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CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA

COMMISSIONER HAMMOND

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 4 DECEMBER 2006, AT 2.03 PM

Counsel assisting:

MR S.D. HALL SC, with him, MR P.J. URQUHART and  
MS M.S. HARRIES

Counsel attending

MR G.R. DONALDSON SC

MR S.J. LEMONIS

1 **THE COMMISSIONER:** Can we continue?  
2

3 **HALL, MR:** Mr Burke, was there ever a proposal that Dr Cox  
4 would come and work with Mr Grill and yourself as part of  
5 your team?---Yes, I do remember Julian discussing that with  
6 me at one stage.  
7

8 All right. What was discussed between you?---My  
9 recollection is that at some stage a year or two ago,  
10 Julian had indicated that - or perhaps longer than that -  
11 Julian had indicated that Wally Cox was thinking of leaving  
12 the public service and that he'd be a good person to work  
13 with.  
14

15 Is that something that was discussed with Dr Cox?---Not in  
16 my - I don't remember ever discussing it with him, no.  
17

18 No, but did Mr Grill say whether it had been raised - - -?  
19 ---I don't recall - - -

20  
21 - - - with Dr Cox?---No, I don't recall Julian telling me  
22 he'd discussed it with him.  
23

24 Well, it didn't go any further, I take it?---I only  
25 remember the one discussion which was very sort of  
26 preliminary and - - -  
27

28 Sorry, very preliminary?---Yeah.  
29

30 And you think that that was over a year ago?---I can't  
31 remember when it was, Mr Hall.  
32

33 You are aware, are you, that - - -?---I'm not sure Mr Cox  
34 was aware of that.  
35

36 No, I understand that's what you are saying. You are aware  
37 that Dr Cox was appointed in July, I think, of this year  
38 for a three-year term to the chair of the EPA?---I remember  
39 he was reappointed, yes.  
40

41 Yes, and were you aware that that was a part-time position-  
42 -I was.  
43

44 Were there any discussions between you and he about that?  
45 ---I know there were discussions between Julian and myself  
46 about that. I don't recall them with Mr Cox but there may  
47 have been at some time.  
48

49 What did you and Mr Grill discuss about that?---My  
50 recollection is that we thought that Dr Cox was a good  
51 officer and that if - and that he should be retained in  
52 effect.  
53

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57 4/12/06

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58 2.03  
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1 Yes, but specifically in respect of his desire that it be a  
2 part-time position, were you supportive of that?---If it  
3 was necessary to keep him I think I would have been, but I  
4 don't recall exactly.

5  
6 All right. Did you speak to anyone about your views that  
7 Dr Cox's position - - -?---I don't recall speaking to  
8 anyone about that.

9  
10 Can I ask you to listen to T474 please and this is a call  
11 on 12 April 2006.

12  
13 (Audio played)

14  
15 **HALL, MR:** It seems to have gotten a little further than  
16 just a discussion between you and Mr Grill in the sense  
17 that you say, "He was going to come and work with Julian  
18 and me as part of our team"?---I think that's an  
19 exaggeration on my part about the conversation I had with  
20 Julian. I never understood that he was going to that.

21  
22 Why did you say it then?---I think I was presenting a point  
23 of view or a face to whoever I was talking to.

24  
25 When Mr Lewis said, "So best of both worlds," you said,  
26 "Yeah, it is." What were you - in agreeing with that, what  
27 were you intending to convey?---I think it's on the - on  
28 the tape there.

29  
30 Yes, I know, but what did you - - -?---Well, he was able to  
31 do other jobs and be a part-time person. So he had the  
32 best of both worlds.

33  
34 Right, but "the best of both worlds" - the worlds that we  
35 talked about were working as part of your team or working  
36 for the EPA?---I wasn't talking about that.

1 Well, what are the "both worlds"?--Well, it's there and  
2 he's allowed to take on other jobs, so the best of both  
3 worlds. Yeah, it is.

4  
5 I see. You mentioned I think at the commencement of your  
6 evidence today that there had been other members of  
7 Parliament who you had spoken to in respect of Canal Rocks.  
8 Is that right?---Yes.

9  
10 One of those we heard mentioned in a call I played to you  
11 before lunch, was Ms Farina?---Yes.

12  
13 I think you mentioned Mr Giffard?---Yes.

14  
15 Were there other members of Parliament who you approached  
16 in respect of Canal Rocks?---I'd spoken to the minister,  
17 I'd spoken to - I don't recall them all but I would have  
18 spoken to three or four I suppose, five.

19  
20 Now, I take it that - the call that I played to you where  
21 Ms Farina was mentioned was on 19 May. At that time she  
22 was and is the parliamentary secretary, the minister for  
23 planning. I take it that would be the capacity in which  
24 you were seeking to engage her in a meeting?---I'm not sure  
25 - which May was it, which year? This year?

26  
27 This year?---She is the parliamentary secretary.

28  
29 Yes?---I'm not sure of the capacity in which I would have  
30 been speaking to her about Smiths Beach because she's the  
31 member for that area.

32  
33 Right. Have you spoken to her in her capacity as the  
34 parliamentary secretary?---Yes.

35  
36 About Canal Rocks?---Yes.

37  
38 Can you tell me about those discussions?---I don't  
39 recollect each of them but in general terms she had a long  
40 experience and was one of the first members who was  
41 involved at my suggestion with Canal Rocks back in 2002 and  
42 I think I was simply putting the point of view to her that  
43 it was a good development.

44  
45 Is that on one occasion or more than one occasion?---I  
46 think that probably I met with Adele on three or four  
47 occasions.

48  
49 Three or four. Okay. They have been amicable meetings?  
50 ---Yes, I think so.

51  
52 Other members of Parliament?---Yes.

53  
54 How many meetings have you had with other members of  
55 Parliament, and if you could tell us who they are?

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58 2.08

59

1 ---Well, the person who was most involved earliest was  
2 Graham Giffard.  
3  
4 Was he parliamentary secretary at that time to the minister  
5 of planning?---He was.  
6  
7 So you had meetings with him?---Yes, I had meetings with  
8 him and he came to two or three meetings with the Smiths  
9 Beach group et cetera.  
10  
11 Right, so how many meetings do you think you had with him?  
12 ---I can't recall.  
13  
14 They were amicable meetings?---Seemed to be, yes.  
15  
16 Do you have any influence or did you have any influence  
17 over the preselection of the MPs that you spoke to?---I  
18 suppose I had some influence, yes.  
19  
20 In respect of any member of Parliament have you sought to  
21 use your influence over preselections in order to get them  
22 to assist your clients, in particular Canal Rocks?---Not to  
23 my recollection.  
24  
25 Well, it's not something you would forget, surely?---Well,  
26 I may have - I may have said at some time or other if I'd  
27 been upset or annoyed about something I may have said  
28 something that was - that expressed my annoyance but I  
29 don't remember ever going to anyone and threatening their  
30 preselection about that or anything else.  
31  
32 Have you ever threatened to use your influence against any  
33 sitting member who refused to advocate Canal Rocks'  
34 interests?---Not to my recollection.  
35  
36 When you say "not to your recollection" are you conceding  
37 the possibility you might have done?---Well, what I'm  
38 thinking about is that Adele Farina was someone who was  
39 elected as a result of the group that I was roughly  
40 associated with providing the seat to her and I may have  
41 expressed from time to time annoyance or some difficulty  
42 but I didn't think it was about Canal Rocks, I thought it  
43 was rather about some nomination she made for a cabinet  
44 secretary's position that someone else was seeking. I'm  
45 trying to recollect but that's all I can think of.  
46  
47 Right. Well, put aside the secretary position?---Yeah.  
48  
49 I want you to - because it's quite a different matter,  
50 isn't it, going to somebody and saying, "Well, I want you  
51 to support my clients' interests - this is a private matter  
52 - and if you don't I will use my influence against you."  
53 You appreciate that that's a very different matter?---Yes,  
54 it is different.

55  
56  
57  
58  
59

35/6/nal

1 Have you ever done that?---I don't recall doing that, no.  
2  
3 When you say you don't recall doing that are you saying it  
4 is possible?---I'm saying I don't recall it.  
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1 Is it the type of thing that you would do?---Well, it's not  
2 normally the type of thing I would do but in a situation  
3 where I was angry or upset or annoyed but I might say  
4 something that most often times I would never be saying  
5 seriously but I'm speculating. My nature is not normally  
6 to do that. My nature is to persuade and to try to  
7 convince. Well, I think that's what I think my nature is.

8  
9 Have you suggested to anyone that Ms Farina is a person who  
10 you believe you can use?---I've certainly suggested that  
11 she's someone to whom I can make representations.

12  
13 Listen to 621 please.

14  
15 **DONALDSON, MR:** Can I have a date please?

16  
17 **HALL, MR:** 17 January.

18  
19 **DONALDSON, MR:** 17 January. Year?

20  
21 **HALL, MR:** 2006.

22  
23 **THE COMMISSIONER:** 621.

24  
25 (Audio played)

26  
27 **THE COMMISSIONER:** Does that need to go out, that  
28 particular one, as far as publication is concerned?

29  
30 **HALL, MR:** It probably doesn't.

31  
32 **THE COMMISSIONER:** I have a problem with it.

33  
34 **HALL, MR:** Yes.

35  
36 **THE COMMISSIONER:** I will be making an order in due course  
37 that the content of call 621 - will that properly identify  
38 it?

39  
40 **HALL, MR:** Yes, it will.

41  
42 **THE COMMISSIONER:** Yes, it will - call 621 not be  
43 published.

44  
45 **HALL, MR:** Thank you, Commissioner.

46  
47 Mr Burke, you can use her?---I beg your pardon?

48  
49 You said you can use her?---Yeah, someone who will make  
50 representations or accept representations certainly.

51  
52 Surely that's not what you meant in this context?---That's  
53 exactly what I meant.

54  
55 Didn't you mean that when she is not in the influence of

56  
57 4/12/06

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58 2.13

59

1 the minister she is somebody who you can bend to your  
2 will?---No.

3

4 In your evidence on the last occasion I asked you some  
5 questions about officers of the Department of Conservation  
6 and Land Management as it then was?---Yes.

7

8 In particular there was a meeting on 2 May this year?  
9 ---Yes.

10

11 You arranged that meeting you told us?---Yes.

12

13 You said at that meeting an assurance was given to you that  
14 any advice from that department would be settled at a  
15 senior level?---Yes.

16

17 And that assurance was given by Mr McNamara?---Yes.

18

19 You also said in your evidence that you didn't know  
20 Mr McNamara previously?---I may've met him, Mr Hall, but he  
21 wasn't known to me, no.

22

23 **DONALDSON, MR:** Sorry, can I have the page reference?

24

25 **HALL, MR:** 924. Thank you.

26

27 And you had met Mr Brabazon once or twice before?  
28 ---Whereabouts is that, Mr Hall?

29

30 **THE COMMISSIONER:** 926.

31

32 **HALL, MR:** 926. Yes, thank you, sir?---Yes.

33

34 I asked you whether you had given Mr Brabazon any  
35 assistance in terms of promotion and you indicated that you  
36 hadn't. Do you see that? It's line 25 and 26?---Yes, I  
37 can see that.

38

39 So he was not, in any sense, an appointee of yours then?  
40 ---No. It is true that I'd mistakenly thought he was, but  
41 he wasn't.

42

43 I see. When did you mistakenly think he was?---Up until  
44 quite recently.

45

46 That's not something that you sought to correct this  
47 morning?---No. It's something that I overlooked but I'm  
48 sorry, it's not something I neglected to correct  
49 deliberately.

50

51 Have you previously considered that he was an appointee of  
52 yours?---May I explain?

53

54 Yes?---I'd previously thought that he was appointed to his  
55 position; as a result a decision I'd taken when he was

56

57

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59

1 appointed. I was mistaken and I was aware of the mistake  
2 and I would've corrected it this morning had I known that -  
3 had I remembered, although it doesn't change my evidence  
4 because the truth is I didn't appoint him. I'd mistakenly  
5 thought that I did. The truth was that I'd appointed his  
6 predecessor. She ended up marrying her boss and Brabazon  
7 was then appointed to her position.

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58

1 I see. When was it that you realised that you had not in  
2 fact had an influence on his appointment?---A week or two  
3 ago.

4  
5 I see. So prior to that time your belief was that you had  
6 some material effect upon his career?---It may have been  
7 longer but, yes, I'd mistakenly thought that I had - I had  
8 been part of his appointment.

9  
10 Yes, and did you consider that that meant that he was  
11 beholden to you?---Not beholden to me, but when he didn't  
12 return phone calls I'm sure I said - and I was annoyed and  
13 angry and I'm sure I said, well, he ought to remember who  
14 set up the department and who appointed him et cetera,  
15 et cetera or something like that.

16  
17 Right?---But that was me letting off steam, if you like. I  
18 didn't say that to Mr Brabazon.

19  
20 No, but you had an expectation that because you believed  
21 you had had an influence on his appointment that he would  
22 show you some return for that?---No, that he'd return my  
23 calls.

24  
25 Did you consider that you had some influence over him?  
26 ---Not really, no.

27  
28 Did you consider you had a friendly relationship with him?  
29 ---Yes.

30  
31 Can I ask you to listen to T105, please. This is 28 April  
32 so it's prior to the 2 May meeting.

33  
34 (Audio played)

35  
36 **HALL, MR:** If we could have page 3 of that transcript on  
37 the screen, please. At the top of that page you say:

38  
I'm pretty sure that I'm - but not knowing that I'm  
pretty sure that we'll get to the stage where Hanly  
will be told to pull his head in.

39 Now, did you mean that senior officers of CALM would do  
40 that?---Yes.

41  
42 Towards the bottom of the page, Mr McKenzie, you talk about  
43 the position that Mr Hanly is in, his stage of life.  
44 Mr McKenzie says, "I don't think he'd be prepared to lose  
45 his job or get" - and you say, "That's what I'm saying,  
46 transferred or, yeah, things like that," and then you  
47 immediately go on to say, "Yeah, well, McNamara is a very  
48 good friend of ours but Brabazon who is 2IC is an appointee  
49 of mine." Was there some suggestion that Mr Hanly could by  
50 your influence over McNamara or Brabazon lose his job or be  
51 transferred?---No.

52  
53 4/12/06

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54 2.18

55

1 Why did you say that?---Well, for two reasons. Firstly, I  
2 was talking to David McKenzie, I was trying to give him  
3 some reassurance but secondly, I had a very clear view from  
4 what David had told me that Hanly wasn't acting in a proper  
5 way and I felt sure that the senior people at CALM  
6 presented with the evidence would cause him to act  
7 properly, and that's what I meant when I said they'd tell  
8 him to pull his head in.

9  
10 What difference would it make that Mr McNamara was a very  
11 good friend of yours?---I don't think it would make any  
12 difference.

13  
14 Then why mention it?---I suppose to impress David or to  
15 reassure him.

16  
17 But you have mentioned it immediately after those  
18 consequences of Mr Hanly. Were you not suggesting that  
19 that is why Mr Hanly might face those consequences?  
20 ---Certainly not.

21  
22 Was it true that Mr McNamara was a very good friend of  
23 yours?---No.

24  
25 Why did you say it?---As I say, to reassure David or to  
26 present a position that I thought would persuade David that  
27 things were moving along.

28  
29 It would be a false reassurance if it wasn't true, wouldn't  
30 it?---Well, the ends might be true. I was confident this  
31 thing would come along the way I was - I was saying, so  
32 technically, yes, but in essence I was confident CALM would  
33 agree to review at a senior level its input to the  
34 different bodies seeking opinions about Smiths Beach.

35  
36 At the meeting of 2 May did you ask that the coordinating  
37 committee that had been previously chaired by Mr Frewer be  
38 reactivated?---Yes.

39  
40 Were you given some assurance about that?---I don't know  
41 that I was given any assurance but I was told that it was a  
42 common thing in government, I think, and it was a good idea  
43 to resolve problems, to have a committee like that.

44  
45 Did you ask Mr McNamara to speak to Mr Allen as to how that  
46 committee should be chaired?---I think that would have been  
47 discussed, yes.

48  
49 What did you discuss about that?---Well, that the committee  
50 was essentially a WAPC or DPI committee and that it was  
51 previously headed by Paul Frewer who had been succeeded by  
52 Mike Allen.

53  
54 Yes, but did you have some view as to how the committee  
55 should be chaired?---I can't recall. I may have thought  
56 that it should be - it would be better - better chaired

1 under CALM. I'm not sure.  
2  
3 Did you have a view as to who should be the chairman?---No,  
4 perhaps I thought that Mr McNamara or Mr Brabazon should be  
5 the chair of it. I'm not sure.  
6  
7 Right. There had been a previous meeting of CALM officers  
8 and Mr McKenzie at which Mr Marlborough was present. I  
9 asked you about that on the last occasion - at page 922.  
10 At line 22 I asked you:  
11

There was, however, a meeting with CALM on 20 June  
last year and I'm not suggesting you were in  
attendance but Mr Marlborough was there with  
Mr McKenzie. Did you know about that?---No.

You didn't arrange it?---No.

Do you know how it was arranged?---No.

When did you become aware of that meeting?  
---Subsequently, perhaps. Well, I'm not sure how  
close to the meeting but after the meeting.

How did you become aware of it?---David McKenzie told  
me -

12 and over the page:

13

What did he say about it?---He said he'd had a  
meeting.

I'm sure he told you more than that?---Yes, he did.

What?---He told me it wasn't a good meeting.

14 Can you have a listen to T57, please. This is on 2 May in  
15 the afternoon following the meeting - and, Commissioner,  
16 this is about 11 minutes long.

17

18

19

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21

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33

1 **THE COMMISSIONER:** T - - -

2

3 **HALL, MR:** 57.

4

5

(Audio played)

6

7 **HALL, MR:** If we go to page 2 of that transcript please.

8 A little further down the page:

9

They're going to talk to Wally Cox and I don't want to put this in an email, you know.

10 Why?---I don't recall. I understood they were going to  
11 talk to Wally Cox and people from DPI but I'm not sure why  
12 I said that.

13

14 Go to page 5. Halfway down the page you say:

15

I asked him to make Brabazon available and to make Brabazon the driver. I said he's going to talk to Frewer too. They said when Frewer was there I didn't have a worry because he put the backbone into what was needed. Now, Kieran, you have to put the backbone into Mike Allen.

16 Did you say that to Mr McNamara?---I don't recall saying  
17 that to Mr McNamara but I certainly recall - I think I  
18 recall talking to Mr McNamara and Mr Brabazon about  
19 resurrecting the committee and then driving it.

20

21

22

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47 4/12/06

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48 2.28

1 What did you mean by that, "You have to put the backbone  
2 into Mike Allen"?---I just thought that people who are  
3 brave, if you like, are people that you've always got some  
4 chance of putting a point of view to.

5  
6 You mean brave in the sense of making an unpopular  
7 decision--Yeah, unpopular decision or actually doing  
8 something.

9  
10 Can we go to page 7, please - top of the page. So in fact  
11 it was you who sent Mr Marlborough along on the previous  
12 occasion?---No.

13  
14 "That's why I sent Norm along, you know"?---I'm not sure  
15 what that's referring to.

16  
17 We will go to the pervious page. On the previous page  
18 Mr McKenzie - page 6, halfway down the page Mr McKenzie  
19 says:

20           You have a rapport and a relationship with him -

21 that is, Mr McNamara -

22           that Norm certainly didn't have -

23 and then Mr McKenzie talks about having to go through this  
24 period of 12 months - and bear in mind that the previous  
25 meeting with Mr Marlborough had been nearly 12 months  
26 before, in June of the previous year?---Mm.

27  
28 You say:

29           Well, I always had in mind that we couldn't get  
          anything done until we flushed them out as to what  
          they wanted. Until some battle lines were drawn, I  
          didn't think there was any point in trying to -

30 and then you say, "That's why I sent Norm along, you  
31 know"?---No, it's not my recollection that I sent Norm  
32 anywhere.

33  
34 Well, what else could that mean?---I've got no idea.  
35 Perhaps there was some other meeting to which Norm went or  
36 something else, but my firm - - -

37  
38 Not with CALM?---I beg your pardon?

39  
40 Not with CALM?---I'm not aware.

41  
42 No. Well, I can tell you Mr Marlborough has given  
43 evidence, as have Mr McNamara and Mr Brabazon, that was the  
44 only meeting of Mr Marlborough's. It's correct, isn't it?  
45 ---Well, I don't have a recollection of sending Norm along  
46 at all.

47  
48 4/12/06  
49 2.40

1 Why would you say that?---I don't have a recollection of  
2 saying it and I don't know why I'd say it.

3

4 Isn't it clear that in fact Mr Marlborough was attending  
5 that meeting at your instruction?---It appears to be that I  
6 sent him along to CALM. I don't have a recollection of  
7 doing that.

8

9 Is that something that you were able to do, instruct  
10 Mr Marlborough to attend meetings on behalf of your  
11 clients?---No, I could ask Norm to go to meetings or come  
12 to meetings and he'd often do so. Sometimes he wouldn't.

13

14 But you were using an imperative form, "I sent" not "I  
15 asked Norm"?---Yes, I was talking to David McKenzie and  
16 perhaps I was trying to convince David of the way in which  
17 things were going and being handled well, but I don't  
18 recollect saying that and I certainly don't recollect  
19 saying - sending Norm along anywhere.

20

21 Over on the next page, page 8. The top third of the page  
22 you say:

23

And, mate, they said to me - and I don't want it  
repeated - they said, "Look, Peter Hanly is an  
ex-forester who has got no imagination and not much  
ability," et cetera, et cetera, et cetera.

24 Did Mr McNamara and Mr Brabazon say that to you?---I don't  
25 think they used those words.

26

27 was this another attempt by you to give comfort to  
28 Mr McKenzie, was it?---No, I was trying to convey to  
29 David - well, partly perhaps but I was trying to convey to  
30 David that I - I formed the view that they thought Peter  
31 Hanly had exceeded his brief.

32

33 Had they said to you?---Well, I think they said words to  
34 some effect that Peter Hanly's comments weren't - weren't  
35 justified. It was in the context of them agreeing to  
36 review whatever was coming forward at a senior level.

37

38 Would it be accurate to say that Mr Brabazon was working  
39 hard for you?---I wouldn't have thought so, no.

40

41 Can you listen to 66, please.

42

43 **THE COMMISSIONER:** 8 May this year?

44

45 **HALL, MR:** Yes.

46

47 (Audio played)

48

49

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51

52

53 4/12/06

BURKE, B.T. XN

1166

54

1 **HALL, MR:** "Mark is a really good bloke who is working  
2 hard for us." Why did you say that?---Well, I think  
3 firstly I was trying to convey my view to Peter Chappell  
4 about the - about the way in which CALM had taken a  
5 position on our representations, and in respect of "working  
6 hard" I think I was referring in the narrow sense to the  
7 restarting of the Frewer committee.

8  
9 But you can't just stop with the word "hard", Mr Burke?  
10 ---Yes.

11  
12 "He's working hard for us"?---On this, which was the  
13 committee.

14  
15 But "for us" - doesn't that mean that he was working in  
16 your interests?---From our point of view, yes.

17  
18 Yes?---I think it was clear that he'd accepted the  
19 representation.

20  
21 Can you listen to 84, please. This is on 23 May and again  
22 this is a reasonably long call.

23  
24 ..... , **MR:** 2006.

25  
26 **HALL, MR:** 2006, yes.

27  
28 (Audio played)

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1 **HALL, MR:** Can you turn to page 2 of that transcript  
2 please? Mr Brabazon says a number of times words to the  
3 effect, "Jim is rock solid. Jim is very strong." What do  
4 you understand him to mean by that?---That he was a very  
5 firm, decisive person.

6  
7 Is that all you were interested in?---Yes.

8  
9 Were you not interested in knowing where he stood as the  
10 representative of CALM as regards the development?---I  
11 presume that he stood where Mr McNamara and Mr Brabazon had  
12 explained was their position.

13  
14 Which was?---That they were satisfied with the concessions  
15 that the developer had offered.

16  
17 So when Mr Brabazon was saying he was rock solid and very  
18 strong you assumed that he would present that position  
19 strongly at the coordinating committee?---I wasn't sure  
20 that he had presented or what he would do, but I just  
21 presumed that he was a firm and decisive person who would  
22 present the CALM point of view.

23  
24 At the top of page 3 Mr Brabazon does tell you something  
25 about Mr Sharp's view. He says:

26  
He was at the last briefing of the consultants and he  
was very happy with what he saw.

27 What did you understand that to mean?---I wasn't sure.

28  
29 On the next page, page 4, about the middle of the page  
30 Mr Brabazon says to you:

31  
It's a matter of, you know, in some ways that's one  
of your client's best bargaining positions. He's  
obviously being able to offer that house block and  
that reserve into the mix, but if you do that - do it  
too early there's always the danger, you know, that  
these people will just sort of say, "Thanks very  
much" and raise the bar.

32 Who were "these people"? Who do you understand that to be  
33 a reference to?---I thought he was talking about the Smiths  
34 Beach Action Group people and generally about opponents of  
35 the project.

36  
37 Right. Did you not think it was unusual that Mr Brabazon  
38 was giving you tactical advice as to how you should present  
39 your development?---I didn't give it much thought. I  
40 thought that CALM was very pleased with what the developer  
41 had offered CALM and that it was not wanting to lose what  
42 had been offered.

43  
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48

1 Mr Burke, you told us in your evidence on the last occasion  
2 that Mr Brabazon was someone you had met once or twice  
3 before. This sounds like a very friendly conversation for  
4 someone you had met once or twice before?---I'd known him  
5 for a long time and I'd met him more than once or twice I  
6 think but he was just someone who I'd known and got on well  
7 with.

8  
9 But you were of the view and in fact expressed it earlier  
10 in this conversation that you wished it was him that was  
11 going to be there at the coordinating committee--Yes, I  
12 think I did express the view to him and Mr McNamara that  
13 either one of them would be a good driver.

14  
15 That's because you felt that you had some certainty as to  
16 Mr Brabazon's view of the development?---No.

17  
18 Well, why was it?---Because they had some strength. They  
19 were brave in terms of being able to prosecute a point of  
20 view against unpopular - or against positions that people  
21 said were unpopular.

22  
23 In this case that meant the unpopular view that the  
24 development should go ahead?---If they came to that  
25 position, yes.

26  
27 And that was your understanding, that they had come to that  
28 position?---I'm not sure that they had come to that  
29 position but I think they certainly thought what the  
30 developer was offering was very fair.

31  
32 The meetings of the coordinating committee that Mr Sharp  
33 was to attend, did you have any understanding as to how  
34 many of those meetings might be required?---No.

35  
36 Could you listen to T50 please? This is on 23 May this  
37 year.

38  
39 (Audio played)

40  
41 **HALL, MR:** Just on the first page of that transcript on  
42 the bottom of the page in speaking about Mr Allen Mr Grill  
43 says:

44  
45 I guess you would have too for intervening in that  
46 matter.

47  
48 What did you understand Mr Grill was talking about?---I'm  
49 not sure that I understood anything, Mr Hall. I don't  
50 recall it.

51  
52 Well, he has spoken about Mr Allen, or you have spoken  
53 about Mr Allen, restarting the Frewer committee?---Yes.

54  
55 Mr Grill says he has praised Mr Allen to high heaven and  
56 then says, "I guess you would have too for intervening in

1 that matter." Now, recall that on 23 May you had had a  
2 telephone call with Mr Frewer thanking him for the 19 May  
3 deferral of amendment 92. Recall that?---Yes, I do. When  
4 I read this I rather think I'm referring to what you showed  
5 me previously.

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1 Yes, what I'm suggesting to you - - -?---When Julian said  
2 he had spoken to Mr Allen.

3  
4 Yes. That's what I'm suggesting to you; that that  
5 intervening at the bottom of the page is Mr Grill is  
6 talking about Mr Allen intervening in the South-West  
7 Regional Planning Committee?---I presume you're right on  
8 the basis of what you showed me today but I didn't recall  
9 this from previously is what I'm saying.

10  
11 Let's turn over the page then. You said, "Jim knows  
12 exactly what the score is." What does that mean?  
13 ---Well, Jim knows that CALM has said that anything coming  
14 forward is going to have to come for or be reviewed by  
15 senior people at CALM.

16  
17 How could they be so assured that it was going to be sorted  
18 out pretty quick?---Well, I think that because CALM was  
19 very happy with the offer that had been made to them after  
20 such a long time that they were interested in making sure  
21 it was sorted out.

22  
23 But CALM was not the only protagonist in these?---I beg  
24 your pardon?

25  
26 CALM was not the only protagonist in these matters?---One  
27 of the major ones.

28  
29 "Mike Allen seems to think we only need a couple of  
30 meetings" you've said?---I don't recall that but I may have  
31 been informed by Mr Frewer's conversation with me - sorry,  
32 Mr Brabazon's conversation with me.

33  
34 Have you suggested to other people that Mr Brabazon is a  
35 good contact of yours?---I'm sure I have, yes.

36  
37 Have you suggested that to members of the press?---I may  
38 have but I don't recall.

39  
40 Can we listen to 93 please, which is on 4 July this year.

41  
42 (Audio played)

43  
44 **HALL, MR:** Did you?---I don't recall ringing him, no. I  
45 may have.

46  
47 Mr Drummond is a journalist, isn't he?---He is.

48  
49 You clearly felt sufficiently confident in your  
50 relationship with Mr Brabazon that you would refer him as a  
51 suitable contact to a journalist?---Yes.

52  
53 Do you remember what this issue was about?---I think it  
54 might have been about the brick works at the airport. I'm  
55 not sure though.

56  
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1171

58 3.00

59

1 When you described Mr Brabazon as being "a very, very good  
2 contact of mine" what did you mean?---That he was a very  
3 good contact of mine.  
4  
5 But in what sense?---That I could talk to him.  
6  
7 Is he the sort of person who you could expect would provide  
8 information that might not be available to the public?---If  
9 he decided to he could or would but not outside any  
10 orthodox or proper sense.

11  
12 Has he done that for you?---Not to my knowledge.

13  
14 You mentioned being angry about Mr Brabazon not returning  
15 your calls?---Yes.

16  
17 In fact you told us on the last occasion that you asked  
18 Mr Shay to make some inquiries for you?---Yes.

19  
20 Mr Shay having previously been Mr Brabazon's boss?---Yes.

21  
22 You understood them to have a friendly relationship?---Yes.

23  
24 Can I ask you to listen to T675 please?

25  
26 **DONALDSON, MR:** Sir, could I have the date of this?

27  
28 **HALL, MR:** 19 September this year.

29  
30 **DONALDSON, MR:** Thank you.

31  
32 (Audio played)

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1 **HALL, MR:** What did you mean by that, there was no basis  
2 for the promotion?---I don't think I meant anything,  
3 Mr Hall. I think I was annoyed and angry and upset and I  
4 was saying whatever I thought was necessary to try to  
5 impress on Syd that he should return my phone calls or tell  
6 me why he wouldn't.

7  
8 But this was someone who might know whether you were  
9 telling the truth or not, you would think. Mr Shay was  
10 formerly Mr Brabazon's boss, yes?---He was his boss  
11 formerly, yes.

12  
13 Yes, and when you said, "When you wanted him promoted and  
14 there was no basis for the promotion" - and Mr Shay says,  
15 "Yes, I know; I know"?---Well, I don't believe that's true  
16 and I'm not sure what Mr Shay was saying when he says, "I  
17 know, I know." All I can say is that I don't have any  
18 knowledge of having promoted Mr Brabazon or been  
19 influential in his career at any time.

20  
21 So you just said this, notwithstanding it wasn't true,  
22 because you were angry?---Yes, I think I was trying to make  
23 the point that after - I was trying to make the point that  
24 he should return my phone calls or explain why he wouldn't.

25  
26 And you felt that he should because he was someone who owed  
27 you?---No, not really. He was someone who I'd had a - I'd  
28 known for a long time and I would have thought that he  
29 would return my phone calls.

30  
31 When you were last here I asked you some questions about  
32 the contact that you had with Mr Marlborough - on page 954  
33 of the transcript - and you said that the amount of contact  
34 you had with Mr Marlborough had decreased from three to  
35 five times a week to a couple of times a week after  
36 Mr Marlborough was appointed to cabinet on 3 February 2006.

37  
38 **DONALDSON, MR:** Sorry, in relation to this matter may I  
39 have it explained how it is that this falls within the  
40 scope and purpose of this examination in relation to Smiths  
41 Beach? My friend is now moving on to this issue.

42  
43 **HALL, MR:** Yes, I'm happy to do that - - -

44  
45 **THE COMMISSIONER:** Yes.

46  
47 **HALL, MR:** - - - Commissioner. It falls within the scope  
48 and purpose because in respect of a number of matters, one  
49 arises immediately out of questioning that I have addressed  
50 today, it has been suggested to Mr Burke that  
51 Mr Marlborough has attended - for example, at the meeting  
52 on 20 June 2005 - at the behest of Mr Burke. The  
53 relationship between the two of them and the influence that  
54 Mr Burke is able to exert over Mr Marlborough or otherwise  
55 is relevant in that regard. Does that sufficiently answer

1 my learned friend's question?

2

3 **DONALDSON, MR:** This is well after that. That meeting to  
4 which reference has been made by Mr Hall was in - 20 June  
5 2005 is the date Mr Hall gave.

6

7 **HALL, MR:** Then I will give another example. There is an  
8 example in respect of the appointment of Mrs Morgan or at  
9 least the suggestion that she would be appointed to a  
10 position on the South-West Regional Development Commission  
11 which was after the period that I'm talking about.

12

13 **THE COMMISSIONER:** Yes, I'm satisfied there is sufficient  
14 nexus.

15

16 **HALL, MR:** Mr Burke, the evidence you gave on the last  
17 occasion was not true, was it?

18

19 **DONALDSON, MR:** Which evidence?

20

21 **HALL, MR:** The evidence I just read out to you?---That the  
22 contact decreased?

23

24 Yes, the contact decreased to a couple of times a week?---I  
25 think it's approximately true or if it's not true it's not  
26 far off the mark.

27

28 Well, what do you mean by that?---Well, let me tell you.

29

30 You have got some figures, have you?---Yes, I do.

31

32 You have been looking at your bills, have you?---I have.

33

34 Do they give the calls going both ways?---No, but I'll  
35 explain that as well if I might.

36

37 Good. Do so?---In the last five months, June 14 to July 13  
38 calls from my mobile and fixed lines to Mr Marlborough were  
39 five. In the next month they were four. The next month  
40 they were 19, and the next month they were five. In the  
41 two preceding months they were five and nine. Now, they  
42 were calls from my mobiles, from my mobile and my fixed  
43 line.

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58

47/24/gmb

1 To what number?---To any of Norm's numbers.

2

3 What numbers have you looked for?---His mobile number, the  
4 phone you labelled a secret phone, and to his fixed lines.

5

6 Which fixed lines?---His fixed lines being his home line  
7 and his office line.

8

9 That's his electoral office?---Yes.

10

11 Right?---Now, to the best of our calculation if I can give  
12 you the full year's figures. From December 14, 2005 to  
13 October 13, 2006 there were a total of 12,914 calls that  
14 came from my mobile and fixed lines to any of Norm's  
15 numbers.

16

17 12 thousand - - -?---914.

18

19 Thank you?---Of those 136 were to Norm lasting more than  
20 30 seconds.

21

22 Why have you limited at 30 seconds?---Because when my  
23 clerical assistant looked at the bills she told me that  
24 almost inevitably if the phone calls only lasted that long  
25 there was another number of Norm's underneath indicating  
26 that it was a number that wasn't completed.

27

28 **THE COMMISSIONER:** Just hold on for a moment. I might  
29 have misheard you. 12,914 calls - is that in total?  
30 ---That's in total, sir.

31

32 In total?---From December 14, 2005 - - -

33

34 I misunderstood you?---Yes. Of that 12,914 136 were to  
35 Norm. Of the 136 48 were in one period which was January  
36 to February of this year, which was clearly a period of  
37 great activity because it was when he was elected to the  
38 ministry. So if you take that 48 off you reach the  
39 situation where - - -

40

41 **HALL, MR:** Why would you take the 48 off?---Well, because  
42 that was in the one month.

43

44 Right?---That was an abnormal period of calls, I would've  
45 thought, when he was elected to the ministry and all that  
46 business was carrying on.

47

48 But the election to the ministry was what you told us on  
49 the last occasion was what pre-empted your decision to  
50 withdraw?---Yes, and it's clear after that they fell down,  
51 but this is the period when he was being elected, but for  
52 any reason - all I'm saying is if you take that one month  
53 out, justified or not, then the number of calls comes down  
54 to 88 calls for the nine months that are counted. So 88  
55 calls in nine months. Now, you're perfectly right,

56

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1175

58 3.10

59

1 Mr Hall, that doesn't include calls to me on my mobile  
2 phone. So if I turn to the information you provided to me  
3 - I'm too nervous to - anyway, that - - -  
4  
5 I can bring it up on the screen, Mr Burke, if it helps?  
6 ---That information - - -  
7  
8 10069?---That shows a total of 318 calls and that shows the  
9 number called, the number calling. To voice-mail is 94.  
10 So if you take the 94 off - - -  
11  
12 We have done that on the right-hand side if you see,  
13 Mr Burke. We have just included - there's 209 calls to  
14 you?---Yes, 209 calls. Now, you have to make some  
15 allowance, I would've thought, for calls that didn't go  
16 through or calls to my voice-mail or to something else, but  
17 even if you make no allowance for the nine months you get  
18 to about 296 calls for those nine months. Now, I may've  
19 got it wrong but I didn't get it wrong in the way you said  
20 I did.  
21  
22 Of course you do realise this is only calls that were made  
23 either to or from the secret phone, this sheet in front of  
24 you. You do realise that, don't you?---I wasn't quite sure  
25 but - - -  
26  
27 So we would have to add in to that - - -?---Yes. Well,  
28 even if you doubled them you don't get to eight calls a day  
29 or six calls a day, that sort of thing.  
30  
31 You have been referring to some documents there. Is that  
32 your telephone bills, is it?---No.  
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58 4/12/06 BURKE, B.T. XN 1176

1 What was it you were referring to?---Just a table setting  
2 out the calls.

3

4 I see. Is that what you have used though in order to  
5 prepare that table?---My bills? Yes.

6

7 Your telephone bills?---Yes.

8

9 Well, can I show you 10862? Sorry, before I do that can I  
10 show you 10070? Now, you may recall that when  
11 Mr Marlborough was giving evidence I said to him that in  
12 the days following the connection of this phone there were  
13 10 calls on 5 February - - -?---What page is this, Mr Hall?  
14 This isn't in my evidence?

15

16 No?---No.

17

18 Seven calls on the 6th and eight calls on the 7th of  
19 February, so far from there being a falling off of calls  
20 after Mr Marlborough was appointed to the ministry there  
21 was a lot of calls and certainly more than a couple a  
22 week?---When was this?

23

24 This was on 5 February and following?---That's immediately  
25 - that's when he was appointed.

26

27 Exactly and that's the date you said when he was appointed  
28 to the ministry there was a change then in your contact  
29 with him?---I think it's shown that there was. I'm not  
30 saying in the first week.

31

32 I see. Well, you didn't make that qualification on the  
33 last occasion?---I'm sorry.

34

35 **DONALDSON, MR:** Well, you didn't ask. You didn't ask.

36

37 **THE COMMISSIONER:** I wonder where this is going.

38

39 **DONALDSON, MR:** It's going nowhere if I might say. That  
40 question simply wasn't asked.

41

42 **HALL, MR:** Let me make it clear to you, Mr Burke. If we  
43 take into account all the telephones - have a look at  
44 10862. This is all the calls made from Mr Marlborough's  
45 personal mobile, as we call it the secret mobile; the home  
46 phone of Mr Marlborough, his Kwinana electoral office to  
47 you either at your home or - - -

48

49 **THE COMMISSIONER:** Mr Hall, I know it's my fault but could  
50 you just explain that a bit to me. Where is to and where  
51 is from?

52

53 **HALL, MR:** The first square at the top of the page is a  
54 subscriber is from, is the calling number, so these are  
55 calls made from Mr Marlborough's - in the first example his

56

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1177

58 3.15

59

1 personal mobile to Mr Burke's mobile.

2

3 **THE COMMISSIONER:** Right.

4

5 **HALL, MR:** The second line is Mr Marlborough's personal  
6 mobile to Mr Burke's home.

7

8 **THE COMMISSIONER:** Thank you, got it.

9

10 **HALL, MR:** Then in the second box at the bottom of the  
11 page they have been grouped going the other way, so from  
12 Mr Burke's mobile to Mr Marlborough's personal mobile;  
13 Mr Burke's mobile to the secret telephone and so forth.

14

15 Mr Burke, there are 542 calls between 13 January 2006 and  
16 9 November 2006 when all traffic going both ways is taken  
17 into account?---Yes, but you've neglected to address what  
18 became clear to us in our analysis and it's reflected in  
19 these two figures. The total calls to Norm from my fixed  
20 line and from my - my two fixed lines and from my mobile  
21 phone was 327 so that's what you should add to your 542,  
22 that's all calls. However, the total number of calls from  
23 my mobile phone and from my fixed line to all of Norm's  
24 numbers according to my records was 327. Your analogous  
25 figure is 542.

26

27 Going both ways?---Yes, that's right. Now, what I wanted  
28 to say to you was this: that when we analyse the calls  
29 that 327 became 136 because that's the number that were  
30 30 seconds or more, sir. I'm not sure about your phone  
31 usage but I know that a great many of my calls aren't calls  
32 I take so while we found 327 calls that actually became  
33 136. If you applied the same analysis to your 542 it would  
34 fall dramatically. Now, Mr Hall, I'm not trying to be cute  
35 and I'm not trying to say that I mightn't have  
36 miscalculated my calls to Norm but I am saying that in no  
37 sense was there eight or 10 calls a day and while I'm at it  
38 I might also add that I was never under the impression it  
39 was a secret phone. I was under the impression that it was  
40 phone owned by Rosalind Shay - Rosalind Marlborough and  
41 that Norm used it.

42

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1 But you told him to tell no-one else?---Yes, of course.

2

3 Why?---Because under the Freedom of Information rules if  
4 the opposition is able to access the phone records it will  
5 be on the front page of every newspaper, as, Mr Hall, it  
6 has been when his relationship with me was publicised.

7

8 But you were even angry with him for telling Mr Grill.  
9 Mr Grill is not part of the opposition?---I wasn't angry  
10 with him for telling Mr Grill. Look, Norm Marlborough is  
11 my best friend. I love him a great deal and I was trying  
12 to make sure that his relationship with me wasn't broadcast  
13 on the front pages of the paper to his detriment.

14

15 Let's just look at some of the calls that were made. In  
16 respect of Mrs Morgan, I asked you on the last  
17 occasion - - -

18

19 **DONALDSON, MR:** I'm sorry, sir, if I could just clarify  
20 one matter before my friend moves on to a discrete issue -  
21 because this is a matter that has attracted some interest.  
22 As we understand it then the evidence is that there were a  
23 total of 542 calls made in the 11-month period either to or  
24 from or between Mr Burke and Mr Marlborough, which on my  
25 maths is roughly 12 a week. Is that what is being - that's  
26 the understanding that we had.

27

28 **THE COMMISSIONER:** That's what I ended up with.

29

30 **DONALDSON, MR:** Yes, thank you very much.

31

32 **HALL, MR:** At page 952 of the transcript, Mr Burke, I  
33 asked you these questions - do you have that?---I do.

34

35 At line 40?---Yes.

36

Did you indicate to her -

37 that is, Mrs Morgan -

38

whether you might speak to Mr Marlborough in that  
regard?---No, I don't think I said that to her.

Did you say anything to her in that regard?---I think  
I said that I'm sure she would get a fair hearing and  
that was that.

Did you speak to Mr Marlborough about it?---Not to my  
recollection. I may have but I don't recollect it.

We're only talking in the last, what, month or two,  
are we, perhaps last two months?---Yes.

39

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41 3.20

Is it possible that you asked Mr Marlborough to appoint her to the South West Region Development Commission?---No, I wouldn't have done that.

Why wouldn't you have done that?---Because I wouldn't have thought that that was the right thing to do. I might've said to him that she was an applicant.

I take it from what you're saying that whilst you and Mr Marlborough are friends there are some boundaries to the sorts of things that you will ask him to do?  
---Yes.

And that's the sort of thing that you would never ask him to do; that is, appoint somebody as a favour to you?---Not as a favour to me, that's absolutely right.

1 Now, this morning you have sought to clarify that by saying  
2 that you may have made representations to him. Am I  
3 misunderstanding what your clarification is?---Yes.

4  
5 What is your clarification?---I was addressing in my mind  
6 the notion that I was threatening, forcing or compelling or  
7 in some other way instructing Norm to appoint Ms Morgan to  
8 the South West development authority.

9  
10 Where did you get those words from?---That was what I was  
11 addressing.

12  
13 Why?---I'm not saying that you used those words.

14  
15 No, why were you addressing that?---Because I'd thought  
16 that's what I was being challenged about.

17

Is it possible that you asked Mr Marlborough to appoint her to the South West Region Development Commission?---No, I wouldn't have done that?

18 ---Yes.

19

20 There's no suggestion of any threat, inducement?---No, I  
21 agree there wasn't, but at the same time I would, with  
22 respect, point out that I spend a lot of my working time  
23 making representations to people about the appointment of  
24 people or other things and there's no reason why I wouldn't  
25 have said to Norm that she was a suitable person.

26

27 Let's deal with Mrs Morgan first. Can you listen to 119  
28 please which is a call made on 28 July this year.

29

30

(Audio played)

31

32 **HALL, MR:** Did you get the email from Mrs Morgan?---I  
33 think I did. I don't recall it but I think I did.

34

35

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37

1 In doing that it was your intention to speak to  
2 Mr Marlborough. Correct?---I think I intended to forward  
3 him on a copy of the application.

4  
5 Can we listen to 121 please which is on 9 August this year?  
6

7 (Audio played)  
8

9 **HALL, MR:** Why was it so important to you, Mr Burke?---I  
10 thought she'd be a very good appointment.

11  
12 But why was it so important to you?---Because I thought  
13 she'd be a very good appointment.

14  
15 But how does that affect you?---Well, I'd recommended her.

16  
17 Why had you recommended her?---Because I thought she'd be a  
18 very good appointment.

19  
20 Had nothing to do with her assistance in the Busselton  
21 shire elections in May of last year?---Not really. I  
22 didn't recall that that was a factor at all.

23  
24 You considered it a done deal?---Look, Mr Hall, this is a  
25 confidential communication between me and my best friend.  
26 I speak to him in all sorts of terms that I'm sure other  
27 people speak to their best friends in and of course it's  
28 very difficult to see that sort of conversation repeated,  
29 but I didn't regard it as a done deal and that's Norm  
30 talking to me as his best friend.

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1 So there would be no reason why you would have rung  
2 Mrs Morgan and told her that she could expect to be  
3 appointed?---I may have rung her after Norm said those  
4 things.

5  
6 Can you listen to 167 please, which is a call made on  
7 14 September this year.

8  
9 (Audio played)

10  
11 **HALL, MR:** So you had sufficient confidence about that  
12 result to let Mrs Morgan know?---Yes, although I - as I  
13 said, I wasn't positive, it could always come off the  
14 rails.

15  
16 It caused some problems between you and Mr Grill, didn't  
17 it?---Not really. I know what you are referring to but not  
18 really.

19  
20 What am I referring to, Mr Burke?---Well, I subsequently  
21 found out that Mr Grill had recommended someone to be  
22 appointed to the authority.

23  
24 Yes, and what was the discussion between you and he  
25 about - - -?---Mr Grill?

26  
27 Yes?---I don't recollect the exact discussion but - no, I'm  
28 sorry, I don't. I think we discussed the fact that he'd  
29 recommended someone or I had or whatever.

30  
31 That's all right. We can play it - 112. 24 August.

32  
33 (Audio played)

34  
35 **HALL, MR:** Is that the conversation you were thinking  
36 of?---Yes, I - I didn't recall the exact conversation but  
37 that's the one that I think I discussed with Julian.

38  
39 Right. So there was some - - -?---About the appointment.

40  
41 I'm sorry?---About the appointment.

42  
43 Yes, so there was some concern on Mr Grill's part that  
44 Mr Marlborough would deliver on another appointment for a  
45 client, that is, Griffin, in January?---I think he was  
46 concerned that Norm mightn't appoint the person that he  
47 would recommend.

48  
49 Did you speak to Mr Marlborough about delivering next  
50 January?---I don't remember. I may well have said to Norm,  
51 "Look, I've had a conversation with Julian and he's got  
52 someone in mind" - and whatever, whatever, but I don't  
53 recall it exactly.

1 Just a couple of final things, Mr Burke. Mr Dean gave  
2 evidence at the Commission immediately following you and he  
3 gave some evidence in regards to the arrangement with  
4 cheques from Broad and AHA. You have given a clarification  
5 about that this morning and said that there were also, you  
6 believe, some - that AHA also paid monthly amounts of \$1000  
7 through IAG. You made that clarification in respect to  
8 what you said at page 870 of the transcript if that assists  
9 you?---Yes?

10  
11 So how much or how many payments went through IAG of this  
12 nature, that is, payments that were for you as a consultant  
13 but passed through IAG?---From how many people?

14  
15 No. How many payments?---I would think maximum 24 to  
16 30 months.

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1 Right, and they were monthly payments?---Yes.

2  
3 Was it 24 to 30 months combined for the two, Broad and  
4 AHA?---No, I think AHA was less than that but I think Broad  
5 was 24 to 30 months.

6  
7 When you said in your clarification that it was paid  
8 through IAG do you maintain what you said before in your  
9 evidence that the cheques were always endorsed over?---Yes,  
10 with this qualification: after I gave my evidence last  
11 time I returned to my home and extracted from my files the  
12 pieces of paper that Broad paid and - although I didn't see  
13 them myself. When I say I extracted them my wife extracted  
14 them and she told me that there were about 18 to 20 of  
15 them.

16  
17 Pieces of paper; what do you mean?---Well, when the cheque  
18 came from Broad signed over it was attached to a piece of  
19 paper and you tore the piece of paper off and banked the  
20 cheque. I've seen it quite often.

21  
22 I see. Right?---There were about 20 of them my wife said.  
23 Now, you will know that because you took them all. I'm  
24 sorry, the CCC took them.

25  
26 Yes. Did you ever receive cheques that were drawn on IAG?  
27 ---I don't recall receiving them, no.

28  
29 He also gave some evidence in regards to the arrangement  
30 that was made when you and he in regards to the Busselton  
31 Shire election. He said in his evidence that you called  
32 him and that he placed some conditions upon IAG being used  
33 when he spoke to you subsequently. This was as a result of  
34 speaking to his executive and that the conditions were that  
35 IAG money was not to be used and that IAG was a conduit,  
36 that the money was to be treated as being separate from  
37 IAG's money. The members' money was not to be used; IAG's  
38 members?

39  
40 .....**MR:** Sorry, where is that?

41  
42 **HALL, MR:** It's at page 965 and following.

43  
44 It's not your evidence, Mr Burke, it's Mr Dean's evidence.  
45 What do you say about that? Were those conditions given to  
46 you?---I don't recall those conditions being imposed on the  
47 arrangement.

48  
49 He said he sought some assurance from you as to whether  
50 this was normal practice for council elections and that you  
51 gave him an assurance about that. That was at 967?---What  
52 was normal practice?

53  
54 That arrangement that you were suggesting to him; that is,  
55 that people could place money with IAG and that IAG would

56  
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1184

58 3.40

59

1 then advance money to council candidates. Did you get an  
2 assurance about that?---That had never happened. That had  
3 never happened before.

4  
5 So you didn't give him that assurance?---No, but he would  
6 have known, Mr Hall.

7  
8 Known what?---Whether it was normal practice for IAG to  
9 fund candidates at council elections in the way that I was  
10 proposing.

11  
12 Because you're saying it had happened before?---No, I say  
13 it never happened before but he would have known if it did  
14 or not because he was in charge of IAG.

15  
16 No, no, he was saying in evidence that he sought an  
17 assurance from you that this was normal practice for - not  
18 IAG but for council elections and that you gave him that  
19 assurance?---I may have given him the assurance about the  
20 500 club or about the John Curtin Foundation or about  
21 anything else but I don't recall any assurance about some  
22 organisation, IAG or otherwise and council elections.

23  
24 He also gave evidence that there was a discussion at your  
25 home after he had been interviewed on the first occasion by  
26 CCC investigators. Do you recall that?---Yes. I do.

27  
28 He said that you talked on - I think he said your back  
29 verandah. Is that right?---I don't have a back verandah.

30  
31 Well, where did you talk?---A balcony, a patio.

32  
33 Right. Do you recall what you said to him?---The major  
34 topic of the conversation was about the problems he was  
35 having with his daughter and his grandchildren and I  
36 remember most of the conversation being about that.

37  
38 Did you say something to him about being interviewed by the  
39 CCC?---I may have but I don't recall.

40  
41 Had you received some information in regards to what  
42 Mr Dean had said when he was first interviewed?---I don't  
43 recall receiving any information. I think Mr Dean may have  
44 told me earlier that he'd been interviewed.

1 Now, just finally, Mr Burke, I showed you some emails  
2 earlier today and 10856 is an example of one of the emails  
3 I showed you - bring that up, please. This is an edited  
4 version. There is some handwriting on there. Do you  
5 recognise the handwriting?---That's my handwriting.

6  
7 All right. Now, I can tell you that this document as well  
8 as the other emails I showed you this morning, 10857 and  
9 10858, and indeed 11484, were seized from your home on  
10 8 November 2006. Clearly by virtue of the handwriting on  
11 them they are hard copies, they are not from the computer?  
12 ---I understand.

13  
14 You received a notice under section 95 of the Corruption  
15 and Crime Commission Act which was dated 6 July 2006. It's  
16 E8846 - can we bring that up, please?

17  
18 Sorry, Commissioner, I have just been reminded that there's  
19 a notation on this notice that it's not to be disclosed so  
20 I ask for a direction that that be lifted for the purposes  
21 of this examination.

22  
23 **THE COMMISSIONER:** Yes, order in those terms with respect  
24 to this notice and this notice only.

25  
26 **HALL, MR:** Now, Mr Burke, you received this notice?---I  
27 did.

28  
29 Yes, and you produced I think some documents, yes?---I went  
30 through my files and got out the documents.

31  
32 But not the ones that I have shown you today, 10856, 57, 58  
33 and 11484?---I don't recall whether that was amongst them  
34 or not.

35  
36 Well, they were found in your home?---Yes.

37  
38 And I can tell you that they were not produced to the  
39 Commission in response to that notice?---Well, perhaps they  
40 were in some - were they in the Smiths Beach file? I  
41 didn't go through all my documents at home. I didn't go  
42 through every file.

43  
44 Is that your explanation?

45  
46 **DONALDSON, MR:** Can I see the schedule, please?

47  
48 **HALL, MR:** Yes, you can. It's the next page?---What I'm  
49 trying to say to you is that the documents you've shown me  
50 appear to be small extracts from some documents relating to  
51 other things which may not have been with my Smiths Beach  
52 documents.

1 Is there some reason that they wouldn't have been with your  
2 Smiths Beach documents?---Because they referred to other  
3 things.

4  
5 I see. What did you do when you received this notice in  
6 terms of ensuring that you had completely complied with  
7 it?---I went to all my Smiths Beach files and got out  
8 everything I thought was relevant.

9  
10 One of those emails only referred to Smiths Beach. That  
11 was 11484. I can bring that on the screen for you - if we  
12 could, please. This one you may recall is the one where  
13 you have embedded answers in Mr Crichton-Browne's email.  
14 It only refers to Smiths Beach. Why wouldn't you have  
15 produced this one?---Are you sure you got that from my  
16 house?

17  
18 That's my information, that it was seized under warrant on  
19 8 November 2006?---Well, the only thing they didn't take  
20 was the kitchen sink, but I can't ever recall even seeing  
21 that letter, that email.

22  
23 You responded to it and you didn't say when I took you to  
24 the embedded answers - - -?---Yes.

25  
26 - - - that they weren't yours?---No, I think I said I  
27 didn't - I'm not sure but all I'm saying - look, I didn't  
28 deliberately not put anything in what I took, what I gave  
29 to Mr Grubb.

30  
31 And your explanation is that they may have been amongst  
32 other things and therefore not discovered by you?---Well,  
33 yes.

34  
35 I see. Yes, thank you, Mr Burke.

36  
37 **THE COMMISSIONER:** Can Mr Burke now be discharged from his  
38 summons?

39  
40 **HALL, MR:** Well, subject to the possibility that other  
41 people who are represented may make application for  
42 Mr Burke to return for cross-examination purposes.

43  
44 **THE COMMISSIONER:** Yes, but apart from that he can  
45 now - - -

46  
47 **HALL, MR:** Apart from that he is not required further in  
48 respect of the Smiths Beach matter. So there is that  
49 possibility.

50  
51 **THE COMMISSIONER:** Is that clear, Mr Donaldson? Do you  
52 have any query on that?

53  
54 **DONALDSON, MR:** No, I understand that. Thank you very  
55 much.

56  
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58 4/12/06 BURKE, B.T. XN 1187  
59

1 **THE COMMISSIONER:** Thank you?---May I address you,  
2 your Honour?

3  
4 A bit unusual. I will let you?---Thank you. Your Honour,  
5 the impact of these hearings on me, my family and friends  
6 have been to firstly force me to resign from the Labor  
7 Party after 43 years of membership; (2) cause instructions  
8 to be issued by the national secretary of the Labor Party  
9 that no member of the Labor Party, state or federal, is  
10 allowed to have dealings with me. A similar instruction  
11 has been issued in Western Australia but extended to all  
12 middle to senior ranking public servants. My children,  
13 particularly my daughters who have some political  
14 involvement, have seen that political outlook effected. My  
15 best friend has had to resign his ministry and has been  
16 forced out of the Parliament and the party and is  
17 hospitalised. Other longer-term friends and acquaintances  
18 are naturally reluctant to continue relationships. My  
19 business has collapsed with no prospect of my earning a  
20 living as I had previously, and I will have to pay very  
21 substantial legal and other costs and I'm continually  
22 reviled in media reports. Now, it may be, sir, that these  
23 penalties are justified by what has been led in evidence at  
24 this Commission, but I don't think they are.

25  
26 **THE COMMISSIONER:** Thank you then, Mr Burke.

27  
28 (THE WITNESS WITHDREW)

29  
30 **THE COMMISSIONER:** Do you intend to call another witness  
31 today?

32  
33 **HALL, MR:** There is a witness, Commissioner, Dr Cox, who -  
34 yes, he's here and I know he's on a plane tonight so - - -

35  
36 **THE COMMISSIONER:** Let us just have five minutes.

37  
38 **HALL, MR:** Yes.

39  
40 **THE COMMISSIONER:** And then we will resume.

41  
42 **HALL, MR:** Thank you, sir.

43  
44 \_\_\_\_\_

1 **THE COMMISSIONER:** Right, Dr Walter Cox.

2

3 **COX, WALTER JACOB** sworn:

4

5 **THE COMMISSIONER:** Thank you, Dr Cox. you. Please sit  
6 down. I must tell you of your rights and obligations under  
7 the Corruption and Crime Commission Act of 2003 which I  
8 will simply call the act.. That act provides that if you  
9 fail to produce any document or other things as required by  
10 the summons or if you fail to answer any question relevant  
11 to the investigation that I require you to answer you may  
12 be in contempt of the commission. You are not excused from  
13 the requirement to answer the question on the ground that  
14 the answer might incriminate you or tend to incriminate you  
15 or render you liable to a penalty. You may accept that  
16 when Mr Hall asks you a question he is doing so on my  
17 behalf and you must answer. If I take the view that the  
18 question is not appropriate in any way I will intervene.  
19 In the absence of the intervention, however, you must  
20 proceed to answer the question. I may ask you some  
21 questions myself but for the most part the examination will  
22 be carried out by Mr Hall. However, the legislation  
23 provides protection for you in the following way: a  
24 statement made by you in answer to a question that I  
25 require you to answer is not admissible in evidence against  
26 you in any criminal proceedings or proceedings for the  
27 imposition of a penalty except contempt proceedings,  
28 proceedings for an offence against the act or disciplinary  
29 proceedings. You must give truthful evidence in this  
30 examination. You have promised to do so in submitting to  
31 the oath. If you fail in that respect, that is, if you  
32 give evidence which is false or misleading in any material  
33 particular you would commit an offence under the Corruption  
34 and Crime Commission Act of 2003 attracting penalties and  
35 your evidence here that is relevant to that prosecution  
36 would be admissible against you. Any observations on those  
37 remarks, Mr Hall?

38

39 **HALL, MR:** No, thank you, sir.

40

41 **THE COMMISSIONER:** Perhaps before you start, Mr Hall, I  
42 might sort of tidy up something arising out of the last  
43 hearing. I did make it clear that I was issuing a  
44 suppression order suppressing the publication of call 621  
45 in its entirety. I just now formalise that. Yes, Mr Hall?

46

47 **HALL, MR:** Thank you, sir.

48

49 Firstly, Dr Cox, can I place on record that we acknowledge  
50 receipt of your letter dated 29 November 2006 which  
51 clarifies the position in regards to the EPA, in particular  
52 in regards to the SEA process. Thank you for that and for  
53 the record that has been bar coded 35778. In your evidence  
54 on the last occasion I asked you about the lunch that you  
55 had with Mr Grill and Mr Burke and you indicated that it

56

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1189

58 3.57

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56/39/gmb

1 was Mr Grill who arranged the lunch and at page 696 of the  
2 transcript you said this:

3

His opening remark -

4 that is, Mr Grill's -

5

in issuing the invitation was, "This is not to talk  
about any proposal I'm associated with."

6 You went on to say that in the course of that lunch nothing  
7 was discussed about Canal Rocks, though the SEA process by  
8 Canal Rocks was alive at the time. Could I ask you to  
9 listen to this call please, T26?

10

11

(Audio played)

12

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COX, W.J. XN

1190

1 **HALL, MR:** When you said - his opening remarks were, "This  
2 is not to talk about any proposal I'm associated with,"  
3 that was not true, was it?---No. Obviously on the basis of  
4 that transcript the opening remarks and the agonising over  
5 it when in fact there was a proposal in front of me is what  
6 I got mixed up but I certainly was of the view in my mind  
7 that we were not going to be talking about any proposal.

8  
9 But in fact the opening remarks were that he wanted to talk  
10 about the environment portfolio generally and also to bring  
11 you up to date with Smiths Beach?---That's what the  
12 transcript says but my recollections were that - and  
13 obviously what registered in my mind was only the  
14 involvement of the portfolio component not the Smiths Beach  
15 component.

16  
17 Now, given that the SEA process was as you told us on the  
18 last occasion live at that point why were you not concerned  
19 then when he said that one of the reasons for this lunch  
20 was to speak about Smiths Beach?---I can't remember my  
21 state of mind at that time but certainly if I was to do an  
22 analysis now I would put it on the basis that the SEA  
23 process had been going on for an awful long time and the  
24 last active involvement in fact at that point was March of  
25 2006 and from memory the lunch was in May and we really  
26 hadn't got to the stage of assessing the proposal, which is  
27 still some time away because the whole thing is grid locked  
28 in terms of the Shire of Busselton making decisions about  
29 the Development Guide Plan.

30  
31 But saying you've "got nothing in front of me now" was not  
32 correct?---No, technically not correct. Quite right.

33  
34 In particular he had raised specifically Smiths Beach,  
35 which was the thing that was before you?---Yeah. As I  
36 said, I certainly don't recollect that comment being made  
37 but it's there, I totally accept it.

38  
39 Yes. Why did you want to disappear a little bit further  
40 away?---I was obviously worried about the perception issue  
41 which you raised with me the last time and I thought  
42 something a little bit further away from the Parmelia would  
43 be an appropriate place to have lunch.

44  
45 So the way you wanted to deal with the perception issue was  
46 to hide?---No, I think hiding is something that is not in  
47 my mind but at the same time you don't make it all that  
48 obvious that people who have been talked about could draw  
49 inferences.

50  
51 But if there was a perception issue surely the wise and  
52 appropriate thing to do was not to have lunch?---Yeah,  
53 except in my mind I was of the impression that we were  
54 mainly going to be talking about the outer issues. You're  
55 quite right to point out that - and I'd forgotten all about

56  
57 4/12/06

COX, W.J. XN

1191

58 4.02

59

57/41/nal

1 that, that Smiths Beach was mentioned but that didn't  
2 register.

3

4 Was it discussed about over lunch?---It was not discussed  
5 over lunch.

6

7

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COX, W.J. XN

1192

1 You are quite sure about that, are you?---Certainly in  
2 terms of my recollections we talked about everything other  
3 than Smiths Beach.

4  
5 The reason I ask is that an email was sent by Mr Burke to  
6 his clients Canal Rocks after the meeting saying that the  
7 meeting had gone well and that a briefing would be given to  
8 them about it. It's E9096. I will show it to you. Just  
9 expand that. Thank you.

10 Julian and I had a good meeting with Wally Cox today.

11 You said 16 May I think but in fact Wednesday was 17 May.  
12 So you can see this is the evening of the day in which you  
13 had had lunch:

14 Julian and I had a good meeting with Wally Cox today.  
Julian will brief David at golf on Friday and no  
doubt David will pass on the detail.

15 In the light of that are you sure that something was not  
16 said about Canal Rocks at the lunch?---Yeah. I certainly  
17 have no recollections of Canal Rocks coming up as a subject  
18 for discussion.

19  
20 You see, Mr Burke went along to that meeting - if we can  
21 look towards the bottom of the email - armed with  
22 information about the SEA process that he had asked for and  
23 received immediately prior to the lunch. Are you sure that  
24 there was not something said to you about the SEA process  
25 at that lunch?---My recollections are that Smiths Beach  
26 didn't come up at all and the SEA process certainly didn't  
27 come up, but can I just read this quickly? Is it relevant  
28 for me to read it, sorry?

29  
30 Not particularly. This is information that Mr Swift has  
31 passed on to Mr Burke about SEA and the way it works, the  
32 voluntary nature of it?---Just that if you think about the  
33 process and where we got to by 17 May the decision to set  
34 the SEA level of assessment goes way back to the year  
35 before.

36  
37 Sure?---That in terms of the journey we were well into the  
38 journey, so any views about voluntary or otherwise are  
39 almost irrelevant. We got to the stage of a draft scoping  
40 document.

41  
42 But you can see that there is here some information being  
43 provided to Mr Burke on that morning, 10.32, and it's quite  
44 evident from the conjunction of these emails that it was  
45 being provided with a view to the lunch that was to be had  
46 with you. Now, read through it if it will assist you but  
47 in reading it are you quite sure that nothing was said to  
48 you?---Yeah, I certainly have no recollections of Smiths  
49 Beach coming up or specifically the SEA process coming up.

50  
51 4/12/06

COX, W.J. XN

1193

52 4.07

53

1 On the last occasion you told us that you were appointed as  
2 chair of the EPA on I think 30 March this year?---No, I  
3 think my answer was I got originally appointed on 30 March  
4 2003.

5  
6 Three. I'm sorry?---My term expired on 30 March 2006. I  
7 then got re-appointed for three months and then got  
8 re-appointed for a three-year term on 1 July I think it is  
9 this year.

10  
11 Right. Thank you for that. That hiatus, that three-month  
12 period, was there some negotiation between you and the  
13 government in regards to the full-time or part-time nature  
14 of the position?---If you don't mind I'll just take you  
15 through a little bit of history. In November of 2005 I  
16 advised the previous minister of the environment that I was  
17 not inclined to continue in the role of chairman of the EPA  
18 on a full-time basis but I would be interested in doing it  
19 on another type of arrangement. I then, however, offer to  
20 extend my term for three months - that's why that  
21 three-month term comes in there - for the specific purpose  
22 of finishing off some quite strategic assessments, they  
23 being the assessment of the Wagerup proposal, the  
24 (indistinct) gas field proposal and, thirdly, the South  
25 West (indistinct) proposal. When a minister was appointed  
26 - sorry, the action of the minister was to put in place the  
27 processes to extend my term on the same conditions from  
28 1 April to 30 June and then when the new minister came into  
29 place he opened up discussions with me, indicating he had  
30 an interest in me continuing my role as chairman of the  
31 EPA. I indicated I would prefer to do it on slightly  
32 different arrangements. The act does not allow part-time  
33 appointments, let's be quite clear about that. I  
34 subsequently got legal advice from crown law, which was  
35 made available to the minister, and that led to my  
36 reappointment from 1 July on a full-time basis but with  
37 more flexible working arrangements.

1 I see. All right, was that something that you discussed  
2 with Mr Grill?---Which component of that history, sorry?

3  
4 Well, firstly the fact that you were seeking reappointment  
5 to the position?---When I publicly indicated that I was not  
6 overly interested in continuing on the current arrangements  
7 a lot of people took an interest in my welfare and that  
8 included Mr Grill; at some point in time the issue came up  
9 and I indicated I was interested in continuing on a  
10 part-time or alternative arrangement basis, not on a  
11 full-time basis.

12  
13 Right. Did Mr Grill express any view as to whether he  
14 supported your reappointment?---He certainly indicated,  
15 like others did, that they would like to see me continue.

16  
17 Did you understand that he was pulling strings on your  
18 behalf?---No. I'd be most upset if that was the case.

19  
20 I'm sorry?---I would be most upset if that was the case.

21  
22 Right, so if that was ever suggested you would react  
23 angrily then, would you?---Very.

24  
25 Listen to T470 if you would.

26  
27 (Audio played)

28  
29 **HALL, MR:** Well, the suggestion was made to you and you  
30 didn't respond angrily?---I took it as one of those general  
31 overview comments that people make saying, "Yeah, we're  
32 happy to see you stay," you know, "We're supportive of  
33 you." I didn't take it as him having any capacity or any  
34 right to get involved in the process.

35  
36 But he didn't confine himself to that. He went so far as  
37 to say, "And we've been, you know, just pulling a few  
38 strings where we can"?---Yeah, I see that in the  
39 transcript.

40  
41 Yes?---I just take that as people making these sweeping  
42 statements that have no basis in fact.

43  
44 Do you believe that they have exercised any influence in  
45 your favour; that is, Mr Burke or Mr Grill?---In terms of  
46 arranging the appointment?

47  
48 In terms of anything?---Sorry?

49  
50 In terms of anything? Have they exercised any influence in  
51 your favour?---Not that I'm aware of.

1 When you intimated, further down on that same page, in the  
2 conversation, "Somebody must have been putting in a good  
3 word somewhere," were you not referring back to the comment  
4 that Mr Grill had made about pulling a few strings?---No.  
5 My state of mind on that one was that undoubtedly the  
6 previous minister came to a view. The previous minister,  
7 in my view, could well have briefed the current minister.  
8 Other than that, I have had no sort of intuition or  
9 knowledge as to anybody else saying good things.

10  
11 Had there been a proposal put to you by Mr Grill that you  
12 would join their team?---No.

13  
14 You are quite sure of that?---Positive. In passing one  
15 time when we were talking about life after the EPA they  
16 said, "You might like to think about doing what we do."  
17 End of story. No proposal was put, neither explored by me  
18 or formally proposed by them.

19  
20 Did you reject it?---There was no offer put on the table.

21  
22 No, but did you say to them, "No, I wouldn't even consider  
23 that"?---I just left it open because at that stage I was  
24 still heading towards retirement. In retirement I may have  
25 wanted to do whatever I wanted to do, but at no stage was  
26 an offer made, at no stage was an offer talked about, at no  
27 stage was an offer accepted.

28  
29 When was this suggested?---When?

30  
31 When?---During that period from the time I'd let it be  
32 known that I was thinking about retiring. It would have  
33 been sometime between November 2005 and about March of  
34 2006.

35  
36 Right, so towards the end of your first term then?  
37 --- (indistinct)

38  
39 So it would not be accurate to say that you were going to  
40 come and work with Mr Grill and Mr Burke as part of their  
41 team?---No. Completely inaccurate.

42  
43 Could you listen to 474, please.

44  
45 (Audio played)

46  
47 **THE COMMISSIONER:** What's the date of that?

48  
49 **HALL, MR:** Sorry, sir, that's 12 April this year.

50  
51 **THE COMMISSIONER:** Right.

52  
53 **HALL, MR:** So that statement made by Mr Burke on the  
54 second page of that transcript is - what comment would you  
55 make about that?---Sorry, which - - -

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58 4.17  
59

1 At the very - the second?---The second paragraph?

2

3 Second paragraph, yes?---Okay. "Want to be part-time -  
4 other work (indistinct)" - no that's categorically  
5 something that never happened.

6

7 Did you ever give Mr Burke or Mr Grill any reason to  
8 believe that you would come and work for them as - - -?  
9 ---No, none whatsoever. Sorry, could I just ask a  
10 question? Who is Lewis?

11

12 Another client of Mr Burke's. At the beginning of that  
13 transcript there's a reference to, "He's a great mate of  
14 Julian's, you know that," and then he says, "He's a great  
15 mate. Julian found him as an Agriculture Department  
16 officer at Kununurra." They are talking about you, aren't  
17 they?---Yes.

18

19 "And by the time Julian left government either he or I had  
20 appointed him to head up every job he ever had." Was that  
21 a fair comment?---No. Let me repeat the history. I was  
22 officer in charge of the Department of Agriculture at  
23 Kununurra when the Burke government got elected in 1983.  
24 The Burke government got elected on a policy of calling the  
25 Ord a "white elephant". A ministerial committee was  
26 established to explore whether in fact government should  
27 continue to support the Ord or not. Three ministers  
28 including Mr Grill came up as part of that process. I  
29 escorted them around, as did a number of other public  
30 service officers responsible for regional responsibilities.  
31 Let's just park that for the time being. Then by sheer  
32 coincidence one day I was reading the paper and I saw a job  
33 advertised as head of the Department of Regional  
34 Development and the North-West; the title was actually  
35 director Department of Regional Development North-West. I  
36 was an applicant for the position. The position was the  
37 normal process, interview process was held. It was chaired  
38 by the deputy chairman of the Public Service Board and two  
39 other panel members. They undoubtedly put forward names of  
40 people who were suitable. I was the one that was appointed  
41 and, interestingly enough and technically, before 1986 the  
42 then Public Service Act meant that I was actually employed  
43 by the Public Service Board, not by the minister for public  
44 sector management, which is the arrangement after 1986. So  
45 I went through due process, I was appointed by the  
46 processes of the day. Subsequently, I was an applicant for  
47 the position of managing director Water Authority of  
48 Western Australia. I was a successful applicant for that.  
49 That was during the term of the Dowding government.  
50 Subsequent to that again I was appointed to head up - I'm  
51 not sure whether you want me to continue because I'm now  
52 starting to get outside the Burke government - sorry,  
53 outside the Labor government eras but, just to make sure we  
54 get a sense of perspective, in 1995 I was appointed to head  
55 up the East Perth Redevelopment Authority by a Liberal  
56 government; in 96 I was appointed to head up the Subiaco

57

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1 Redevelopment Authority by a Liberal government.

2

3 Is this going to take some time, Dr Cox?---Sorry?

4

5 Is this going to take a long time to go through your CV?  
6 ---No, I can - I'll get to the end shortly. I just held a  
7 number of positions.

8

9 I just wonder if we can't - without wanting to cut you off  
10 at all, but would it be fair to say that your evidence is  
11 that the positions you have obtained have always been on  
12 merit?---Entirely and utterly and I'm sure there's many  
13 people in the community who would happily testify to that.

14

15 Has Mr Grill or Mr Burke ever given you to understand that  
16 they have influenced your appointments in any way at all?  
17 ---Well, they certainly have made comments in passing, like  
18 the ones you've got on the transcript.

19

20 I meant to you. Have they said that to you? Have they  
21 indicated that to you?---They have in my presence made  
22 comments along the lines that they were influential in my  
23 appointments, the first - the first and second  
24 appointments.

25

26 Right, and did you accept that?---I just take it with a  
27 pinch of something. As I indicated, the answer is no  
28 because there was a very good process put in place in 83  
29 run by the Public Service Board and nobody else.

30

31 Were they at any stage either of them referees for you?---I  
32 have never asked them to be referees. As far as I'm aware  
33 they have never been referees.

34

35 So you are not aware that they have been consulted by  
36 delegates or by appointment committees?---I'm not aware  
37 that they have ever been consulted.

38

39 But they have made, both of them, suggestions to you that  
40 they have exercised some influence in those early two  
41 appointments?---Exercised influence? I'm not quite sure  
42 what the right words are but they certainly indicated in  
43 conversations where I've been one of a number of people  
44 that they were influential in my appointments.

45

46 Right, but as I understand it you are saying you don't  
47 necessarily accept that that's so?---I don't and  
48 particularly - sorry, and I just forgot to mention this as  
49 well. My understanding is Brian Burke retired in 86. My  
50 appointment to the Water Authority of Western Australia as  
51 managing director was in 1989. Brian Burke was no longer  
52 there.

53

54 No, but he may still have exercised some influence?---I'm  
55 not aware of it.

56

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60-61/48/glj

1 All right. Yes, thank you, Dr Cox. I have nothing else.

2

3 **THE COMMISSIONER:** Can Dr Cox be excused from his summons?

4

5 **HALL, MR:** Yes, subject to the proviso as to whether  
6 anyone else needs him but we would advise him as to that.  
7 Otherwise, yes.

8

9 **THE COMMISSIONER:** And you are leaving town today?--Yes,  
10 sir. Can I please thank the Commission for accommodating  
11 my travel arrangements? Thank you.

12

13 Thank you now and sufficient unto the day, and we will  
14 adjourn until 10.00 tomorrow.

15

16 AT 4.27 PM THE MATTER WAS ADJOURNED UNTIL  
17 TUESDAY, 5 DECEMBER 2006

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