?---Yeah.

And you'd observed then, had you, that he was affected by alcohol?---I believed he was, yeah.

Was he a person who had an alcohol problem, as far as you knew?---I've never had a lot to do with him, but I found him to be rather an arrogant type; bombastic. But all I did with that young lady was what I thought was due and proper.

Just - - well, I think you're one of the few people to have emerged with that criticism, might I say, after the inquest, but can I just stay with Sergeant Seiler for a minute? What was it that caused you to form the view that he was affected by alcohol when you left the office?---His demeanour, you know; like, "Ah, ha, ha," you know; like - - just not normal behaviour.

Did you smell alcohol on his breath?---Yeah.

MR HASTINGS: You did. Yes. And - - ?---It was - - he was basically told not to go near there and to keep out of the way. Just - -

Who told him that?---I don't know. One of the sergeants.

The duty sergeant?---No. No. Because it was the City station.

Oh, I see?---But he was told to keep out of the way. Just, you know, be - - whoever he was working with, just to get him out of the way.

Was it Sergeant - - Senior Sergeant Ramshaw?---Oh, look, I'm sorry; I wouldn't know.

According to the statement of Sergeant Seiler, the person with whom he was working was Constable Mackin. Do you remember Constable Mackin?---No. I - - I was only in uniform a short time then. Can you tell me - - do you know what time he was locked up?

Well, around about 9.30?---So it was long before the young lady was taken there then.

I think so, yes?---Yeah. Well, that should be on the police camera.

What should be?---The times when people were brought - -

Oh, yes?--- - - in and out of - -

There were - - ?--- - - the lock-up.

There were records of the times when people were in and out, yes. So did you see Sergeant Seiler again after your time in the station?---Never. I think I was interviewed a couple of days later as to my dealings with things, and I had no idea that she had a boyfriend there or it was Stephen Wardle's girlfriend.

Did you tell people who interviewed you at the time that you'd observed Sergeant Seiler to be affected by alcohol? Was there a discussion with others that that fact ought not to be revealed?---No.

Or was it simply an understanding that you wouldn't say something like that about a fellow officer - - -

MR HASTINGS: - - - about a fellow officer?---Yeah.

Have you discussed with anybody since the events of that time, the fact that Sergeant Seiler may have been affected by alcohol at the time?---Yes.

With whom?---Mick Buckley.

I see?---I told him.

What about any of the other people who were there on the night?---No, because - -

Never discussed with him - -?--- - - you find the shifts change so quickly that one guy's on one night and you mightn't see him again for another 2 weeks, sort of thing. So it wasn't a case of - - I never sort of took a big interest in it, because I just thought it was a - - you know, he choked or something like that and it was just one of those things, but my whole thing was just trying to look after the young lady, and that's what I did do.

Yes. Can I just ask you then, finally I think, some more questions about Mr Hancock? You've described his role in relation to the Mickelbergs and the fabrication of the evidence, which seems quite a blatant act of corrupt activity.

Did you ever see him engage in similar conduct to that, on another occasion?---No, because I never was in a position to work with him at that level. I was working on a murder inquiry with him, but we never got to a stage of, like, charging anyone, so - -

Did you maintain a friendship with him in the years that followed?---A sort of friendship.

What does that mean?---Well, I was always worried about the whole thing. Continually. As I said, it ruined 20 years of my life.

Were you friends, as such?---I suppose we could say that we were friends.

Well, you say in the affidavit of the 5th of June that you considered Mr Hancock to be your best friend; is that a fair statement?---We were - - we were good friends. We had a bond.

Being the fabrication of the evidence?---Yes.

Did you socialise with him?---Not very often, because a lot of times he'd spend in Kalgoorlie and I mightn't see him for 6 months.

Had you been to his home?---Yes.

MR HASTINGS: Frequently?---Probably more times since he's been dead than when he was alive.

It has been suggested that he had significant mining interests. Were you aware of that?---I know that he had the - - he had a mine not far from Ora Banda, which was open - - which was hand-dug and then open-cut, and that got - - all the water leaked into that, and that was had it. Apart from that, I think that's been in the family for generations, but it was certainly no gold mine. It was - - it wasn't making money, from what I believed.

Do you know whether he'd concealed his interests in mining investments?---I know nothing about his business activities whatsoever.

I think various suggestions have been made, even publicly, that he, in his safe at home, may have had records which would have - - -

MR HASTINGS: - - - which would have revealed his true interest in various mining activities which were otherwise concealed. Did you have any knowledge of him having documents at home which would record his interest in secret mining ventures?---No. I know nothing about his business interests whatsoever, other than that he had the Ora Banda Hotel, he had the battery there, and he had the mine which was - - you know, I think you could find more gold in St Georges Terrace than you could have found in that.

All right. Commissioner, I might just tender some documents before I conclude. Can I tender the affidavit of Mr Antony Lewandowski, sworn the 5th of June 2002, which is barcoded D1003 - -

COMMISSIONER: That document will become exhibit PH8.

MR HASTINGS: Of course. I'm sorry, Commissioner. Being a confidential exhibit with access only to - - well, I'm not sure that confidentiality about the affidavit is particularly effective but at least for the time should be a confidential exhibit.

COMMISSIONER: Yes, PH8C.

EXHIBIT PH8C Mr Hastings DATE 5.6.02
Confidential: affidavit of
A. Lewandowski.

MR HASTINGS: If I can just also perhaps tender a couple of the other documents to which I referred in the course of asking questions of Mr Lewandowski, one is his statement in relation to the events of the 26th of July 1982, which is undated, which is barcoded D1003786. Could that also be a confidential exhibit?

COMMISSIONER: That will become exhibit PH9C.

EXHIBIT PH9C Mr Hastings DATE (Unstated)
Confidential: statement of
A. Lewandowski barcoded D1003786.

MR HASTINGS: The statement of Mr Hancock, to which I referred in passing, relating to the Mickelbergs, which is barcoded D1003787.

COMMISSIONER: That document will become PH10C.

EXHIBIT PH10C Mr Hastings DATE (Unstated)
Confidential: Statement of Mr Hancock
barcoded D1003787.

MR HASTINGS: Which is similarly undated. The handwritten notes of Mr Lewandowski dated the 26th of July 1982, which were barcoded D1003791. Might they be a confidential exhibit?

COMMISSIONER: That will become PH11C.

EXHIBIT PH11C Mr Hastings DATE 26.7.82
Confidential: Handwritten notes of A.
Lewandowski
barcoded D1003791.

MR HASTINGS: The affidavit of Antony Lewandowski, sworn 21 August 1987, and barcoded D1003790.

COMMISSIONER: That document will become exhibit PH12C.

EXHIBIT PH12C Mr Hastings DATE 21.8.87
Confidential: Affidavit of A. Lewandowski
barcoded D1003790.

MR HASTINGS: The affidavit of Antony Lewandowski, sworn 23rd January 1998, barcoded D1003793.

COMMISSIONER: That will be exhibit PH13C.

EXHIBIT PH13C Mr Hastings DATE 23.1.98
Confidential: Affidavit of A. Lewandowski
barcoded D1003793.

MR HASTINGS: And the defamation affidavit which in fact is not barcoded - - which has not yet, but is now barcoded D1004621, which is the affidavit of Antony Lewandowski of 10 April 1985.

COMMISSIONER: That affidavit will become exhibit PH14C.

EXHIBIT PH14C Mr Hastings DATE 10.4.85
Confidential: Affidavit of A. Lewandowski
barcoded D1004621.

MR HASTINGS: Thank you. I think that was all for the time being, Commissioner. I have no further questions of Mr Lewandowski.

COMMISSIONER: Yes. Thank you. The question arises as to the publication of the evidence at this hearing. Perhaps that could be settled later when - -

MR HASTINGS: Yes. The expectation, Commissioner, is that it will be made available, I think initially, to the DPP.

COMMISSIONER: Yes.

MR HASTINGS: And then to be dealt with at his discretion in the context of the current proceedings in the Court of Criminal Appeal which will no doubt - - -

MR HASTINGS: - - - will no doubt involve some consultation with Mr McCusker and Mr Levy, but perhaps if we can just leave that for the time being and when the transcript is available - - or deal with it now perhaps, but if access be granted to the transcript to the Director of Public Prosecutions, which will embrace Mr Randazzo or Mr Stone, who is also involved in the matter.

COMMISSIONER: Yes. Well, the transcript then will be accessible to the Director of Public Prosecutions, Mr Randazzo and Mr Stone and the director's staff.

MR HASTINGS: Thank you.

COMMISSIONER: And any future use of the evidence shall be made available at the discretion of the Director of Public Prosecutions and those officers of the director.

MR HASTINGS: Yes, Commissioner, thank you.

COMMISSIONER: Yes.

MR HASTINGS: Mr Lewandowski, of course, has attended today voluntarily so there is no issue of releasing him from his summons - -

COMMISSIONER: Yes.

MR HASTINGS: - - because he's come of his own accord.

COMMISSIONER: Yes.

MR HASTINGS: Thank you.

COMMISSIONER: Well, thank you, Mr Lewandowski - - ?---Thank you, sir.

- - for your assistance.

WITNESS WITHDREW

COMMISSIONER: We will adjourn now until a quarter past twelve.

MR HASTINGS: Thank you.

AT 12.07 PM HEARING ADJOURNED

ROYAL COMMISSION INTO WHETHER THERE HAS BEEN
ANY CORRUPT OR CRIMINAL CONDUCT BY WESTERN
AUSTRALIAN POLICE OFFICERS

COMMISSIONER: G.A. Kennedy AO QC

PRIVATE HEARING

Held at Perth on the 4th day of April, 2003

(Commissioner Hammond of the Corruption & Crime Commission made an order on 20 September 2005 to vary an order to allow publication of this transcript)

Counsel Assisting

Mr S. Hall

Appearances

Ms J. Pepe appeared for Sgt M.A. Mackin and Sgt R. Seiler
Mr T.J. Saayman appeared for Mr Constantine
Mr M.L. Levy (with Ms C. Brookes) appeared for Mr A.
Lewandowski

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AT 11.04 AM HEARING COMMENCED:

COMMISSIONER: Yes?

MR HALL: Commissioner, this is a resumption of the hearings that were held in February of this year regarding the events surrounding the death of Stephen Wardle. At that time, the cross-examination of Mr Lewandowski was deferred pending submissions. It has been decided to reconvene for the purposes of cross-examination of Mr Lewandowski, but in the circumstances - Mr Lewandowski presently facing criminal charges - it is prudent, in my submission, that this hearing be conducted in private to this extent, that members of the public have been excluded, but Mr Lewandowski's counsel and such counsel as have indicated that they wish to be present have been allowed to be present.

We have contacted, on my instructions, all of the counsel who were present on the previous occasions and the only ones who wish to be present, as I understand it, are Mr Saayman, who acts for Mr Constantine, and Ms Pepe, who was conducting the cross-examination on behalf of Mr Mackin and Sergeant Seiler.

COMMISSIONER: Yes.

MR HALL: So I would ask that an order be made firstly that the hearing be private, but permitting those who are authorised to appear.

COMMISSIONER: Yes. I direct that this hearing be conducted in private. I direct that except in such manner and to such persons as I may specify, the evidence to be given by the witness at this hearing and/or the contents of any statement of information, document or a description of any thing produced to the Commission must not be published.

I further direct that the fact that the witness is giving or has given evidence before the Commission and any information that might enable the witness to be identified or located in relation to this matter must not be published.

Mr Lewandowski, I wonder if you could take the Bible and read out the oath, please.

MR LEWANDOWSKI: Yes, sir.

ANTHONY LEWANDOWSKI sworn:

COMMISSIONER: Thank you. Sit down, please. Yes, Ms Pepe?

MS PEPE: Thank you.

COMMISSIONER: I should indicate that in relation to the cross-examination there should be no cross-examination of Mr Lewandowski in relation to any of the counts in the indictment which has been presented against him.

MS PEPE: I understand that, sir. I did inquire.

COMMISSIONER: Thank you.

MS PEPE: So I will be very brief. There's not really much for me to ask.

CROSS-EXAMINED BY MS PEPE (Continuing):

MS PEPE: Mr Lewandowski, you said that there was a debriefing prior to the commencement of work. You called it a muster?--- When you - - when you say "debriefing", we had a meeting, like - -

I think you got - - ?--- - - people - - we all got together and - -

I think you called it a muster?---Well, yes; like a muster. We were all together.

What time was that muster?---I can't recall. Whether it was shortly after my commencement of duty or me then going to the City Police Station to basically find out what was going on and what I had to do.

Do you recall what shift you were on that - - ?---It was an afternoon shift.

What time would that have commenced?---3.00 till 11.00.

Is it fair to say that the muster then would have been immediately prior to that?---It wouldn't have been prior. I'd have been at Central station prior to going to the City station.

So are you now saying that the muster was at Central station?---No. It was at City station.

Are you sure about that?---Yes.

Why would the muster be at City station if your duties were to be conducted at the Central station?---Because that was the closest police station to the Entertainment Centre.

You said earlier in your evidence on another occasion that Ron Seiler was very loud and boisterous?---Yes.

MS PEPE: You would agree with me that that is his character? He is always loud and boisterous?---He's a boisterous character, but he was more boisterous in respect to what we were doing, which was acceptable, on my - - what I believe.

Did you speak to him directly on that occasion?---I can't recall whether I did, but there was either myself or someone else gave instructions to his driver to keep him out of the way.

So you can't recall whether you spoke to him directly, but you - - ?---Oh, I could have. I - - maybe I could have spoke to him.

But you may not have?---I may not of, no.

But you recall observing him?---Yes - - -

MS PEPE: - - - recall observing him?---Yes.

And you say he was more boisterous than normal?---More boisterous than acceptable under the circumstances.

And it was on that basis that you drew the conclusion that he was affected by alcohol?---Yes.

But you had nothing to substantiate that other than your observations?---He smelt of liquor.

But you said you didn't speak to him?---I didn't have to speak to him to smell liquor on his breath.

How close did you get to him?---We were all behind this - - the desk and we were all pretty close.

What liquor did you smell?---Sorry?

What type of liquor did you smell?---I don't know but I know when a person has been drinking and when they haven't been drinking.

At that time were you a heavy drinker?---No.

You weren't at that time?---Not a heavy drinker. I would never drink alone. I would only drink with friends.

Were you drinking at the time? Were you having problems with alcohol at that time?---No, not at that time. No.

You gave evidence at the coronial inquest. Do you recall that?---Yes.

Have you re-read the transcript of your evidence?---No.

You haven't. You will recall though that you made no mention of this allegation of Seiler being drunk to the Coroner?---I was never asked.

So it wasn't a matter of you failing to tell the truth. Are you saying it was a matter of you just not offering the evidence?---It was a matter of when I went to the last Mickelberg appeal that I was accused by Ray Tilbury - - he said two detectives told him that I was responsible for Stephen's death and from that day on - - I had nothing to do with it whatsoever - -

Okay?--- - - and it's just played on my mind.

Are you okay?---Yeah.

MR LEVY: I should indicate, Mr Commissioner, that Mr Lewandowski has been pretty unwell for the last week or so. He's had another admission into hospital.

COMMISSIONER: I see.

MR LEVY: So he is not in the best of health. He has indicated to me that he wants to get this matter over and done with but he is suffering from ill-health.

COMMISSIONER: Yes, thank you. I will note that. If you want a break, Mr Lewandowski - - ?---No, I don't need a break, sir. I just wanted to get it over with.

Yes, very well.

MS PEPE: Sir, if this makes it easier, I'm not going to go any further.

COMMISSIONER: Yes.

MS PEPE: I don't think it's worth it.

COMMISSIONER: Yes.

MS PEPE: I'll leave it at that, and I bear in mind that he's not well.

COMMISSIONER: Thank you.

MS PEPE: Thank you, sir.

WITNESS: Thank you.

COMMISSIONER: Is there any other cross-examination?

MR SAAYMAN: No, sir, thank you.

NO CROSS-EXAMINATION BY MR SAAYMAN

COMMISSIONER: Yes. Mr Levy, do you wish to ask any questions?

MR LEVY: No, I have nothing, thank you.

NO CROSS-EXAMINATION BY MR LEVY

COMMISSIONER: Mr Hall?

MR HALL: Nothing further.

NO RE-EXAMINATION

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POLICE

COMMISSIONER: Well, thank you, Mr Lewandowski. You are released from further attendance?---Thank you, sir.

WITNESS WITHDREW

AT 11.14 AM HEARING ADJOURNED