
No. 156

**PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL**

STANDING COMMITTEE

UPON

PARLIAMENTARY PRIVILEGE

**REPORT CONCERNING THE PUBLICATION
OF AN ARTICLE APPEARING IN THE
SUN HERALD NEWSPAPER
CONTAINING DETAILS OF
IN CAMERA EVIDENCE**

Ordered to be printed 28 October 1993

October 1993

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CHAIRMAN'S FOREWORD

This inquiry arose from the unauthorised publication in the *Sun Herald* newspaper on 3 January 1993 of details of evidence given *in camera* before the Joint Select Committee Upon Police Administration. The purpose of the inquiry was, firstly, to attempt to ascertain the identity of the person who disclosed the information to the journalist who wrote the article. Secondly, the Committee had to determine whether the disclosure and publication of the information amounted to a breach of privilege or a contempt of Parliament.

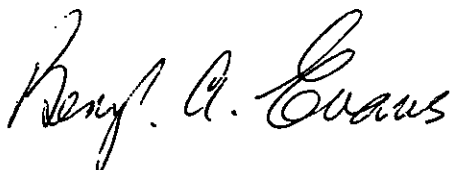
The Committee took evidence from the Chairman of the Joint Select Committee Upon Police Administration, from the author of the article, and from the acting editor of the *Sun Herald* who approved its publication. In addition, the Committee obtained details of the procedures which were followed by the Joint Select Committee Upon Police Administration in relation to the *in camera* evidence. Despite these efforts, the Committee was unable to come to any conclusion concerning the source of the disclosure of the *in camera* evidence.

The Committee examined in some detail the law and precedents relating to parliamentary privilege in New South Wales and concluded that the publication of the article amounted to a clear breach of privilege. However, the evidence before the Committee indicated that the publication did not obstruct or interfere with the work of the Joint Select Committee Upon Police Administration, or of either House of Parliament. The Committee has concluded that the publication did not amount to a contempt of the Parliament.

The Report makes a number of recommendations which, the Committee believes, will reduce the possibilities for disclosures of *in camera* evidence to occur in the future. Whilst these issues are significant, the broader and more fundamental issue to emerge from the inquiry is the need for Parliament to enact legislation to clarify the scope of parliamentary privilege in New South Wales. At present, the powers and privileges of the New South Wales Parliament are less extensive, and more uncertain, than those of any other Parliament in Australia. I hope that this Report will stimulate the Parliament to take steps to rectify this situation.

As Committee Chairman, I wish to acknowledge the co-operation and contributions of the Members of the Legislative Council who served on the Committee.

The Committee also wishes to thank the Clerk to the Committee and Deputy Clerk of the Legislative Council, Ms Lynn Lovelock, the Clerk Assistant - Procedure, Ms Giselle Dawson, who acted as Clerk to the Committee on several occasions, and the Project Officer, Ms Velia Mignacca.

A handwritten signature in cursive script that reads "Beryl A. Evans".

The Hon Beryl Evans MLC

Chairman

Standing Committee Upon Parliamentary Privilege

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TERMS OF REFERENCE

[Extract from letter dated 2 February 1993 from the President of the Legislative Council to the Chairman of the Standing Committee Upon Parliamentary Privilege:]

The Clerk of the Parliaments has received from the Joint Select Committee Upon Police Administration a Special Report entitled "Disclosure of *in camera* Evidence". It relates to the unauthorised publication in the *Sun Herald*, dated 3 January 1993, of *in camera* evidence given before the Committee by the Hon E.P. Pickering, MLC, on 20 November 1992.

...

Since the Legislative Council presently stands prorogued and will next meet on 24 February 1993, pursuant to the resolution of the House I refer for consideration and report the abovementioned publication, with particular reference to:

- a) the source of the unauthorised disclosure;
- b) whether a breach of privilege or a contempt has been committed;
- c) whether substantial interference with the Committee's or House's functions has resulted, or is likely to result, which is contrary to the public interest;
- d) recommendations for action in this regard.¹

¹ The full text of this letter appears at Appendix 6 to this Report.

SUMMARY OF RECOMMENDATIONS

1. That, despite a case of breach of privilege having been found, no action be taken against the journalist who wrote the article which contained the *in camera* evidence, or against the acting editor of the *Sun Herald* who approved publication of the article.
2. That the Legislative Council resolve that the President issue a statement informing all members of the Parliamentary Press Gallery that the disclosure or publication of any details of evidence which is given *in camera* before a parliamentary committee, may constitute a breach of privilege and a contempt of Parliament.
3. That all media editors, and all new members of the Press Gallery be issued with guidelines regarding the reporting of the proceedings of Parliament and its committees, at the time when they receive security passes granting access to Parliament House.
4. That committees of the Parliament adopt stringent procedures for protecting the confidentiality of *in camera* evidence.
5. That the Parliament enact legislation to define its powers and privileges and to specify its powers to deal with breach of privilege and contempt of Parliament.

- SECTION ONE -

OUTLINE OF CURRENT INQUIRY

Origin of the Inquiry

- 1.1 The current inquiry arises from the unauthorised disclosure of evidence given *in camera* before the Joint Select Committee Upon Police Administration. That Committee was established on 14 October 1992 by identical resolutions of the Legislative Assembly and the Legislative Council. The terms of reference of the Committee include, that:
- "(1) A Joint Select Committee be appointed to inquire into whether mechanisms of accountability, the existing roles of and reporting relationships between the Minister for Police, the Police Board of New South Wales, the Inspector General of Police and the Commissioner of Police are adequate to ensure an efficient, effective and accountable police service in New South Wales and may make such recommendations for reform as it considers desirable.
 - (2) In conducting the inquiry:
 - (a) the Committee shall have regard to the circumstances which resulted in the resignation of the Honourable E. P. Pickering, MLC as Minister for Police and Emergency Services."²
- 1.2 On 20 November 1992 Mr Pickering gave evidence *in camera* before the Joint Select Committee Upon Police Administration. As part of that evidence, he read a prepared statement providing examples of what he said were "the type of cultural problems that one faces as the Police Minister". The written statement from which Mr Pickering read became *in camera* evidence in the inquiry of that Committee.
- 1.3 On 3 January 1993 an article revealing details of *in camera* evidence contained in Mr Pickering's statement was published in the *Sun Herald* newspaper. The article, under the by-line of John Synnott State Political Reporter, was headed "How Ted nabbed pusher". A copy of the article is contained in Appendix 3 to this Report.

² Votes and Proceedings, No 43, Entry 1; Minutes of Proceedings No. 29, Entry 16.

- 1.4 On Monday 4 January 1993 the story was taken up by *The Australian*, *The Sydney Morning Herald* and *The Telegraph Mirror* as well as the television media.
- 1.5 On 6 January 1993, the Chairman of the Joint Select Committee Upon Police Administration wrote to the President of the Legislative Council in relation to this matter. The letter states that the Committee had not authorised the publication of the material provided by Mr Pickering in any form whatsoever. It requests that the matter be referred to the Standing Committee Upon Parliamentary Privilege.
- 1.6 The President responded by letter dated 11 January 1993. This letter states that the Joint Select Committee Upon Police Administration should reach a conclusion as to whether the disclosure of the *in camera* evidence is sufficiently serious as could constitute a substantial interference or the likelihood of such with the work of the Committee, committee system or functions of the Houses. The Committee should then report its conclusion to the President.
- 1.7 The conclusions of the Joint Select Committee Upon Police Administration on this matter are contained in its Special Report dated 2 February 1993 and presented to the House on 2 March 1993. The Report states that "the disclosure of the *in camera* evidence is of sufficient seriousness as could constitute a substantial interference or likelihood of such with the work of the Committee, the Committee system or the functions of the Houses".³ However, it indicates that "in this particular instance the Committee believe that the disclosure will not interfere with the Committee Members' work".⁴
- 1.8 The matter of the unauthorised disclosure of the *in camera* evidence was referred to this Committee by the President of the Legislative Council by letter dated 2 February 1993. The letter states that the matter is referred for consideration and report, with particular reference to:
 - (a) the source of the unauthorised disclosure;
 - (b) whether a breach of privilege has been committed;
 - (c) whether substantial interference with the Committee's or House's functions has resulted, or is likely to result, which is contrary to the public interest; and
 - (d) recommendations for actions in this regard.

³ Special Report p.2, paragraph (7).

⁴ Ibid.

Conduct of the Inquiry

- 1.9 The Committee first considered the matter at a meeting on 2 February 1993. The Committee held nine further meetings during which the matter was considered. During the period that the Committee was conducting this inquiry, it was also inquiring into another, unrelated matter concerning the broadcasting of proceedings of the House. This matter was also considered during some of the Committee's meetings.
- 1.10 During the course of the inquiry, the following witnesses appeared and gave evidence before the Committee: the Hon Duncan Gay MLC, Chairman of the Joint Select Committee Upon Police Administration; Mr John Synnott, the author of the article; and Mr John Digby, the acting editor of the *Sun Herald* at the time publication of the article was authorised. In addition to the oral testimony of these witnesses, the Committee received a written submission dated 31 July 1993 from Freehill Hollingdale and Page, solicitors, on behalf of the John Fairfax Group Pty Limited, Mr Digby and Mr Synnott.

- SECTION TWO -

ATTEMPTS TO IDENTIFY THE SOURCE OF THE UNAUTHORISED DISCLOSURE

2.1 The first attempt to identify the source of the unauthorised disclosure was made by the Joint Select Committee Upon Police Administration itself. The Chairman of that Committee wrote to all persons who had access to the *in camera* evidence asking whether they had any knowledge of the source of or how the disclosure occurred.⁵ All those contacted provided written assurances that they had no such knowledge.⁶

2.2 Further attempts to discover the source of the disclosure were made by this Committee. In evidence before the Committee, Mr Synnott was asked:

"CHAIRMAN: ...Would you like to tell me how you obtained the information in that article?

Mr SYNNOTT: It was given to me; someone faxed it to me.

CHAIRMAN: It was faxed to you?

Mr SYNNOTT: Yes." (Transcript pp. 1-2)

However, Mr Synnott did not disclose the identity of the person who had sent the fax.

2.3 During the course of his evidence Mr Synnott also revealed that:

- ▶ he received the fax the week before the article was published (Transcript p.5 and p.21);
- ▶ he had discussions with the informant before and after receiving the fax (Transcript p.4);
- ▶ he had known the informant for quite some time (Transcript p.16);
- ▶ he could not remember whether the fax had been sent from Parliament House (Transcript p.24);

⁵ Special Report of the Joint Select Committee Upon Police Administration on the Disclosure of In Camera Evidence, 2 February 1993, p.1, paragraph 6.

⁶ Ibid.

- ▶ he could not remember whether the fax bore any markings which would identify the place from which it had been sent or the person who had sent it (Transcript p.24);
 - ▶ after the article had been published, he gave the fax to a colleague, Stephen Skinner, who had expressed an interest in seeing the details of the story rather than the published version (Transcript p.5). Mr Skinner is now in Cambodia (Transcript p.2 and p.5).
- 2.4 In an attempt to pursue this matter further, the Committee wrote to Mr Skinner care of the *Sun Herald*, requesting him to provide any information which could assist the Committee in identifying the person who had sent the fax. The Committee received a reply dated 13 July 1993 from the Legal Unit of the John Fairfax Group Pty Limited, publishers of the *Sun Herald*. The letter states that Mr Skinner resigned from the Fairfax organisation on 30 January 1993, that the *Sun Herald* does not have a forwarding address for him and is unable to contact him.
- 2.5 The Committee also questioned Mr John Digby regarding the source of the *in camera* evidence. Mr Digby stated that Mr Synnott had not told him where the information had come from, except that it came from the Committee, "or a source close to the committee, I do not know" (Transcript p.3). He said that he had not seen the information on which Mr Synnott's article was based (Transcript p.2).
- 2.6 In conclusion, despite numerous attempts, the Committee has been unable to discover the identity of the person who disclosed the *in camera* evidence to Mr Synnott.

- SECTION THREE -

BREACH OF PRIVILEGE AND CONTEMPT OF PARLIAMENT

1. Nature of breach of privilege and contempt of Parliament

3.1 The terms "breach of privilege" and "contempt of Parliament", though often confused, are not synonymous. "Parliamentary privilege" refers to the peculiar rights and immunities enjoyed by Members of Parliament individually as Members of Parliament, and the rights, powers and immunities of Houses of Parliament as collective entities.⁷ When any of these rights, powers or immunities is disregarded or attacked, a "breach of privilege" is committed.⁸

3.2 Examples of these rights, powers and immunities include:

- (i) freedom of speech in Parliament;⁹
- (ii) the right to control publication of debates and proceedings;¹⁰
- (iii) the power to compel the attendance of witnesses before parliamentary committees;¹¹
- (iv) the qualified immunity of Members of Parliament from legal process.¹²

3.3 "Contempt of Parliament" is described in *May's Parliamentary Practice* as follows:

"Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent for the offence."¹³

⁷ Erskine May, Parliamentary Practice 21st Edition, Butterworths 1989, p. 69.

⁸ Ibid.

⁹ Article 9 of the Bill of Rights 1688; Imperial Acts Application Act 1969 (NSW), section 6.

¹⁰ Erskine May, p.85.

¹¹ Parliamentary Evidence Act 1901 (NSW), sections 7 and 8.

¹² Parliamentary Privilege in Australia, Enid Campbell, Melbourne University Press, 1966, chapter 4.

¹³ Erskine May, p.115.

3.4 It follows from the above definitions that an act may amount to a contempt of Parliament - because, for example, it obstructs the performance of the functions of the House - even though it does not breach any of the specific rights, powers or immunities of Parliament. Conversely, it would appear that conduct could constitute a breach of a specific right or immunity, without however amounting to a contempt of Parliament.

2. Reception of privilege in New South Wales

3.5 The New South Wales Parliament is the only Parliament in Australia which has no legislation comprehensively defining its powers and privileges. While there are a number of statutory provisions which regulate certain aspects of parliamentary privilege, most of this area is governed by the common law.

3.6 The statutory sources of parliamentary privilege in New South Wales include the Defamation Act 1974, certain sections of the Parliamentary Evidence Act 1901, and Article 9 of the Bill of Rights 1688 (Imp.).¹⁴ The most relevant of these provisions to the present case is Article 9 of the Bill of Rights.

3.7 Article 9 applies to New South Wales by express enactment of the New South Wales Parliament.¹⁵ The Article states:

"That the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside of Parliament."

3.8 Apart from conferring freedom of speech on Members of Parliament in relation to statements made in Parliament, Article 9 is said to be the basis of several of the rights, powers and immunities possessed by Parliament. These include the right to regulate Parliament's own internal proceedings,¹⁶ and the right to control publication of its debates or proceedings.¹⁷ Closely connected with these rights is the right to exclude strangers, and to debate with closed doors.¹⁸

3.9 Apart from these various legislative provisions, the New South Wales Parliament possesses only those powers and privileges which are conferred by the common

¹⁴ 1 William & Mary, sess.2 c.2.

¹⁵ Imperial Acts Application Act 1969, section 6, Schedule 2.

¹⁶ Erskine May, pp.90 - 91; Campbell, chapter 5; Solicitor General's advice "Re: The Privileges of the Parliament of New South Wales", 25 March 1983, p. 5, reproduced in the Minutes of Proceedings together with certain Minutes of Evidence taken before the Joint Select Committee Upon Parliamentary Privilege, September 1985.

¹⁷ Erskine May, pp.85 - 86; Solicitor General's advice.

¹⁸ Erskine May, p. 85.

law. The common law principles which govern this area were first laid down by the Privy Council in a series of cases in the mid nineteenth century. These cases established that "colonial" legislatures, or legislatures which derive their authority from Imperial statute, have no inherent right to the powers and privileges of the House of Commons. Such legislatures, it was held, have only those powers which are "necessary to their existence" and the proper exercise of their functions.

- 3.10 The first case in which these principles were clearly stated was *Kielley v Carson*¹⁹ in 1842. In that case the Privy Council held that the House of Assembly of Newfoundland did not have the power to arrest a stranger and bring him before the House to be punished for using gross and threatening language to a member of the House. The Privy Council referred to the powers possessed by local legislatures, as follows:

"Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given them than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute.... In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law. But the power of punishing any one for past misconduct as a contempt of its authority, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not..."²⁰

- 3.11 The Privy Council stated that the House of Commons possesses the power to punish for contempt by virtue of its descent from the High Court of Parliament, and by ancient usage and custom. This power was not passed on to colonial legislatures as part of their inheritance of the common law.²¹
- 3.12 Later cases made it clear that those powers which are necessary to the existence of a local legislature and to the proper exercise of its functions must be "protective" and "self-defensive" only, and not punitive. In *Barton v Taylor*,²² the Privy Council held that the New South Wales Legislative Assembly had the power to suspend a Member of the House during the continuance of the current sitting in order to protect the House against obstruction or disturbance of its proceedings. However, the Privy Council considered that an unconditional suspension for an indefinite time would be more than the necessity of self-defence requires and would amount to a punitive measure.

¹⁹ (1842) 4 Moore PC 63.

²⁰ Ibid. p. 88.

²¹ Ibid. p. 89.

²² (1886) 11 AC 197.

- 3.13 Further examples of powers which have been held by the courts to be necessary to the exercise of the functions of a local legislature, include:
- (i) the power to remove a Member from the House for disorderly conduct and to keep the Member excluded (but not to inflict a penal sentence for the offence): *Doyle v Falconer* (1866) LR 1 PC 328; *Toohey v Melville* [1892] 13 LR (NSW) 132;
 - (ii) the power to expel a Member and declare his seat vacant, provided there are special circumstances and the action is not a cloak for punishment of the offender: *Armstrong v Budd* (1969) 71 SR (NSW) 386.
- 3.14 The cases referred to above suggest that, when either House of the New South Wales Parliament is confronted with a case of possible breach of privilege or contempt, two principles must be considered. First, any powers which the House proposes to exercise must be necessary to its existence and to the proper exercise of its functions. Secondly, such powers must be protective and self-defensive only, and not punitive.

3. The evidence in this case

- 3.15 In determining whether the disclosure or publication of the *in camera* evidence in this case constitutes a breach of privilege or contempt, the Committee had particular regard to the following facts -

1. Designation of the evidence as *in camera*

- (a) During the proceedings of the Joint Select Committee Upon Police Administration, before Mr Pickering proceeded to give the *in camera* evidence, the Chairman of that Committee made the following statement:

"At this stage I intend for the press and public to leave the room, to allow the former Minister to give the rest of his statement *in camera*, and for the Committee to deliberate on that." ²³

- (b) The words "*in camera*" were printed across the top of the first page of Mr Pickering's prepared statement, and on some of the pages containing the material which was used in the article.²⁴

²³ Transcript of proceedings of the Joint Select Committee Upon Police Administration, 20 November 1992, p.624.

²⁴ Transcript of evidence of the Hon Duncan Gay MLC before this Committee, p.12.

- (c) The minutes of proceedings of the Joint Select Committee Upon Police Administration indicate that, on 20 October 1992, the Committee made the following resolution:

"That:

(1) Pursuant to S.O. 367, evidence taken by the Committee and documents presented to the Committee which have not been reported to the House not be disclosed or published by any Member of the Committee or by any person."

Standing Order 367 of the Legislative Assembly states that:

"If the House or a Select Committee so order, the evidence taken by any Select Committee of the House, and documents presented to such Committee which have not been reported to the House, shall not be disclosed or published by any Member of such Committee, or by any other person."

2. Effect of the disclosure on the work of the Joint Select Committee

- 3.16 The Special Report of the Joint Select Committee Upon Police Administration states:

"(7) The Committee concludes that the disclosure of the *in camera* evidence is of sufficient seriousness as could constitute a substantial interference or likelihood of such with the work of the Committee, the Committee system or the functions of the Houses.

In this particular instance the Committee believes that the disclosure will not interfere with the Committee Members' work."²⁵

- 3.17 The Committee notes in particular the statement that the disclosure will not in this instance interfere with the work of the Members of the Select Committee.

- 3.18 The Chairman of the Joint Select Committee Upon Police Administration, the Hon Duncan Gay MLC, confirmed in evidence before this Committee that the publication of the confidential information had not interfered with the work of the Committee. For example, when asked what impact the publication of the evidence had had on the work of the Committee, Mr Gay replied:

"Ultimately we were able to put procedures in place that it did not have any, but it had the potential to totally discredit the work of the

²⁵ Special Report, p. 2.

committee... it ran the risk of negating all the work we had done at that stage. Had it continued there was the potential that we would have had to dismiss the committee and restart." (Transcript pp. 3-4).

- 3.19 At another point, it was put to Mr Gay that the disclosure could have been an interference with the work of the Committee in certain circumstances. Mr Gay replied:

"Yes, it certainly had the potential. I am pleased to say that the committee worked very well and we were able to take steps that allowed this material to really not to have any effect on the operations of the committee. Had we not been able to do that, had we had a less amiable - I suppose that is one way of describing it - or professional committee, it certainly would have run the risk." (Transcript p.11).

- 3.20 There were several other instances when Mr Gay indicated to the Committee that, while the publication of the evidence had had the potential to interfere with the work of the Committee, it had not in fact had that effect: Transcript pp.4, 6, 14.

- 3.21 Mr Gay was also asked whether the publication of the evidence would have deterred further witnesses from coming before the committee. Mr Gay replied:

"It had that potential, had it continued. It did not continue, but if it had, it had that potential." (Transcript p.7).

- 3.22 The Committee believes that the fact that the publication did not interfere with the work of the Select Committee suggests that it did not obstruct or impede the performance of the functions of that Committee, of either House of Parliament, or the Members of either House. This lends weight to the view that the publication did not constitute a contempt of Parliament.

3. Level of sensitivity of the evidence

- 3.23 Mr Gay told the Committee that the information leaked was reasonably non-controversial compared to a lot of other information which was in the Committee's possession (Transcript p.4). He stated that the information leaked was some of the least confidential that was handled by the Committee (Transcript p.7).

4. Effect of the disclosure on police investigations

- 3.24 Mr Gay indicated that both the Joint Select Committee Upon Police Administration and the Police Minister had been concerned that certain police investigations might have been compromised by the leaking of the confidential information (Transcript p. 4). Mr Gay did not say whether any investigations actually had been compromised.

- 3.25 While the Committee considers that the effect of the leak on police investigations is a very serious matter, it appears to the Committee that the question of contempt turns on the effect of the leak on the functions of the House, its Members and committees rather than its effect on police investigations.

5. Evidence of Mr Synnott

- 3.26 Mr Synnott told the Committee that he knew at the time he wrote the article that Mr Pickering's evidence had been given *in camera*. However, he was not aware at that time that the disclosure of evidence given *in camera* before a select committee could constitute a contempt of Parliament:

"...I knew it was *in camera* evidence, but I was not aware when I was writing it that it was in contempt of Parliament to publish it..."
(Transcript p.3)

- 3.27 In response to questions from the Committee, Mr Synnott described his intentions in writing the article:

"Mr BULL: Just following up on that point, as you have just said, you did not realise that you were committing contempt of Parliament when you wrote it, but you obviously have that knowledge now. Do you have any regrets that you did that?"

Mr SYNNOTT: That I?

Mr BULL: That you have written something that is in contempt of Parliament?

Mr SYNNOTT: "I have a lot of respect for Parliament, and it certainly was not my intention to cock my snook at the Parliament and its procedures. But I regarded the public interest in the Police Commissioner saying that he did not effectively trust his police force to investigate crime was - that was my overriding interest, and the other, the interest of Parliament in protecting the integrity of the Committee was not - was displaced from my prime considerations."
(Transcript p.3)

6. Evidence of Mr Digby

- 3.28 Mr Digby told the Committee that he was aware that the document on which the article was based was confidential, but that he did not know that it had been *in camera* (Transcript p.3). Mr Digby was asked:

"CHAIRMAN: Did you know at the time you decided to publish the article that the unauthorised disclosure of evidence given *in camera* before a parliamentary committee constitutes a breach of privilege of the Parliament and may constitute a contempt of Parliament?"

Mr DIGBY: I understood that it could.

CHAIRMAN: You knew that when you were publishing it?

Mr DIGBY: It could have been a breach if those circumstances were met, that it could have been." (Transcript p. 3)

However, further on Mr Digby was asked:

"Mr SAMIOS: Were you under the impression that what was being published by you could be in contempt of Parliament? Is that what you said earlier?

Mr DIGBY: No, I did not realise that it could be in contempt of Parliament. I did not realise that breaching a committee rule was necessarily in contempt of Parliament itself." (Transcript p. 13)

3.29 Before making the decision to publish, Mr Digby obtained oral legal advice from the in-house lawyer for the Fairfax organisation (Transcript p. 4). He would not reveal any details concerning this advice.

3.30 When asked what he would do if he received *in camera* evidence from a Parliamentary committee now that he was aware that publication could constitute a contempt, Mr Digby replied:

"In the circumstances I certainly regret the trouble we have caused and I would have to certainly weigh that up very seriously in any future considerations of stories" (Transcript p.33)

3.31 Mr Digby indicated that he proposed to inform his journalists of the need for confidentiality with *in camera* evidence before Parliamentary committees on the same basis as evidence before closed courts (Transcript p.33).

4. Conclusions and recommendations

3.32 Having considered all the circumstances of the present case, the Committee concludes that the original disclosure and subsequent publication of the *in camera* evidence constitute a clear breach of privilege. According to the fundamental principles of parliamentary privilege which derive from the Bill of Rights of 1688, Parliament has the right to regulate its own internal proceedings and to control publication of its proceedings. Proceedings in a select committee of the Parliament are subject to the same principles. The disclosure and publication in this case were contrary to the express intentions of the Joint Select Committee Upon Police Administration that the evidence be treated as *in camera*, and contrary to the resolution of that Committee on 20 October 1992 that unreported evidence not be disclosed or published.

- 3.33 The Committee is in no doubt that the right of a select committee of the Parliament to hear evidence *in camera* is essential to the existence of the Parliament and to the proper exercise of its functions.
- 3.34 Although the Committee finds that a breach of privilege has been committed, the Committee is not satisfied that the disclosure of the *in camera* evidence in this particular case also amounts to a contempt of the Parliament. All the evidence before the Committee indicated that the publication of the information did not interfere with the work of the Joint Select Committee, and did not deter witnesses from giving evidence to that Committee. There was no evidence before the Committee that the publication obstructed or impeded the performance of the functions of the Select Committee, of either House of the Parliament, or of the Members or officers of either House.
- 3.35 The Committee concludes that no substantial interference with the Committee's or House's functions has resulted or is likely to result from the disclosure of the *in camera* evidence, which is contrary to the public interest.
- 3.36 Having concluded that a breach of privilege occurred in this case, the Committee has given careful consideration to the action which should be taken in respect of the breach. The Committee believes that, while the author of the article and the acting editor who approved its publication have committed a breach of privilege, the principal offender is the person who originally disclosed the information. The Committee notes that, in similar cases, where the person who originally disclosed the information has not been found, Committees of Privileges of the House of Commons have not usually been willing to recommend that any action be taken against those who gave wider publicity to the disclosure.²⁶ The Committee endorses this approach in this particular case.
- 3.37 The Committee therefore recommends that no action be taken against the journalist who wrote the article which contained the *in camera* evidence or against the acting editor of the *Sun Herald* who approved publication of the article.

RECOMMENDATION 1:

- 3.38 That, despite a case of breach of privilege having been found, no action be taken against the journalist who wrote the article which contained the *in camera* evidence, or against the acting editor of the *Sun Herald* who approved publication of the article.

²⁶ Erskine May, pp.123-124; e.g. Committee of Privileges 2nd Report Session 1971-72, concerning an article in the Daily Mail newspaper of 21 October 1971; Committee of Privileges 1st Report Session 1977-78, concerning articles in the Guardian and Daily Mail newspapers; Committee of Privileges 1st Report Session 1984-85, report in Times newspaper regarding Home Affairs Committee. These cases all concerned the premature disclosure of the contents of draft reports of select committees.

3.39 The Committee believes, however, that Parliament should take steps to ensure that similar "leaks" of *in camera* evidence do not occur in the future. One issue which concerns the Committee is the fact that both Mr Synnott and Mr Digby stated in evidence that they had not been aware that the publication of the *in camera* evidence could constitute a contempt of Parliament. This suggests that there are others in the media who are not aware that the disclosure of such evidence constitutes a breach of privilege and may constitute a contempt. Although the Committee has concluded in this particular instance that no contempt occurred, the disclosure could certainly have amounted to a contempt if the work of the Joint Select Committee had been in any way impeded.

3.40 Accordingly, the Committee recommends:

RECOMMENDATION 2:

That the Legislative Council resolve that the President issue a statement informing all members of the Parliamentary Press Gallery that the disclosure or publication of any details of evidence which is given *in camera* before a parliamentary committee, may constitute a breach of privilege and a contempt of the Parliament.

RECOMMENDATION 3:

3.41 That all media editors, and all new members of the Press Gallery be issued with guidelines regarding the reporting of the proceedings of Parliament and its committees, at the time when they receive security passes granting access to Parliament House.

3.42 The second issue which the Committee believes should be addressed is the need for parliamentary committees to adopt stringent procedures for maintaining the confidentiality of *in camera* evidence. In the present case, before Mr Pickering read from his prepared statement, the Chairman of the Select Committee announced that the press and public were to leave the room as the witness wished to give the rest of his evidence *in camera*. The *in camera* exhibit had the words "*in camera*" printed at the top of the first page and at the top of several subsequent pages.

3.43 The Special Report of the Joint Select Committee Upon Police Administration indicates that a wide range of people had access to the *in camera* evidence. Annexure C to the Special Report contains letters signed by all those who had access to the evidence. These include not only the Members of the Committee and their staff, but various staff from Hansard, Parliamentary Printing Services, the office of the Legislative Assembly and several officers of the Independent Commission Against Corruption.

3.44 The Committee believes that the present case demonstrates the need for tighter measures to be adopted. The Committee is of the view that, when committees are

dealing with *in camera* evidence in the future, they should consider adopting the following procedures:

1. The words "*in camera*" to be marked on every page of transcripts of *in camera* evidence and of any *in camera* submissions or documents.
2. Transcripts of evidence given *in camera* to be produced as separate documents from transcripts of evidence given in public. All *in camera* committee documents to be kept separately from public documents.
3. *In camera* evidence and documents to be printed on paper of a different colour to the paper on which public documents are printed.
4. A register to be kept by the clerk to the committee of all those who are given a copy of, or have access to, the *in camera* evidence.
5. Members of committees to be reminded at each inquiry where evidence is taken *in camera* that disclosure of *in camera* evidence amounts to a breach of privilege and may constitute a contempt of Parliament.
6. When a witness gives oral evidence *in camera* to a committee, the clerk to the committee to keep a list of all those who are present during the giving of such evidence, including Members of the Committee, Members' staff, committee staff and Hansard reporters.
7. Where the *in camera* evidence is particularly sensitive, the committee should consider making only one copy of the material and keeping that material in a locked safe in the office of the Clerk of the House. The material would not be able to be copied, but members of the committee would be able to read it in the Clerk's office. The Clerk of the House would keep a register of those persons who were allowed access to the material.

3.45 Although these measures will not prevent deliberate disclosures of *in camera* evidence, the Committee believes that they will reduce the opportunities for disclosures of confidential information to occur. The procedures to be adopted may vary according to the nature of the inquiry and the nature of the *in camera* evidence in each particular case.

RECOMMENDATION 4:

3.46 That committees of the Parliament adopt stringent procedures for protecting the confidentiality of *in camera* evidence.

- SECTION FOUR -

PARLIAMENTARY PRIVILEGE LEGISLATION FOR NEW SOUTH WALES

- 4.1 In conducting this inquiry, the Committee has had difficulty ascertaining the precise nature of the New South Wales Parliament's rights and powers in relation to breach of privilege and contempt. Although the Committee was ultimately able to come to some firm conclusions on these issues, the Committee's task was complicated greatly by the uncertainty which currently surrounds the law relating to parliamentary privilege in New South Wales.
- 4.2 As indicated in paragraphs 3.5 to 3.14 of this Report, only certain aspects of parliamentary privilege have been defined in legislation in New South Wales. For the most part, this area is still governed by the common law. As discussed earlier in this Report, under the common law the New South Wales Parliament has no inherent right to exercise the full range of powers and privileges possessed by the House of Commons. It possesses only such powers as are necessary to its existence as a legislature and to the proper exercise of its functions. Such powers as it does possess are "protective" and "self-defensive" only and not "punitive".
- 4.3 Although these principles have been stated clearly by the Courts, the way that these principles are to be applied in any particular case is far from clear. The boundaries between a power that is "necessary" and "self-defensive" and one which is "punitive" are in many cases uncertain and open to considerable debate.
- 4.4 The New South Wales Parliament is the only Parliament in Australia which has no legislation comprehensively defining its powers and privileges. All other states and the Northern Territory have legislative or constitutional provisions governing this area. Some of these provisions confirm that the Parliament possesses the same powers and privileges as the House of Commons.²⁷ Others specify various types of conduct which will amount to a contempt and the Parliament's powers to deal with this conduct.²⁸
- 4.5 The Commonwealth Parliamentary Privileges Act, 1987 combines these two approaches. On the one hand, the Act sets out a series of offences which amount to a contempt and specifies the Parliament's powers to deal with these offences. However, the Act also preserves the powers and privileges conferred on the Parliament by the Commonwealth Constitution, to the extent that these powers are not inconsistent with the Act. The powers and privileges conferred under the

²⁷ Victoria: Constitution Act 1975, Section 19(1); South Australia: Constitution Act Section 38.

²⁸ Tasmania: Parliamentary Privilege Act 1858, Section 3; Queensland: Constitution Act 1867, Section 45; Western Australia: Parliamentary Privileges Act 1881.

Constitution are the same as those possessed by the House of Commons as at the establishment of the Commonwealth.

- 4.6 A comprehensive review of parliamentary privilege in New South Wales was undertaken by the Joint Select Committee Upon Parliamentary Privilege, which reported in 1985. The Committee's Report examines many different aspects of parliamentary privilege, from broadcasting of proceedings in Parliament, to whether Parliament should have the right to impose fines to punish contempt. One of the Report's many recommendations is that the New South Wales Constitution be amended so that it states that the Parliament possesses the same powers and privileges as the House of Commons as at 1856. Despite this recommendation, no action has yet been taken in this regard.
- 4.7 The Committee believes that it is imperative that legislation clarifying this area be introduced in the Parliament as soon as possible, whether such legislation results in constitutional amendment or simply defines the powers possessed by the Parliament. The Committee believes that as long as there is uncertainty concerning the status of Parliament's powers and privileges, it is likely that this uncertainty will be reflected in the minds of persons who report on, or receive information concerning, proceedings in Parliament and its committees.

RECOMMENDATION 5:

That the Parliament enact legislation to define its powers and privileges, and to define its powers to deal with breach of privilege and contempt of Parliament.

APPENDIX 1

**SUMMARY OF PREVIOUS CASES
OF BREACH OF PRIVILEGE**

**(I) SUMMARY OF THE MAJOR CASES REGARDING
PARLIAMENTARY PRIVILEGE RELEVANT TO NEW SOUTH WALES****(a) *Kielley v Carson* (1842) 4 Moore PC 63**

The Privy Council held that the House of Assembly of Newfoundland did not have the right to arrest a stranger and bring him before the House to be punished for using gross and threatening language to a member of the House.

It was held that "colonial" legislatures have no inherent right to the powers and privileges of the House of Commons, including no inherent right to punish for contempt. These legislatures have only such powers as are reasonably necessary to their existence and the proper exercise of their functions.

(b) *Fenton v Hampton* (1858) 11 Moore PC 347

The principles established in *Kielley v Carson* were upheld and followed. The Privy Council held that the Parliament of Tasmania did not have the power to arrest for contempt a person who failed to obey an order of the House to appear at the bar of the House to answer a charge of disobedience to a summons to appear before a select committee of the House.

(c) *Doyle v Falconer* (1866) LR 1 PC 328

The Legislative Assembly of Dominica had resolved that a Member who had committed 'a contempt be removed from the Chamber and taken to jail. The contempt was committed when the Member persisted in debating an objection after having been called to order by the Speaker. The Member then addressed insulting words to the Speaker.

The Privy Council stated that a power to remove a Member who is obstructing the deliberations of the House is necessary to the self-preservation of the House. However, a power to inflict a penal sentence is not.

(d) *Barton v Taylor* (1886) 11 AC 197

A Member of the Legislative Assembly of New South Wales entered the Chamber within a week after the House had passed a resolution that he be suspended from the service of the House. The Member was removed from the Chamber and prevented from re-entering it.

The Privy Council held that the powers inherent in a "colonial" legislature are such as are necessary to its existence and the proper exercise of its functions. For these purposes, protective and self-defensive powers only, and not punitive, are necessary. Their Lordships considered that a power to suspend during the continuance of any current sitting was reasonably necessary. However, a power of unconditional suspension for an indefinite time is more than the necessity of self-defence requires.

(e) *Harnett v Crick* [1908] AC 470

The case turned on the validity of a Standing Order of the Legislative Assembly of New South Wales which empowered the Assembly to suspend a Member until a verdict in a criminal trial affecting that Member was returned, or until otherwise ordered.

The Privy Council held that the Legislative Assembly had the power to pass the Standing Order. It stated that it was impossible, upon a fair view of all the circumstances, to say that the Standing Order did not relate to the orderly conduct of the Assembly.

(f) *Willis and Christie v Perry* (1912) CLR 592

A Member of the Legislative Assembly of New South Wales had been disorderly in the Chamber and had left the Chamber in a disorderly manner. The Speaker directed the Sergeant-at-Arms to arrest the Member and bring him back into the Chamber.

The High Court of Australia held that the Speaker had no power to arrest the Member and bring him back into the Chamber. The Legislative Assembly has only protective and self-defensive powers, and no punitive powers.

(g) *Chenard v Arissol* [1949] AC 127

The Privy Council upheld the validity of a provision of the Seychelles Penal Code which conferred immunity from suit for defamation on Members of the Legislative Council of Seychelles.

The Letters Patent which established the colony included the power to make laws for the peace order and good government of the colony. The Privy Council held that such a power authorises the enactment of rights, privileges and immunities for the Parliament.

(h) *Armstrong v Budd* (1969) 71 SR (NSW) 386

The Legislative Council of New South Wales had resolved that one of its Members was guilty of conduct unbecoming a Member, that he be expelled, and that his seat be declared vacant. The Member challenged the validity of the resolution.

The Supreme Court of New South Wales held that the resolution was within the powers of the Legislative Council. In a proper case, a power of expulsion for reasonable cause may be exercised, provided the circumstances are special and the its exercise is not a cloak for punishment of the offender.

**(II) SUMMARY OF REPORTS OF THE COMMITTEES OF PRIVILEGES
OF THE HOUSE OF COMMONS CONCERNING "LEAKS"
FROM SELECT COMMITTEES**

A Disclosure of evidence taken in private

(i) Select Committee on Science and Technology, 1967-68

Second report of the Committee of Privileges, Session 1967-68

Following a report in *The Observer* newspaper, a Member of the House informed the Committee of Privileges that he had supplied a reporter with a proof copy of evidence taken in private by the Select Committee on Science and Technology. The Committee of Privileges concluded that the Member was guilty of a breach of privilege and of a serious contempt of the House, and that the newspaper reporter and his editor had committed a contempt of the House. They recommended that the Member be reprimanded, as he subsequently was, and that no further action should be taken in relation to the reporter or the editor.

This case is unique in that the person who disclosed the information admitted having done so.

B Disclosure of contents of draft reports

(i) Select Committee on the Civil List, 1971-72

Second Report from the Committee of Privileges, Session 1971-72

An article was published in the *Daily Mail* containing figures relating to the salaries of the Queen and others which were in many respects identical to those contained in a draft Report. The Committee of Privileges investigated the distribution of the draft. They then examined the author of the article, who declined to identify the source of his information. The Committee concluded that the article must have been derived directly or indirectly from the text of the draft, and that its publication was a contempt of the House. However, they observed that the principal offender was the unknown person who provided the newspaper correspondent with the information, and described his action as a deliberate and flagrant contempt of the House. An apology was made by the author of the article. No further action was recommended by the Committee, nor was any action taken by the House.

(ii) **Select Committee on a Wealth Tax, 1974-75**

First Report from the Committee of Privileges, Session 1975-76.

An article in the *Economist* gave details of the Select Committee's draft Report. The Committee of Privileges examined both the editor and the author of the article. They twice communicated with the Members of the Select Committee but were unable to identify the source of the newspaper's information. The editor and journalist were not prepared to disclose their contacts, except to say that the Committee's staff were not involved.

The Committee of Privileges reported that the newspaper men acted irresponsibly and expressed their opinion that, should it later be discovered who was responsible for divulging the contents of the draft, the House should deal with them with the utmost severity. They also recorded their view that this was a suitable occasion for the imposition of a fine on the *Economist*. In agreeing with the opinion of the Select Committee on Parliamentary Privilege in 1967 that the House was unnecessarily handicapped by the inability to impose fines, they recommended the exclusion of the editor and reporter from the precincts for six months. In a debate on the Report, the House rejected the latter recommendation.¹ No such Bill has been passed.

(iii) **Select Committee on Race Relations and Immigration, 1977-78**

First Report of the House of Commons Committee of Privileges, Session 1977-78

In this case, articles in the *Guardian* and *Daily Mail* gave details of the Select Committee's draft Report. The Committee of Privileges sought, by letters addressed to all Members of the Select Committee, to elicit information about the means by which the information had reached the newspaper reporters. The Committee was unsuccessful and, having stated its opinion that the publication was a contempt of the House, recommended no further action. The prime offender, the Committee said, was the person (or persons) who provided the information on which the offending articles were based. The Committee also observed that, though that particular case was not so serious as to call for further action, they did not wish to imply that future cases should be regarded less seriously than in the past.

¹ May, P. 124, footnote 1.

(iv) Home Affairs Committee, 1984-85

First Report from the House of Commons Committee of Privileges, Session 1984-85

The Committee concluded that a report in *The Times* disclosing the contents of a draft Report prepared for the Home Affairs Committee was a serious contempt of the House. The Committee concluded that, in the light of past experiences with cases of this type, there would be no benefit in taking further action in relation to that specific complaint. Instead the Committee released a Second Report concerning the law of privileges and rules of the House in relation to leaks from select committees.

(v) Select Committee on the Environment 1985-86

First Report from the Committee of Privileges, Session 1985-86

An account of the draft report of the Select Committee was published in *The Times*. The Select Committee sought formal written assurances from all Members of the Committee that they were not responsible for the leak. Similar assurances were given by the staff concerned. The journalist refused to disclose his source. The Privileges Committee found that a serious contempt had been committed by the person responsible for the original disclosure, the reporter and the editor. The Committee recommended that the reporter be suspended from the Lobby for six months and excluded from the precincts of the House for that period. It recommended that the number of Lobby passes issued to *The Times* newspaper be reduced by one for six months. However, the House took a different view.²

² CJ (1985-86) 374.

APPENDIX 2

EXTRACT FROM THE MINUTES OF THE
PROCEEDINGS OF THE LEGISLATIVE COUNCIL

STANDING COMMITTEE UPON PARLIAMENTARY PRIVILEGE

APPOINTMENT OF COMMITTEE

Mr Pickering moved, pursuant to notice:

1. That a Standing Committee upon Parliamentary Privilege (referred to as "the Committee") be appointed to consider and report upon any matters relating to privilege which may be referred to it by the House or the President.
2. That the Committee have leave to sit during the sittings or any adjournment of the House, and have power to take evidence and send for persons and papers.
3. That the Committee have power to confer with any Committee appointed for similar purposes by the Legislative Assembly.
4. That, notwithstanding anything to the contrary in the Standing Orders, the Committee consist of the following Members: Mr Bull, Mr Dyer, Mrs Evans, Mr Jobling, Mr Jones, Mr Samios and Mr Vaughan.
5. That, notwithstanding anything contained in the Standing Orders, a matter of privilege may only be brought before the House in accordance with the following procedures:
 - (1) A Member desiring to raise a matter of privilege must inform the President of the details in writing.
 - (2) The President must consider the matter as soon as practicable and decide whether a motion relating to the matter shall take precedence under the Standing Orders. The President must notify his decision in writing to the Member.
 - (3) While a matter is being considered by the President, a Member must not take any action or refer to the matter in the House.
 - (4) If the President decides that a motion relating to a matter of privilege shall take precedence, the Member may, at any time when there is no business

before the House, give notice of a motion to refer the matter to the Committee. The notice shall take precedence under Standing Order 55 on the day stated in the notice.

- (5) If the President decides that the matter should not take precedence, a Member is not prevented from referring to the matter in the House or taking action in accordance with the practices and procedures of the House.
- (6) If notice of a motion is given under paragraph 5(4), but the House is not expected to meet within one week after the day on which the notice is given, the motion may be moved at a later hour of the sitting as determined by the President.

Question put and passed¹.

¹ Minutes of Proceedings No 13, Entry 3, Wednesday 16 October 1991

How Ted nabbed pusher

EXCLUSIVE by JOHN SYNNOTT
State Political Reporter

FORMER NSW Police Minister Ted Pickering has revealed how he was forced to investigate a heroin dealer himself out of frustration at the inaction of his police force.

After getting nowhere with the force's drug squads, Mr Pickering told a member of his staff to stake out the drug pusher's premises.

This evidence resulted in charges, according to Mr Pickering's confidential evidence to the parliamentary committee into police administration, obtained by *The Sun-Herald*.

Rich MLA Clover Moore first told Mr Pickering of allegations against the person and he informed the Drug Enforcement Agency (DEA) in early 1990. By February 15, Mr Pickering had heard nothing from the DEA so he referred the matter to the State Drug Crime Commission (SDCC).

"Their surveillance of the suspect, however, apparently failed to detect any illegal activity," he said.

In view of these unsuccessful investigations, a detailed running sheet prepared by Clover Moore's informant was provided to the SDCC, and a member of his staff — with the assistance of the informant — carried out surveillance of the suspect.

The suspect was charged with possessing and supplying heroin the following day when the reports of the results of this operation were provided to the SDCC.

Mr Pickering raised in private with the committee four other examples of what he regarded as police corruption.

This is some of his evidence:

PEDOPHILE PROTECTION
OPERATION Collector led to the acquisition of additional information which resulted in the investigation of 14 police and 41 civilians who were allegedly involved in a pedophile protection racket in NSW. Just before my resignation as Police Minister, I received the Internal Police Security Unit's (IPSU) final report which concluded that corrupt practices did exist between serving police officers and pedophiles.

OPERATION ASSET

ON December 8, 1988, I authorised a reference to the State Drug Crime Commission (SDCC) which was known as Operation Asset.

That operation was based on intelligence gathered and provided by the Australian Bureau of Criminal Intelligence and NSW Police Intelligence.

The considerable information provided to the commission concerned the activities of 23 identified retired police officer and 15 currently serving officers who were suspected of being involved in corrupt activities with known criminals.

The operation, however, was seriously compromised... it was at this point that I realised that NSW police could not be employed to investigate serious organised criminal activity within police ranks.

KINGS CROSS POLICE

FOR a number of months prior to November 1988, the possibility that police were involved in the distribution of illegal drugs in the Kings Cross area came to my attention from a number of sources.

Despite repeated requests... no action was taken to investigate these allegations.

At my specific direction, an undercover operation was put in

place in the Kings Cross area under the code name Collector.

This operation was almost compromised when it became apparent from a legal telephone tap that a prime suspect — a police officer — had been tipped off by a fellow officer about the investigation.

This led to a raid by the IPSU and DEA officers on Kings Cross police station on March 31, 1989.

A number of police officers and civilians were charged and subsequently convicted for the supply and possession of illegal drugs.

SENIOR CONSTABLE X

BETWEEN late 1984 and late 1988 this man was the subject of two investigations in connection with his alleged activities concerning the supply of illicit drugs.

Both investigations were unsuccessful because of poor investigation procedures. On January 6, 1989, an informant provided me with information concerning Senior Constable X's alleged involvement with the distribution of illegal drugs through three distributors at an inner-city hotel.

When I passed this information on to IPSU, suspects were interviewed by officers of that branch just before an undercover investigation was put in place by the Drug Squad. IPSU's uncoordinated intervention frustrated what may otherwise have been an effective undercover operation.

On January 23, 1989, the National Crime Authority provided further information concerning Senior Constable X's continuing activities at a different location and subsequent investigations by IPSU finally led to charges being laid.

● The parliamentary inquiry is to reconvene next month, when Mr Pickering and Police Commissioner Tony Lauer will give evidence.



APPENDIX 4

PARLIAMENT HOUSE,

SYDNEY, N.S.W. 2000

JOINT SELECT COMMITTEE UPON POLICE ADMINISTRATION

6 January, 1993

Dear Mr Willis

PREMATURE DISCLOSURE OF IN CAMERA COMMITTEE EVIDENCE

I am writing to inform you of a serious breach of parliamentary privilege by the premature release of in camera evidence.

On 20 November, during the giving of in camera evidence, Mr Pickering read a prepared statement providing examples of what he said were "the type of cultural problems that one faces as the Police Minister".

In the Sun Herald of 3 January, 1993, under a banner headline of "Pickering Sensation - how I nabbed, heroin pusher" - an exclusive by John Synnott, State Political Reporter, a great deal of the evidence, contained in Mr Pickering's confidential statement was revealed to that newspaper's readers. The story was picked up by The Australian, The Sydney Morning Herald and the Telegraph Mirror on Monday 4 January, 1993 as well as the television media.

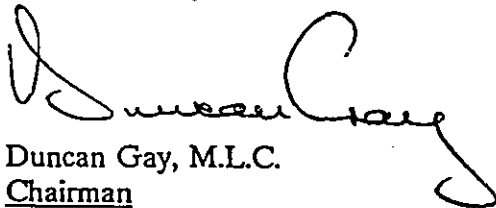
The Committee has not authorised the release for publication of the material provided by Mr Pickering in any form whatsoever. Accordingly, I am of the view that such unauthorised publication may constitute a contempt of the Parliament.

I have contacted all available members and I am unable to locate the source of the leaks from the resources of the committee.

In the circumstances I request that you refer the matter to the Parliamentary Privileges Committee for urgent investigation.

A copy of the Sun Herald news article is attached.

Yours sincerely



Duncan Gay, M.L.C.
Chairman

The Hon. M. F. Willis, M.L.C.,
President,
Legislative Council,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000



APPENDIX 5

President's Chambers,
Legislative Council,
Parliament House,
Sydney, N.S.W. 2000,
Australia

11 January 1993

(02) 230-2300

(Fax) 230-2884

The Hon Duncan Gay MLC
Chairman of Committees
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Gay

Unauthorised Disclosure of In Camera Committee Evidence

I refer to your correspondence of 6 January 1993 concerning the premature disclosure of in camera Committee evidence in the Sun Herald dated 3 January 1993.

Having considered the matter carefully, I am persuaded that a prima facie case of privilege may exist. In reaching this opinion, I am particularly mindful of the view expressed in May's Parliamentary Practice that:

"A publication or disclosure of debates or proceedings in committees conducted with closed doors or in private...will...constitute a breach of privilege or a contempt." (20th edition, page 124).

The second report from the House of Commons Committee of Privilege entitled Premature Disclosure of Proceedings of Select Committees (Session 1984-85) dated 23 July 1985 is also pertinent and sets out those procedures which should normally be adopted when the leak of confidential proceedings of a select Committee comes to light (see copy attached of recommendation 14 of that Report, together with paragraphs 51-54 and 64, 65, 66, 67, 68 and 70 referred to therein).

In order that I may be finally persuaded that a prima facie case does exist, such that I can make a reference to the Standing Committee Upon Parliamentary Privilege, I therefore suggest that you initiate the following procedure:

Your Committee should attempt to discover the source of the disclosure by:

- a) Your writing to each member of your Committee pointing out to each member the leak that has occurred and requesting of each member a written advice as to whether that member has any knowledge of the source of or how the disclosure occurred. Your letter should request the written response before 1 February 1993 when your Committee is next due to meet.

- b) You should write in similar terms to each member of your Committee's staff and the reporting staff who serviced your Committee during the taking of the in camera evidence.
- c) You should list this breach for discussion in camera by your Committee as Item 1 for its meeting on 1 February 1993. At that time, you should report to your Committee your actions up to that time and the result thereof.
- d) Your Committee should, on the basis of your report to it, make a conclusion as to whether the disclosure of the in camera evidence is of sufficient seriousness as to constitute a substantial interference or the likelihood of such with the work of your Committee, the Committee system or the functions of the House.
- e) If your Committee so finds, you should have it adopt a report in that behalf and have it resolve to refer that report to me with a request that I find that there is a prima facie case sufficient to justify my referring the matter to the Standing Committee Upon Parliamentary Privilege.

I believe that it is within the competence of your Committee to action my recommendations as outlined above by or on 1 February 1993 when it next meets, if it wishes me to act.

I might add (without in any way pre-empting my final decision) that I regard the unauthorised disclosure and publication of any evidence given in camera most seriously as being potentially an interference with the Committee's functions and jeopardising the integrity of the Committee system and, consequently, the functions of the House.

Consequently, in anticipation that your Committee report to me requesting that I act by referring the matter, and my being so persuaded by that report, I have directed action to convene the Standing Committee Upon Parliamentary Privilege on 2 February 1993 to elect a Chairman and possibly receive a reference.

Yours faithfully



Max Willis
President



President's Chambers,
Legislative Council,
Parliament House,
Sydney, N. S. W. 2000,
Australia

(02) 230-2300

(Fax) 230-2884

2 February 1993

The Hon. B. Evans, MLC
Chairman
Standing Committee Upon Parliamentary Privilege
Parliament House
SYDNEY NSW 2000

Dear Mrs Evans,

Disclosure of *In Camera* Evidence

The Clerk of the Parliaments has received from the Joint Select Committee Upon Police Administration a Special Report entitled "*Disclosure of In Camera Evidence*". It relates to the unauthorised publication in the Sun Herald, dated 3 January 1993, of *in camera* evidence given before the Committee by the Hon. E. P. Pickering, MLC, on 20 November 1992.

On 16 October 1991 the House appointed the Standing Committee Upon Parliamentary Privilege. The resolution establishing the Committee gave it certain powers including the power to consider a matter referred to it by the President of the Legislative Council.

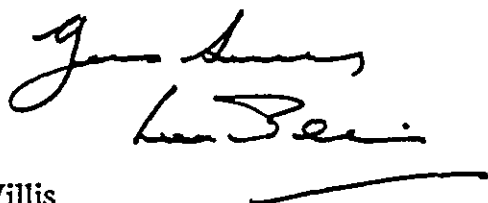
As you are aware, under the Standing Orders of the Legislative Council the Standing Committee Upon Parliamentary Privilege has power to sit during the life of the Parliament in which appointed (SO 257C).

I have examined the Special Report of the Joint Select Committee Upon Police Administration and consider that the premature disclosure of the *in camera* evidence is of sufficient seriousness as might constitute a possible breach of privilege or contempt, which warrants the matter being referred to the Standing Committee Upon Parliamentary Privilege for inquiry and report as a matter of urgency.

Since the Legislative Council presently stands prorogued and will next meet on 24 February 1993, pursuant to the resolution of the House I refer for consideration and report the abovementioned publication, with particular reference to:

- a) the source of the unauthorised disclosure;
- b) whether a breach of privilege or a contempt has been committed;
- c) whether substantial interference with the Committee's or House's functions has resulted, or is likely to result, which is contrary to the public interest; and
- d) recommendations for action in this regard.

The Committee's early consideration would be appreciated.

A handwritten signature in cursive script, appearing to read "Max Willis", with a horizontal line underneath.

Max Willis
President



APPENDIX 7

PARLIAMENT OF NEW SOUTH WALES

THE JOINT SELECT COMMITTEE UPON POLICE ADMINISTRATION

SPECIAL REPORT *

DISCLOSURE OF *IN CAMERA* EVIDENCE

- * The Annexures to the Special Report have not been reproduced here as they are voluminous, and have been published as part of the Special Report.

2 FEBRUARY, 1993

SPECIAL REPORT

The Joint Select Committee Upon Police Administration has considered the matter of the publication in the Sun Herald on 3 January 1993 of an article purporting to give an account of in camera evidence given before the Committee on 20 November 1992, and has agreed to the following Special Report:

- (1) On 20 November 1992 during the giving of in camera evidence before the Committee the Hon E P Pickering, MLC, read a prepared statement providing examples of what he said were "the type of cultural problems that one faces as the Police Minister".
- (2) On 3 January 1993 an article was published in the Sun Herald headed "Pickering Sensation - How I nabbed heroin pusher", under the signature of John Synnott, State Political Reporter. The article revealed details of much of the evidence contained in Mr Pickering's confidential statement.
- (3) On Monday 4 January 1993 the story was taken up by The Australian, The Sydney Morning Herald and The Telegraph Mirror as well as the television media.
- (4) A letter dated 6 January 1993 concerning the matter (Annexure A) was sent by the Committee's Chairman, the Hon Duncan Gay, MLC, to the President of the Legislative Council. The letter states that the Committee had not authorised the release for publication of the material provided by Mr Pickering in any form whatsoever. It indicates that all the available members of the Committee have been contacted but that it has not been possible to identify the source of the leak. The letter requests that the matter be referred by the President to the Legislative Council Privileges Committee for urgent investigation.
- (5) The President responded by letter dated 11 January 1993 (Annexure B) that, in order to assist him in deciding whether a prima facie breach of privilege existed, the Committee should reach a conclusion as to whether a disclosure of the in camera evidence is sufficiently serious as could constitute a substantial interference or the likelihood of such with the work of the Committee, Committee system or functions of the Houses, and if so, report that conclusion to the President.
- (6) The Chairman has written to each Member of the Committee requesting written advice as to whether that Member or the Member's staff has any knowledge of the source of or how the disclosure occurred. Similar letters have been written to the ICAC which, following their request, was provided with a copy of the evidence, to the Committee staff, to the reporting staff who serviced the Committee during the taking of the in camera evidence and to staff who photocopied the evidence. None of the replies received to date contains any information which could assist in ascertaining the source of the original disclosure. The letters and the replies are attached at Annexure C.

- (7) The Committee concludes that the disclosure of the in camera evidence is of sufficient seriousness as could constitute a substantial interference or likelihood of such with the work of the Committee, the Committee system or the functions of the Houses.

In this particular instance the Committee believe that the disclosure will not interfere with the Committee Members' work.

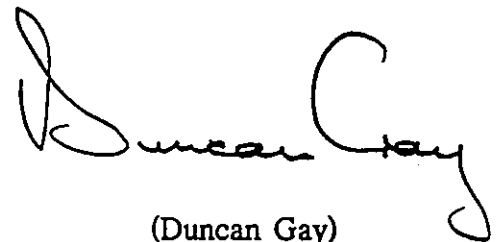
- (8) The Committee resolves that this Special Report be presented to both Houses in order that the matter can be referred to any Committee of Privileges of either House.
- (9) The following documents are attached to this report:

Annexure A - Letter dated 6 January 1993 from the Hon. Duncan Gay, MLC, to the President of the Legislative Council enclosing copy of The Sun Herald article;

Annexure B - Letter dated 11 January 1993 from the President of the Legislative Council to the Hon. Duncan Gay, MLC.

Annexure C - Letters to Committee Members, ICAC, Committee and parliamentary staff with replies.

2 February 1993



(Duncan Gay)
Chairman

APPENDIX 8

MINUTES OF COMMITTEE MEETINGSNOTE:

At the time the Committee was conducting this inquiry, it was also inquiring into another, unrelated matter concerning the broadcasting of proceedings of the Legislative Council. Those parts of the Minutes of the Meetings of the Committee which concern this other matter have been deleted from the Minutes which appear below. They have been included as part of the Committee's Report on the Broadcasting of Sound Recordings of Excerpts of Proceedings, September 1993.

Minutes No. 1

TUESDAY 2 FEBRUARY 1993

at Parliament House, Sydney, at 2:30 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer

Mr Jones
Mr Samios

The Clerk declared the meeting open and called for nominations for the Chair. On motion of Mr Jobling, Mrs Evans was called to the Chair.

Apologies: Mr Vaughan

The Committee deliberated.

Resolved, on motion of Mr Jobling:

That arrangements for the calling of witnesses be left in the hands of the Chairman and the Clerk.

That, unless otherwise ordered, parties appearing before the committee shall not be represented by members of the legal profession.

That, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the hearings of the committee.

That, unless otherwise ordered, transcripts of evidence taken by the committee be not made available to any person, party or organisation provided that each witness previously examined shall be given a proof copy of their evidence for correction and return to the Clerk.

The Chairman tabled:-

1. A Special Report from the Joint Select Committee Upon Police Administration entitled "In-Camera Evidence", dated 2 February 1993.
2. Background Paper: The Powers of the New South Wales Parliament with Regard to the Unauthorised Disclosure of Evidence given In Camera before a Select Committee.

Mr Jobling moved: That the Clerk prepare a paper outlining the powers of the NSW Parliament regarding privilege, and in particular, the benefits or otherwise, of having privileges legislation enacted.

Debate ensued.

Question put and passed.

The Committee adjourned at 2:45 p.m. until Monday 8 February 1993, at 2:30 p.m.

Minutes No. 2

MONDAY 8 FEBRUARY 1993

at Parliament House, Sydney, at 2:30 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer
Mr Jobling

Mr Jones
Mr Samios
Mr Vaughan

Resolved, on motion of Mr Samios, seconded by Mr Dyer: That the Minutes from Meeting No. 1, on 2 February 1992, be amended to include the names of seconders to motions.

The Chairman tabled the following correspondence:

- i) Letter from the Editor of Debates, dated 5 February 1993, detailing Hansard Officers' access to the in camera evidence prematurely disclosed in the Sun Herald.
- ii) Letter from Manager, Parliamentary Printing Services, regarding Printing staff access to the in camera evidence.
- iii) Letter from Ms D. Sweeney, Solicitor to the Independent Commission Against Corruption, detailing ICAC Officers' access to the in camera evidence prematurely disclosed in the Sun Herald.
- iv) Memorandum from Mr D. Gay, Chairman, Joint Select Committee Upon Police Administration, forwarding remaining annexures to the Special Report dated 1 February 1993.

The Chairman made a statement regarding the disclosure of Committee proceedings to the media.

Mr Jones informed the Committee that he was responsible for the disclosure and expressed regret that it had occurred.

The Committee deliberated.

Resolved, on motion of Mr Bull, seconded by Mr Samios: That press statements concerning the deliberation of the Committee be made only by the Chairman on behalf of the Committee.

Mr Jobling made a statement concerning his continuing membership of both this Committee and the Joint Select Committee Upon Police Administration.

Resolved, on motion of Mr Dyer, seconded by Mr Samios:

That the Chairman write to both Presiding Officers requesting both Houses to give leave for Members and Officers of the Houses to appear before this Committee.

That following the granting of leave for Members to appear before this Committee, the Chairman write to Mr Gay requesting him to appear before this Committee to give evidence in relation to the matter now before this Committee.

The Committee adjourned at 3.35 p.m. *sine die*.

Minutes No. 3

THURSDAY 29 APRIL 1993

at Parliament House, Sydney, at 1:00 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer
Mr Jobling

Mr Samios
Mr Vaughan

Apologies were received from Mr Jones.

Minutes of previous Meeting were confirmed on motion of Mr Dyer, seconded by Mr Jobling.

The Chairman tabled the following correspondence:

- (i) Letter from the Clerk to the Joint Select Committee Upon Police Administration, dated 9 February 1993, forwarding details of Legislative Assembly Staff who had access to the in camera evidence given by Mr Pickering.
- (ii) Letter from the Chairman of the Joint Select Committee Upon Police Administration dated 9 February 1993, indicating that the Committee had not acceded to the request for a copy of the transcript of in camera evidence given by Mr Pickering on 20 November 1992.
- (iii) Letter from Mr Tony Katsigiannis, President of the Free Speech Committee, dated 10 February 1993, requesting permission to appear before the Committee.
- (iv) Letter from Mr Andrew Tink, Member for Eastwood, dated 11 February 1993, forwarding a copy of the transcript of evidence given by him before the Parliamentary ICAC Committee.
- (v) Letter from the Clerk of the Legislative Assembly, dated 3 March 1993, acknowledging receipt of the Chairman's request that the House grant leave to Members to appear before the Committee, and pointing out the provisions of Legislative Assembly Standing Order No. 380.

The Clerk circulated copies of the New Zealand House of Representatives Report of the Privileges Committee entitled "Report on the Question of Privilege referred on 3 March 1992 concerning the disclosure of two pieces of confidential Select Committee Evidence", dated 1992.

The Committee deliberated.

Resolved, on motion of Mr Samios, seconded by Mr Jobling: That the Chairman of the Joint Select Committee Upon Police Administration be requested to appear and give evidence before the Committee at 10.30 a.m. on Monday 24 May 1993, in relation to the Committee's inquiry into the premature disclosure of in camera evidence.

* * * * *

The Committee adjourned at 1.30 p.m. until Monday 24 May 1993 at 10.00 a.m.

Minutes No. 4

MONDAY 24 MAY 1993

at Parliament House, Sydney, at 10:00 a.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer

Mr Samios
Mr Vaughan

Apologies received from Mr Jobling and Mr Jones.

Minutes of previous Meeting held 29 April 1993 were confirmed on motion of Mr Dyer.

* * * * *

The Hon. Duncan Gay, MLC, Chairman of the Joint Select Committee Upon Police Administration, sworn and examined.

Resolved, on motion of Mr Samios: That the press and public be admitted. The names of press reporters to be recorded by the Clerk.

Mr Gay tendered:

- (a) Newspaper article by Mr Synnott, Sun Herald, 3 January 1993
- (b) Special Report of the Joint Select Committee Upon Police Administration, dated 2 February 1993
- (c) Disclaimers.

Evidence concluded, the witness withdrew.

* * * * *

The Committee deliberated.

* * * * *

Resolved, on motion of Mr Samios: That Mr John Synnott, journalist with the Sun Herald newspaper, be summonsed to appear and give evidence before the Committee on Monday 7 June 1993 in relation to the Committee's inquiry into the premature disclosure of in camera evidence.

The Committee adjourned at 12.10 p.m. until Monday 7 June 1993 at 10.00 a.m.

Minutes No. 5

TUESDAY 1 JUNE 1993

at Parliament House, Sydney, at 2:30 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Dyer
Mr Jones

Mr Samios
Mr Vaughan

Apologies were received from Mr Bull and Mr Jobling.

Minutes of previous Meeting held 24 May 1993 were confirmed on motion of Mr Jones, seconded by Mr Dyer.

The Committee deliberated.

Resolved, on motion of Mr Jones, seconded by Mr Dyer: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the evidence of the Chairman of the Joint Select Committee Upon Police Administration, given on 24 May 1993, from the first question asked by the Chairman, at page 3, line 26.

Resolved, on motion of Mr Samios, seconded by Mr Vaughan: That the Clerk release the evidence to Mr John Synnott, Reporter, Fairfax Press, under a covering letter stating that the Committee has resolved to release the evidence of the Chairman of the Joint Select Committee Upon Police Administration relating to the impact of the disclosure of in-camera evidence.

The Committee adjourned at 3.00 p.m. until Monday 7 June 1993.

Minutes No. 6

MONDAY 7 JUNE 1993

at Parliament House, Sydney, at 10:30 a.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer
Mr Jones

Mr Jobling
Mr Samios
Mr Vaughan

Minutes of previous Meeting held 1 June 1993 were confirmed on motion of Mr Dyer, seconded by Mr Bull.

The Committee deliberated.

Resolved, on motion of Mr Jobling, seconded by Mr Dyer: That Mr Synnott's solicitor be permitted to be present in the capacity of adviser to Mr Synnott during the taking of Mr Synnott's evidence.

Resolved, on motion of Mr Bull, seconded by Mr Dyer: That the Committee proceed in camera during the taking of evidence until such time as the issue concerning the serving of the summons on Mr Synnott is resolved.

Mr John Synnott, Journalist, Fairfax Press, was admitted and sworn.

Mr Synnott was attended by Mr Richard Coleman, Legal Adviser, Fairfax Press.

Resolved, on motion of Mr Jobling, seconded by Mr Bull: That the taking of evidence be adjourned until 11:50 a.m. this day.

* * * * *

The Committee deliberated.

Pursuant to Resolution of the Committee, the taking of evidence from Mr John Synnott resumed at 11.50 a.m.

The Committee continued in camera.

Resolved, on motion of Mr Jobling, seconded by Mr Samios: That the Committee continue hearing evidence in public.

The Press and the public were admitted.

Evidence concluded, the witness withdrew.

Resolved, on motion of Mr Jobling, seconded by Mr Dyer: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the evidence of Mr John Synnott, given on 7 June 1993.

Resolved, on motion of Mr Samios, seconded by Mr Vaughan: That Mr John Digby, Journalist, Fairfax Press, be summonsed to appear and give evidence before the Committee on Friday 11 June 1993 in relation to the Committee's inquiry into the premature disclosure of in camera evidence.

Resolved, on motion of Mr Samios, seconded by Mr Dyer: That Mr Stephen Skinner, Journalist, Fairfax Press, be summonsed to appear and give evidence before the Committee with relation to the Committee's inquiry into the premature disclosure of in camera evidence.

The Committee adjourned at 1:10 p.m. until Friday 11 June 1993 at 10:30 a.m.

Minutes No. 7

FRIDAY 11 JUNE 1993

at Parliament House, Sydney, at 10:30 a.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Dyer
Mr Jones
Mr Jobling

Mr Samios
Mr Vaughan

Apologies were received from Mr Bull.

Minutes of previous Meeting held 7 June 1993 were confirmed on motion of Mr Jobling, seconded by Mr Dyer.

The Committee deliberated.

Resolved, on motion of Mr Jobling, seconded by Mr Vaughan: That the Committee only proceed in relation to Mr Skinner on condition that he is available in Sydney before the Committee has reported.

Resolved, on motion of Mr Dyer, seconded by Mr Jobling: That the adviser to Mr John Digby be allowed to be present during the taking of Mr Digby's evidence.

Correspondence: The Chairman tabled a letter from Mr Richard Coleman, Legal Unit, John Fairfax Group Pty Limited, dated 9 June 1993.

The Committee deliberated.

Resolved, on motion of Mr Jobling, seconded by Mr Samios: That a copy of the corrected transcript of the evidence given by Mr John Synnott be forwarded to Mr Coleman of John Fairfax Group Pty Limited.

Moved, on motion of Mr Jobling, seconded by Mr Samios: That the background paper prepared for the Committee not be released.

Debate ensued.

Question put and passed.

Resolved, on motion of Mr Jobling, seconded by Mr Samios: That further submissions be accepted from Fairfax by 31 July 1993.

The Press and the public were admitted.

Mr John Digby, Deputy Editor of the Sun Herald, sworn and examined. Attended by advisers Richard Coleman and Geoff McClellan.

The evidence concluded, the witness withdrew.

The Committee deliberated.

Moved by Mr Jobling, seconded by Mr Dyer: That Mr Skinner be requested, in writing by the Chairman, to forward a submission.

Debate ensued.

Question put and passed.

The Committee adjourned at 12:30 p.m., *sine die*.

Minutes No. 8

MONDAY 12 JULY 1993

at Parliament House, sydney, a 2:20 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Dyer

Mr Samios

Apologies were received from Mr Bull, Mr Jobling, Mr Jones, and Mr Vaughan.

Minutes of previous Meeting held 24 May 1993 were confirmed on motion of Mr Dyer, seconded by Mr Samios.

The Committee deliberated.

The Chairman tabled a letter from the Chairman of the Joint Select Committee Upon Police Administration dated 24 June 1993, advising that Mr Pickering's written statement and oral evidence to that Committee contained both public and confidential material.

The Committee deliberated.

* * * * *

The Committee deliberated.

The Committee adjourned at 3.20 p.m., *sine die*.

Minutes No. 9

WEDNESDAY 18 AUGUST 1993

at Parliament House, Sydney, at 9:30 am.m

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer

Mr Jobling

Apologies were received from Mr Jones, Mr Samios and Mr Vaughan.

Minutes of previous Meeting held 12 July 1993 were confirmed on motion of Mr Dyer.

The Chairman tabled a submission to the committee from Freehill Hollingdale & Page on behalf of John Fairfax Group Pty Limited, Mr John Digby and Mr John Synnott.

* * * * *

Resolved, on motion of Mr Dyer, seconded by Mr Jobling: That the Chairman prepare and submit a Draft Report in regard to the disclosure of in camera evidence for circulation amongst the Committee, and that a future day be fixed for its consideration.

The Committee deliberated.

Resolved, on motion of Mr Dyer: That the Chairman write to the Hon. Duncan Gay, Chairman of the Joint Select Committee Upon Police Administration, to confirm that the Committee resolved to go into closed session, and to ascertain whether the Committee resolved that Mr Pickering's in camera evidence not be disclosed or published, in accordance with Legislative Assembly Standing Order 367.

The Committee adjourned at 11.51 a.m. until Thursday, 16 September 1993 at 1.00 p.m. in Room 1136.

Minutes No. 10

THURSDAY 16 SEPTEMBER 1993

at Parliament House, Sydney, at 1:00 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Bull
Mr Dyer

Mr Jobling
Mr Jones
Mr Vaughan

Apologies were received from Mr Samios.

Minutes of previous Meeting were confirmed on motion of Mr Dyer, seconded by Mr Bull.

The Chairman tabled a letter from the Hon. Duncan Gay, Chairman, Joint Select Committee Upon Police Administration, dated 7 September 1993, regarding the taking of in camera evidence before that Committee.

The Committee deliberated.

The Committee adjourned at 1:27 p.m., *sine die*.

Minutes No. 11

TUESDAY 26 OCTOBER 1993

at Parliament House, Sydney, at 12:30 p.m.

MEMBERS PRESENT

Mrs Evans (in the Chair)

Mr Dyer
Mr Jobling
Mr Jones

Mr Samios
Mr Vaughan

Apologies were received from Mr Bull.

Minutes of previous Meeting held 16 September 1993 were confirmed on motion of Mr Dyer, seconded by Mr Vaughan.

The Committee deliberated.

The Committee considered the Draft Report.

Paragraphs 1.1 to 1.10 read and agreed to.

Paragraphs 2.1 to 2.6 read and agreed to.

Paragraphs 3.1 to 3.37 read and agreed to.

Recommendation 1 read and agreed to.

Paragraph 3.39 read and agreed to.

Recommendation 2 read and agreed to.

Recommendation 3 read.

Mr Vaughan, seconded by Mr Samios, moved: That the recommendation be amended by the omission of the word "new" and the insertion of the words "media editors, and all".

Debate ensued.

Question: That the amendment be agreed to—put and passed.

Recommendation 3, as amended, agreed to.

Paragraphs 3.42 to 3.45 read and agreed to.

Recommendation 4 read and agreed to.

Paragraphs 4.1 to 4.7 read and agreed to.

Recommendation 5 read and agreed to.

Resolved, on motion of Mr Jones, seconded by Mr Samios: That the Report, as amended, be adopted.

Resolved, on motion of Mr Jones, seconded by Mr Samios: That the Report be signed by the Chairman and presented to the House.

Resolved, on motion of Mr Dyer, seconded by Mr Jones: That the Committee extends its thanks to the Committee Secretariat for its assistance in preparing this Report.

The Committee adjourned at 12.50 p.m. *sine die*.

**EVIDENCE TAKEN BEFORE
STANDING COMMITTEE UPON
PARLIAMENTARY PRIVILEGE**

At Sydney on Monday, 24th May, 1993

The Committee met at 10.30 a.m.

PRESENT

The Hon. Beryl Evans (Chairman)

**The Hon. R. T. M. Bull
The Hon. R. D. Dyer
The Hon. J. M. Samios
The Hon. B. H. Vaughan**

DUNCAN JOHN GAY, Member of Parliament, of "Haywood", Crookwell, sworn and examined:

CHAIRMAN: In what capacity are you appearing before the Committee?

Mr GAY: As Chairman of the Joint Select Committee upon Police Administration.

CHAIRMAN: Do you wish to make a statement at this stage?

Mr GAY: Yes I do.

CHAIRMAN: As well as your submission?

Mr GAY: Yes. I have a submission which I will table, but I also would like to read from it. I do have some other material that may be helpful to the Committee. With your permission I will give it to the clerk to distribute. In its efforts to discover the source of the disclosure of in-camera evidence to the journalist, John Synnott, whose article "How Ted nabbed pusher" was published in the *Sun Herald* on 3rd January, 1993, the committee received disclaimers from all concerned persons declaring that they had no knowledge of how the disclosure occurred. These included committee members and their staff, the secretariat of the committee, staff of the Independent Commission Against Corruption, Phillips Fox, Mr Pickering's lawyers and the parliamentary reporting and printing services and their contractors, Ace Reporters.

The committee was unable to discern the source of the leak. A copy of the newspaper article is appended to my submission. Mr Synnott gave as his source Mr Pickering's confidential evidence to the parliamentary committee into police administration obtained by the *Sun Herald*, which is just before the first highlighting. The material in Mr Synnott's article matches that in Mr Pickering's opening statement almost verbatim, although it is not complete, with the following differences: Senior Constable R. E. Whyte, who is named in Mr Pickering's statement remains unknown to the newspaper article; he is referred to only as Senior Constable X. The drug dealer who is named in Mr Pickering's statement remains unnamed in the newspaper article; she is referred to as a heroin dealer or the suspect. The honourable member for Bligh, unnamed in Mr Pickering's statement, is named in the newspaper article.

The newspaper article presents a rearrangement of Mr Pickering's evidence so that the superfluous material is omitted and the information appears in a different order. There is, as one would expect, some introductory and concluding material in the words of the journalist, 25 lines in all, and that is the material that is not highlighted in the article. Despite these differences, it is readily apparent that Mr Synnott drew the bulk of his article, that is 120 lines out of 145 lines, by direct quotation from Mr Pickering's statement. In the copy of the newspaper article appended, those parts that are verbatim are highlighted in yellow. The extent to which Mr Synnott's article is not complete is shown in the blue highlighting of an appended copy of the in-camera evidence which I have before me. You can see quite clearly that the material in the article is word for word from Ted Pickering's submission to the police committee.

Beyond that, I have appended two other articles dated 29th March and 2nd April. The article of 29th March states that Senior Constable R. E. Whyte, a New South Wales police officer for 24 years, appeared in Central Court. It goes on to say that the arrests followed a six-week operation by members of the Drug Enforcement Agency involving telephone intercepts, listening devices and surveillance of the pair. In other words, the material that was published in Mr Synnott's article from Mr Pickering's submission to our committee was part of an ongoing investigation that only came to fruition—this was published in January—at the end of March, early April.

CHAIRMAN: I am sorry I should have asked you at the beginning if you would rather any part of your evidence to be heard in camera?

Mr GAY: It is up to the committee to decide. All that I have said so far is certainly on the public record. The only things that I would ask to be in camera, I indicated an excerpt from Mr Pickering's statement which names some people and I would rather it be left in camera. The only reason for tabling it, it shows basically what was left out and it is highlighted in blue what was left out from the Pickering submission in Mr Synnott's article. It is really only sent to the committee, and only part of it concerns Senior Constable Whyte and the other area, just to give you an indication of what was left out, to reinforce that certainly it is beyond doubt in my

mind that Mr Synnott had a copy of the in-camera submission that was given to the police committee. This was not in-camera evidence as such. It was a submission that Mr Pickering gave to our committee in camera. It was a detailed submission. The chapter headings are all there but it was drawn directly from the committee. There is absolutely no doubt. That is the only reason I have included that, but I would prefer that particular bit to be kept in camera.

CHAIRMAN: I will put it to the committee.

Mr DYER: I understood that the normal rule regarding hearings at this committee is that they would be in public unless the committee determines otherwise, and I wanted to seek your guidance as to what the position is in that regard.

CHAIRMAN: That is why I asked Mr Gay if there was anything there he did not want to say in public. It is up to the committee.

Mr SAMIOS: In the circumstances, as we have given notice to the media, we should permit them to be present unless there is something outside the underlining in blue.

CHAIRMAN: Will you be declaring those pieces?

Mr GAY: I can go through my information again, if you wish, in a public session, just leaving out that blue piece.

Mr VAUGHAN: If there were a case for keeping out the media, I would support it, but I do not know whether there is a case.

Mr BULL: There is not a case, is there?

Mr SAMIOS: I so move that the media be permitted to be present.

Mr DYER: I second the motion.

Mr GAY: That is all I have to add at this stage. Perhaps the committee may have some questions.

CHAIRMAN: Mr Gay, what impact has the publication in the *Sun Herald* on 3rd January, 1993, of in-camera evidence given before the Joint Select Committee upon Police Administration had on the work of the committee?

Mr GAY: Ultimately we were able to put procedures in place that it did not have any, but it had the potential to totally discredit the work of the committee. The mere fact that a lot of detail and confidential material was before the committee, the

fact that part of that material was published, and so far as I am concerned completely at variance to the rules of the Legislative Assembly in publishing, part of which our committee operates under, it ran the risk of negating all the work we had done at that stage. Had it continued there was the potential that we would have had to dismiss the committee and restart.

CHAIRMAN: You are saying then that the deliberations of your committee have become different in some way after the disclosure of the publication?

Mr GAY: I do not think they were different but there was always the concern—certainly from us in handling confidential material and the Police Service and others in supplying us with confidential material—that that cloud hung over the committee.

Mr BULL: Did you think there were concerns that police investigations might have been compromised by the leak?

Mr GAY: Yes, this particular material that was released was reasonably non-controversial compared with a lot of other material that was in the committee's possession.

Mr BULL: In whose opinion was it that it would compromise police investigations?

Mr GAY: Well, it was the committee's view and the Minister had concerns. We did not have a direct approach from the Police Service but I am sure that the concerns that were expressed to us by the current Minister reflected the concerns within the Police Service.

Mr DYER: If I could just set the scene briefly, I think I am correct in saying that on 6th January this year you wrote a letter to the President of the Legislative Council, the Hon. Max Willis, under the heading "Premature Disclosure of In Camera Committee Evidence", and among other things in that letter you said:

In the circumstances I request that you refer the matter to the Parliamentary Privileges Committee for urgent investigation.

Do you agree that that was how the matter was initiated by the police administration committee?

Mr GAY: That is correct.

Mr DYER: Then on 11th January Mr Willis responded to that approach by you on behalf of the police administration committee. I would like to quote a short passage from Mr Willis' reply to you. He said:

Your committee should, on the basis of your report to it, make a conclusion as to whether the disclosure of the in camera evidence is of sufficient seriousness as to— and if I may, I emphasise the word "to":

—constitute a substantial interference or the likelihood of such with the work of your committee, the committee system or the functions of the House.

Do you remember Mr Willis advising you in those terms?

Mr GAY: Yes.

Mr DYER: I would like to draw your attention to the Special Report of the Joint Committee upon Police Administration dated 2nd February, 1993, and in particular paragraph (7) of that report, the first sentence of which reads as follows:

The Committee concludes that the disclosure of the in camera evidence is of sufficient seriousness as could constitute a substantial interference or likelihood of such with the work of the Committee, the committee system or the functions of the Houses.

Could I put it to you that that formulation adopted in that special report differs from what Mr Willis suggested in two respects. The first was that Mr Willis used "House" singular whereas the committee uses "Houses" plural—and I attach no particular significance to that because there obviously are two Houses in this Legislature. I would, however, like to direct your attention to the use of the conditional word "could" in this finding rather than the word "to" used in what Mr Willis suggested. Could you tell this Committee why the police administration committee decided to break down what Mr Willis suggested and use the conditional language of "could"?

Mr GAY: It was very deliberate on our behalf. We were a long way down the track in those investigations and had we used the deliberative word, it would have negated totally the work that we had done and it was a decision of the Committee to use the lessor "could", which was one of the alternatives in his letter to us.

Mr DYER: So you were afraid, could I put it to you, that if you adopted Mr Willis' language and used the word "to" that that could have partially at least aborted the work of the police administration committee?

Mr GAY: Yes.

Mr DYER: Could I ask you regarding another aspect of paragraph (7) of the special report of your committee, and I quote as follows, "In this particular instance the Committee believes that the disclosure will not interfere with the Committee Members' work". Could you identify for this Committee, what in your belief was the understanding of the police administration committee of the difference between a substantial interference in the work of the committee as distinct from an absence of interference with the work of the committee members?

Mr GAY: No, I could not. We made that decision on the material that we were dealing with at the time. It is hard for me to say off the top of my head what the committee felt would have been that extra step to trigger it being serious—I think that was the wording that you quoted there. It was certainly the decision of the members of the committee, that whilst we were concerned that it went close, it certainly did not stop our long-term deliberations.

Mr DYER: I am trying to satisfy myself as to what the substantial difference might be between a perceived interference with the work of committee, the committee system or the functions of the Houses on the one hand and a failure to interfere with the work of the committee members on the other hand. Could I put it to you that a committee is not an incorporated body; it is a collection of men and women who are appointed to consider terms of reference. I am trying to identify in my own mind what, in the perception of the members of the police administration committee, is the difference between an interference with the committee system as opposed to an interference or, in this case, a non-interference with the work of the committee members.

Mr GAY: Yes. As you have identified, we believed it was an interference with the work of the committee system but not the work of the committee ultimately. That is why we made that reference. I guess had it continued and had the leaks been more serious—although, as I said earlier, these certainly were serious leaks and there can be no doubt that the material came from Ted's submission to our committee. They were word for word. I have identified, of the 145 lines, 120 came directly from his submission, and the reference to Senior Constable X turned out to be Senior

Constable Whyte, which was an ongoing investigation. That was peripheral to the committee's work but it certainly must have been a concern to the police force. That is the difference.

It did not stop our work, but certainly it was a breach of the committee system, and, as I said earlier, it was in conflict at the very least with the standing orders of the Legislative Assembly that the information before a committee cannot be prematurely published. They are not the exact words but it is pretty close to an analysis. Perhaps the Clerk of the Legislative Council or the Deputy Clerk could enlighten your Committee on the exact words from the Legislative Assembly—and remember this was a joint committee that was operating under the standing orders of both Houses.

CHAIRMAN: Could I say that it did not interfere to any great extent perhaps, but surely it would have deterred further witnesses coming before the committee?

Mr GAY: It had that potential, had it continued. It did not continue, but if it had, it had the potential. As I said earlier, it also had the potential because we had a lot of confidential material before our committee and thankfully this was some of the least confidential. How do you judge confidential? It was all confidential, but this was some of the least delicate material. There was a lot more delicate material that was before the committee and it certainly was not leaked, and we were pleased about that.

Mr DYER: To be absolutely clear as to what you are saying, I take it that the police administration committee does adhere to its finding in its special report to the President of the upper House that the disclosure did not in fact interfere with the work of the committee members as individuals.

Mr GAY: Yes.

Mr DYER: Following on from what the Chair put to you, do you believe that there was any disinclination by any witness to bring forward material by way of evidence to your committee flowing from this particular leak of the material.

Mr GAY: There did not appear to be to the committee. I cannot judge beyond that.

Mr DYER: Could I ask you a question regarding another aspect of the matter. I take it that I can assume—and I think I can—that the police administration committee took the view that potentially at least the leak involved a breach of privilege.

Mr GAY: Yes.

Mr DYER: That being the case, could I ask you whether it is your view, speaking for the police administration committee, that the actions of the person who leaked the material, whoever that may be, are more serious than the actions of the person, that is a journalist, who received it.

Mr GAY: Look, I could not split that. As far as I am concerned, there is equal concern about the person who leaked the material and the person who published it, Mr Synnott. But Mr Synnott would also have had to have the authority of his editor to do it, and on any clear reading of that material that authority was there, given that Mr Synnott must have had a copy of the submission, the in-camera submission from Mr Pickering, to be able to select from it. As I said earlier he has only edited quite small parts out of it, therefore I would imagine his editor as well would have had access to that—had he asked. I would expect that there has got to be some responsibility somewhere, given that in the first place the person who leaked the information had quite clearly breached the rules of the parliamentary committee and the privilege of the parliamentary committee.

The second choice has to be Mr Synnott's and the third choice has to be the editor's. I wonder about getting a headline compared to looking at some of the information that was involved there. Surely any responsible editor would have looked at some of that material and said, "Really, this is part of ongoing investigations. This is unauthorised". It is not a bit of great journalism where this guy has gone and worked for months and months on this matter. All that has happened is that someone has dropped a piece of paper off a truck and he has copied it virtually verbatim on to a page. As I said earlier, in relation to the one which is referred to as Senior Constable X—which was in fact Senior Constable Whyte, and the others there, who were part of an ongoing investigation—the potential was there to compromise those investigations.

Mr DYER: I understand what you are saying but what I am trying to put to you is that it could be said by some that a distinction can be drawn between a clear obligation on members of the parliamentary committee not to reveal in-camera evidence and an equal or similar obligation on persons advising that committee not to reveal in-camera evidence on the one hand and, on the other hand, what the position might be of a journalist into whose hands the material might fall. Before you respond, I put that to you on the basis of what might be called the doctrine of the freedom of the press. You would be aware that in the United States freedom of the press is a constitutional guarantee, and I am just putting to you that journalists receive material from all sorts of sources which, according to their own ethics, they feel obliged not to reveal—and there have been some recent cases of courts imprisoning or otherwise dealing with journalists who have chosen to adhere to that ethical principle. Could I direct your mind again to how Mr Synnott might have seen himself vis-à-vis the leaked material as opposed to whoever the leaker was, and we do not know who that is.

Mr GAY: First of all, the freedom of the press has to be there, but implicit in that freedom of the press has to be a responsibility, and that is where you get into the grey area. Frankly—and this is only a personal opinion—I think that this particular article crossed that grey area. The article, in the third paragraph, clearly states that it was confidential material that was before the committee, "This evidence resulted in charges, according to Mr Pickering's confidential evidence to the parliamentary committee into police administration, obtained by the *Sun-Herald*". They are quite clear in the knowledge that that was confidential material. The committee was operating looking at two areas. One was the relationship between the former Minister and the commissioner and the second area was in relation to accountability and administration. A lot of this material is peripheral. If Mr Synnott, through material, had found that the committee was not performing its duty properly or was in breach of the delegated powers from the Parliament, I would have thought there was a reason to go ahead and publish. But beyond this, this is just sensational material that has put at risk ongoing operations, merely for a cheap headline as far as I am concerned. It had absolutely nothing to do with the ongoing role of the

committee or the ongoing responsibility of a journalist and I certainly felt that Mr Synnott and his editor, and certainly the person that leaked the material, should have been more responsible.

Mr DYER: Supposing for the sake of argument that Mr Synnott took no particularly active steps to obtain the material but the person who leaked the material sought him out and handed the material to him, what do you say Mr Synnott's responsibility was at the point where he received that written material?

Mr GAY: Mr Synnott still has the right to say no. He can take the material if he has to, and it is probably a hard thing for a journalist given such material as that to say no, but beyond that is the publishing and that is where the decision had to be made. He should have weighed up those criteria. As I said, there is the freedom of the press but there is a responsibility that goes with it. As far as I am concerned this particular article was irresponsible. It did not help the community in any way.

Mr DYER: It seems to me that the person most in jeopardy, if this Committee were to so find, would be Mr Synnott, who potentially could be called before this Committee to answer for his actions. I am merely seeking from you in direct terms a response as to what you think Mr Synnott's responsibility was at the point the material fell into his hands—leaving the editor out of it for the time being.

Mr GAY: It is a bit hard. I cannot make the decisions that you have to make at the end of the day. You are asking me whether Mr Synnott should be made a martyr or not. That is effectively what it gets down to at the end of the day from your Committee deliberations.

Mr DYER: I am really trying to pose the dilemma of the position that Mr Synnott found himself in, and whether you can draw a distinction in regard to the seriousness of the action that took place as between Mr Synnott as leakee, if I can use that expression, and whoever, Mr or Mrs X, the leaker was.

Mr GAY: Whatever happened to Mr Synnott, he is an experienced parliamentary journalist. He knows the ground rules that apply in that position, and in fact the matter was reinforced late last year when material, a draft report from the ICAC committee, was published by the Leader of the Opposition, Mr Carr, and the various options that were open to the Parliament were publicly canvassed at that time.

Mr Synnott, as I said, is an experienced journalist and surely if he was not aware, he should have been aware after that. I cannot instruct the Committee on what decisions it should make, but he certainly would have been aware or should have been aware.

Mr DYER: I am not suggesting that you should anticipate what decisions this Committee would make, or what importance or seriousness it might attach to various aspects of this matter. I am just exploring what in your perception as chairman of the police administration committee the relative seriousness might happen to be in your view as between the unknown person who leaked the material and the known person who received it.

Mr GAY: I understand. My view is that the relative seriousness, as you put it, is with the person who leaked the material and the editor of that paper, less so Mr Synnott.

Mr SAMIOS: Mr Gay, you mentioned the failure to interfere with the work of the committee system did not prejudice the work of the committee.

Mr GAY: Yes.

Mr SAMIOS: But you agree that it could have been an interference in certain circumstances.

Mr GAY: Yes, it certainly had the potential. I am pleased to say that the committee worked very well and we were able to take steps that allowed this material really not to have any effect on the operations of the committee. Had we not been able to do that, had we had a less amiable—I suppose that is one way of describing it—or professional committee, it certainly would have run the risk.

Mr SAMIOS: I suppose this was a first experience, and I wonder really how confident you were at the time of the security procedures relating to in-camera evidence.

Mr GAY: We thought we had our security pretty good, but after a matter like this comes up, it certainly showed that there were a lot more people involved just in a day's evidence than one would really expect. As you can tell from the list of disclaimers that we have had signed, what appears to be a fairly tidy in-camera evidence day really does involve a cast of thousands virtually.

Mr SAMIOS: Did you as a result of this experience introduce a further

tightening of the procedures, apart from the disclaimers?

Mr GAY: Yes, we did. I could not off the top of my head detail all the procedures, but we certainly stamped all documents in various spots and put names and or numbers on each document, so if material was leaked the source of that leak was readily identifiable.

Mr SAMIOS: The disclaimers came soon after the event?

Mr GAY: Yes.

Mr SAMIOS: And there were no qualifications to any of the disclaimers, were there?

Mr GAY: Not as far as I can remember. I am happy with the disclaimers to the extent that everyone involved signed a disclaimer, but obviously one of the people that signed a disclaimer was the person who gave the material to Mr Synnott.

Mr BULL: Following up on Mr Dyer's questioning relating to the leaking of the document, it is obviously your opinion that someone that was in possession of this document actually physically passed on the evidence to the journalist?

Mr GAY: Yes, it is, unless they wrote the article themselves, but it is obvious, as I said, that Mr Synnott has gone carefully through and pulled large slabs out.

Mr BULL: You do not think it was through carelessness, having regard to the number of documents, and the document got waylaid and someone has picked it up and handed it on to him? You think it has actually physically been given over by someone in a responsible position that had it in possession?

Mr GAY: Yes, I am in no doubt on that.

Mr BULL: Did the leaked paper have "Confidential" or "In Camera Evidence" clearly displayed on it?

Mr GAY: Yes, it has "In Camera" on the top of it, as you can see from the first page.

Mr BULL: On each page?

Mr GAY: No, it does not appear on each page, but the page where the material on Senior Constable Whyte came from clearly has "In Camera" written on it, and the material from Operation Asset has "End of In Camera Statement" written on

it.

Mr BULL: Do you think it is possible that Mr Synnott may not have known that the paper he was in possession of was confidential or in camera evidence?

Mr GAY: No. He says in his article, "The evidence resulted in charges, according to Mr Pickering's confidential evidence to the parliamentary committee".

CHAIRMAN: On that particular day, the in-camera evidence was in one submission by Mr Pickering?

Mr GAY: Yes, a bound submission.

CHAIRMAN: On that day some evidence was in camera and some was not?

Mr GAY: That is correct.

CHAIRMAN: Therefore it would have been recorded exactly, the parts that were not in camera, so Mr Synnott would have known that the paper he picked up was not published in the daily evidence?

Mr GAY: I am sorry?

CHAIRMAN: You said that some of Mr Pickering's statement was in camera and some was not?

Mr GAY: Yes.

CHAIRMAN: So that each day the evidence that was taken out of camera that was public could be checked against the evidence that was in camera, could it not? Imagine I have the evidence taken in public in one hand and the in-camera evidence in the other hand. If the evidence taken in public was handed to Mr Synnott, he could certainly see that it did not contain the in-camera evidence, even if "Confidential" was not written on top of the in-camera evidence?

Mr GAY: Yes.

CHAIRMAN: They are separate things?

Mr GAY: Yes, and as I said, Mr Synnott was in no doubt. He states in his article that he is publishing confidential evidence from the committee.

Mr BULL: In relation to what the committee felt about this particular leaking of its evidence, you did say in response to one of my earlier questions that it was obviously more of an embarrassment to the Police Service and, I suppose, the Government than the committee because of the information that was disclosed?

Mr GAY: It was also an embarrassment, as I said at the time, to the Parliament, and a threat to the committee system.

Mr BULL: Was Mr Pickering similarly embarrassed?

Mr GAY: Look, I am unaware. I am sure he was, but I have not got direct evidence.

Mr BULL: He did not write to the committee or contact the committee, saying "Look, I am distressed that this evidence has found its way to a newspaper"?

Mr GAY: I do not think he wrote to the committee. I had many contacts from people who were distressed that the information had reached a newspaper.

Mr BULL: But not from Mr Pickering?

Mr GAY: I am sure Mr Pickering was amongst them.

Mr VAUGHAN: What you have been saying over and over during the questioning is that there was an embarrassment but not an interference?

Mr GAY: Yes. It ultimately did not interfere in our ability to bring down a report, but it did have the potential to do it.

Mr DYER: I am not quite clear from your recent response as to whether Mr Pickering in subsequent oral evidence to the police administration committee complained regarding this leak.

Mr GAY: No. As far as I know, in oral evidence before the committee Mr Pickering did not complain, but I am almost certain he or his office contacted me voicing their concerns. A lot of people contacted me in early January voicing their concerns over this leak. They really did not have to ring me, I was concerned enough myself.

Mr DYER: But you believe that in all probability and according to your recollection that at least Mr Pickering's office contacted the committee to express concern that this material had been leaked?

Mr GAY: No, that is not what I said.

Mr DYER: That is why I am asking the question, I am not quite clear.

Mr GAY: Look, off the top of my head I certainly cannot remember—that is what I said earlier—whether there was a formal approach from Mr Pickering or his office to the committee. I do not think there was one in the evidence before the

committee, but I do recollect being contacted either by Mr Pickering's office, his solicitors or Mr Pickering personally concerning that material.

Mr DYER: Did you say you do not?

Mr GAY: I do remember, but I cannot remember—I remember that there was a concern from Mr Pickering's side expressed on the material.

Mr DYER: So someone on behalf of Mr Pickering, even if it was not Mr Pickering himself, did contact the committee to express concern?

Mr GAY: Contacted the chairman, not the committee.

Mr BULL: Just to refresh my memory, did any of Mr Pickering's staff or Mr Pickering write a disclaimer, or were they invited to write a disclaimer?

Mr GAY: Yes. You will find they are in there, plus the people that published—not published, but prepared the material for him, a particular group of printers, Ace Reporters and Contractors.

Mr BULL: And also Mr Pickering and his staff? I have not had time to check that.

Mr GAY: Yes, and all the committee members and their staff, and Hansard, the clerk to the committee—everyone that had any access at all.

Mr SAMIOS: Since this event have there been any other examples of in-camera evidence being leaked?

Mr GAY: There was not, until after the completion of the first report. I was pleased to say, as I said earlier, that there was further confidential evidence from Mr Pickering that had the potential to be much more sensational than this, but that was not leaked. There is an apparent leak, though we cannot be as certain as we were with this one, because this one is a direct leak of the material, concerning the Ombudsman's visit to the committee two to three weeks ago when the Ombudsman gave evidence to our committee. There was a leak in an article in the *Sydney Morning Herald*—you are testing my memory now but I think it was the *Sydney Morning Herald*—that said that the Ombudsman had expressed concerns regarding the Police Board when he gave evidence to our committee.

Mr SAMIOS: But you just mentioned that after this event and after the disclaimers you also tightened up security procedures for in-camera evidence?

Mr GAY: Yes.

Mr SAMIOS: You are now saying that, in spite of that, there was another leak of in-camera evidence?

Mr GAY: Yes, I am. It was not a submission. Whilst we have been able to tighten up the procedures on submissions and written material, the Ombudsman gave verbal evidence to the committee.

Mr SAMIOS: Is the same newspaper involved?

Mr GAY: No, this was the *Sydney Morning Herald*. Could I add to that, and perhaps your Committee could check, but from memory I think Mr Synnott ran some details of that in the city edition of the *Sun-Herald* that weekend. It may be worth checking.

Mr SAMIOS: Can I just go back to that because I think it is an important point. Do I understand that not only did you introduce greater security procedures, but there was a leak? Did you take out disclaimers after that second leak?

Mr GAY: No.

Mr SAMIOS: Why not?

Mr GAY: We did not view the leak as being as serious as the first one. It was not on material that was nearly as sensitive as the first one. I guess what we are looking at is the principle rather than the particular act. I frankly wonder what power we had to do anything about it. We appear to be fairly hamstrung regarding this one and committees as a whole appear to be fairly hamstrung on stopping them at all, unless the Parliament, this Committee, the whole lot, look at proper privileges legislation. I went down the track, went through all the documents at the time, but frankly I could not see where we had the power to do much about it at all.

Mr SAMIOS: Is it not fair to say that if there is an air of doubt about the procedures, that that doubt could well be reflected in the attitude of journalists who receive confidential information?

Mr GAY: Oh, yes, I agree, Mr Samios. There really is the ability to be able to do this without checks at all when you look at it carefully. I do not know what checks we ultimately have. I am not sure whether you can bring them before the bar of Parliament. The only check we have in New South Wales is to remove their

privileges as journalists within the Parliament. I think ultimately that is what you get down to; that is all you have. You certainly have not got the same powers—this is only my understanding—that they have under the Federal parliamentary privileges where they can bring them before the bar of Parliament and ultimately, with those who breach the privilege of the Parliament, they have the ability to impose sentences on them.

Mr VAUGHAN: Even they have not been very successful. They have been bluffed by Brown and Fitzpatrick.

CHAIRMAN: You said that a mass of people were coming and going all the time and it was difficult to say who was there. When the evidence was concluded it was taken to be printed. Did you know that on that particular night it was not done in the place that it had been done every other day?

Mr GAY: No, I was not aware. I only became aware of that when we started going through the procedure of getting disclaimers. You have to remember that this evidence was from 20th November, 1992, and the article was printed in January.

CHAIRMAN: But all the evidence was done, I understand, in the upper House precincts, and that particular night it went to the lower House to be done?

Mr GAY: I am unaware.

CHAIRMAN: As you know, we did another check and asked the various people concerned if they had any idea about it, and it came back on a further check that that is what happened that day.

Mr GAY: I do not think I would like to draw the inference that the lower House leaks more than the upper House.

CHAIRMAN: No, that is not what I am saying. You said you tightened things up, that you did not know that that had happened, but you did not check to see that it was being done under proper circumstances and guarded or protected?

Mr GAY: No. Frankly, the running of the Parliament, the printers and Hansard and that area—I think we take for granted that they are discreet. I am not sure if I really have seen evidence to show that.

CHAIRMAN: I thought that perhaps it was more available to be seen in that

particular place, or in moving from one to the other where it might have been dropped or lost?

Mr GAY: Yes, I guess there is that potential. There again, if it had come from that area, one would have imagined that it had more of a chance of coming up in December some time rather than being something that came up in January. I do not know; it is nothing that you can be sure of.

Mr BULL: With regard to future committees dealing with in-camera evidence, do you think it would be safer if that evidence was given orally, without recording and transcripts?

Mr GAY: No, I do not, but I certainly think we need to put some teeth into our privileges legislation.

Mr VAUGHAN: You would not be able to challenge the evidence at any time, and there would be problems in drawing up a report.

Mr DYER: Mr Gay, you have dealt with this issue previously in your evidence but I want to clarify with you, with certainty, that your view is that the potential for other witnesses to be discouraged by the leaking of this material was apparent and present but there are no actual instances that have been brought to your attention of any witnesses who were in fact discouraged. Am I correct in that belief?

Mr GAY: That is correct, Mr Dyer, yes.

(The witness withdrew)

EVIDENCE TAKEN BEFORE

STANDING COMMITTEE

UPON PARLIAMENTARY PRIVILEGE

At Sydney on 7th June, 1993

The Committee met at 10.30 a.m.

PRESENT

The Hon. Beryl Evans (Chairman)

The Hon. R. T. M. Bull
The Hon. R. D. Dyer
The Hon. J. H. Jobling

The Hon. R. S. L. Jones
The Hon. J. M. Samios
The Hon. B. H. Vaughan

(Proceedings continued from evidence in camera)

JOHN ANTHONY SYNNOTT, Journalist, of 67 Marian Street, Enmore, on former oath:

CHAIRMAN: Have you seen the article published in *The Sun-Herald* on Sunday, 3rd January, 1993, under the heading "How Ted nabbed pusher"?

Mr SYNNOTT: I have.

CHAIRMAN: Were you the author of this article?

Mr SYNNOTT: I was.

CHAIRMAN: At the time of writing the article did you realise that the information was given during in-camera evidence before a parliamentary committee?

Mr SYNNOTT: I did.

CHAIRMAN: Are you aware that the publication of in-camera evidence of a parliamentary committee, which has not been reported to the House, might constitute a contempt of Parliament?

Mr SYNNOTT: No.

CHAIRMAN: You were not aware of that?

Mr SYNNOTT: Yes.

CHAIRMAN: I will ask that question again: Are you aware that the publication of in-camera evidence of a parliamentary committee, which has not been reported to the House, might constitute a contempt of Parliament?

Mr SYNNOTT: Am I aware now? Yes.

CHAIRMAN: You are now, but you say you were not when you actually published that paper?

Mr SYNNOTT: Did you say publish or write?

CHAIRMAN: You were not aware when you put that in the paper?

Mr SYNNOTT: When I wrote it I was not aware.

CHAIRMAN: I will have a further question on that later. Would you like to tell me how you obtained the information in that article?

Mr SYNNOTT: It was given to me; someone faxed it to me.

CHAIRMAN: It was faxed to you?

Mr SYNNOTT: Yes.

CHAIRMAN: Was there a designation on that fax?

Mr SYNNOTT: To me.

CHAIRMAN: But as to where it had come from. Most fax sheets—

Mr SYNNOTT: I forget, actually.

CHAIRMAN: Do you have a copy of that fax?

Mr SYNNOTT: I do not have it now.

Mr JOBLING: Do you still have the fax in your possession?

Mr SYNNOTT: No.

Mr JOBLING: What happened to it?

Mr SYNNOTT: I gave it to a colleague of mine who has since left the *Sun-Herald*, and I believe he has destroyed it.

Mr JOBLING: Would you care to name your colleague?

Mr SYNNOTT: Stephen Skinner; he is in Cambodia at present.

CHAIRMAN: Did the editor see that article before it was published?

Mr SYNNOTT: The *Sun-Herald* did not actually have an editor. David Hickie had left, and the new editor—it did not have an editor on deck. I think the new editor had been appointed, but he had not taken up his position, so the acting editor certainly saw it.

CHAIRMAN: Did he understand that it was breaking a privilege of Parliament?

Mr SYNNOTT: Yes.

CHAIRMAN: He understood that that evidence had been taken in camera?

Mr SYNNOTT: Would you repeat that question?

CHAIRMAN: I asked you if the editor saw that article before it was printed, and you said yes.

Mr SYNNOTT: Yes, he did.

CHAIRMAN: Did he understand that it was evidence that had been taken in camera?

Mr SYNNOTT: I do not know, but the article said it was, so one presumes he did.

CHAIRMAN: That is what surprised me a moment ago when you answered that you did not know that it had been taken in camera, yet you have just said that it was stated that it had been taken in camera.

Mr SYNNOTT: I did not say that the evidence—I did not say that.

Mr SAMIOS: Who was the acting editor?

Mr SYNNOTT: John Digby.

CHAIRMAN: Would you say that again, please, Mr Samios?

Mr SAMIOS: Who was the acting editor, and the reply was John Digby, I think.

Mr SYNNOTT: No, perhaps I should clear that former point up. I knew it was in-camera evidence, but I was not aware when I was writing it that it was in contempt of Parliament to publish it, when I was writing it. So perhaps that is the misunderstanding.

Mr BULL: Just following up on that point, as you have just said, you did not realise that you were committing contempt of Parliament when you wrote it, but you obviously have that knowledge now. Do you have any regrets that you did that?

Mr SYNNOTT: That I?

Mr BULL: That you have written something that is in contempt of Parliament?

Mr SYNNOTT: I have a lot of respect for Parliament, and it certainly was not my intention to cock my snoot at the Parliament and its procedures. But I regarded the public interest in the Police Commissioner saying that he did not effectively trust his police force to investigate crime was—that was my overriding interest, and the other, the interest of Parliament in protecting the integrity of the Committee was not—was displaced from my prime considerations.

Mr BULL: When this information was provided to you and faxed to you from someone, either a member of the Committee or someone associated with the Committee one would assume, did it have on the top of it "Confidential in-camera evidence"?

Mr SYNNOTT: I only got a section of the—so it did not have that.

Mr BULL: So why did you, in your evidence—?

Mr SYNNOTT: Hang on, I would like to correct that answer. It did have "in camera" at the start of the section that I got, yes.

CHAIRMAN: When you were discussing this information with the informant, did he or she emphasise the point that this was in-camera evidence?

Mr SYNNOTT: Could you repeat that question?

Mr BULL: When you were discussing the information that was provided to you by fax from the informant, did he or she emphasise the point that this was in-camera evidence?

Mr SYNNOTT: Did not emphasise it no.

Mr BULL: But you did have discussions with the person who provided the information prior to or after receiving the fax?

Mr SYNNOTT: Yes.

Mr BULL: And at no time was the informant willing to tell you, or at no time did he or she take the option to tell you, that this was in-camera evidence, and it might have been a contempt of Parliament?

Mr SYNNOTT: No, there was not any warning.

Mr BULL: After this experience, shall we call it, would you think in the future, if you were provided with in-camera evidence, that you would so blatantly publicise it?

Mr SYNNOTT: Well, there is—as I said earlier, there are two considerations, the public interest and the interests of the Parliament to consider. So it is a question of—

Mr BULL: Where do you think the responsibility lies, with the person who is leaking the information to you as the informer, or with you as the recipient of the information publishing it?

Mr SYNNOTT: The fault lies?

Mr BULL: If there is a contempt of Parliament, because information has been provided from a committee which is in-camera evidence, there are obviously two parties to that. One is the informer and one is the receiver of the information. Do you think the contempt of Parliament lies with the informer, with the person who writes, or with both.

Mr SYNNOTT: It is a legal question, I think.

Mr BULL: So you are not sure?

Mr SYNNOTT: No.

Mr JOBLING: You indicated earlier, as I understood it, that you received this information by fax?

Mr SYNNOTT: Yes.

Mr JOBLING: To the best of your recollection, could you indicate to the Committee how soon after the in-camera evidence was given that it came into your possession?

Mr SYNNOTT: I cannot really.

Mr JOBLING: Recently shortly thereafter would be a fair assumption though?

Mr SYNNOTT: No. It came in the week before it was published.

Mr JOBLING: There was a considerable delay?

Mr SYNNOTT: I think yes. I am just trying to remember, when was the evidence taken in camera?

Mr JOBLING: From memory it was quite some time before it was published.

Mr SYNNOTT: Yes.

Mr JOBLING: Can you think of any particular reason why the person who sent you this information would have wanted to send it to you?

Mr SYNNOTT: I would say the public interest in the content of the information.

Mr JOBLING: Bearing in mind that it was in-camera evidence?

Mr SYNNOTT: Yes.

Mr JOBLING: As I understand, you said that you gave it to a colleague whom you believe perhaps was Stephen Skinner who, I think you said, is in Cambodia?

Mr SYNNOTT: Yes, and I think he has disposed of it.

Mr JOBLING: Could you tell me when you gave it to your colleague?

Mr SYNNOTT: He casually expressed some interest in having a look at the details of the story rather than the published version, and so it would have been two weeks after.

Mr JOBLING: But this is subsequent then to your article appearing in the Sunday paper?

Mr SYNNOTT: Oh yes.

Mr JOBLING: When you gave it to your colleague could you indicate to us the type of discussion that took place and perhaps what he was interested in?

Mr SYNNOTT: He had a general interest in the Committee's deliberations and in the issues that were raised in the story. He had a particular interest in the leading part of the story about the drug pusher and he promised not to spread it far and wide, to keep it to himself.

Mr JOBLING: Having received the evidence, having thought about it and having attended a number of the public hearings of the Committee, you had to write your story?

Mr SYNNOTT: Yes.

Mr JOBLING: Having written the story do you then submit it to the sub-editor or the editor for approval?

Mr SYNNOTT: It goes into the editor's basket, as they call it, electronic basket.

Mr JOBLING: And the acting editor at the time apparently was Mr John Digby?

Mr SYNNOTT: Yes.

Mr JOBLING: To the best of your knowledge, do you believe that Mr Digby was aware of the question of contempt of the Parliament by publishing an in-camera article?

Mr SYNNOTT: He took legal advice and I believe that advice is privileged.

Mr JOBLING: In your opinion would it be an unreasonable request if we were to approach Mr Digby to see if such advice was available for this Committee?

Mr SYNNOTT: It is a matter for the Committee.

Mr JOBLING: Having submitted it then to Mr Digby and obviously if he took legal advice it would be perceived that perhaps something worried him before he printed the story, would that be a fair assumption to make?

Mr SYNNOTT: A lot of stories are legalised. So, I presume if it was legalised, that would be a fair assumption.

Mr JOBLING: Did you and Mr Digby discuss the particular article that was to appear before it appeared?

Mr SYNNOTT: Yes.

Mr JOBLING: Would you like to tell us your recollection of that conversation?

Mr SYNNOTT: I do not think I should reveal discussions about legal advice, on legal advice.

Mr JOBLING: I take your point. I was more concerned not necessarily about the legal advice, on which I accept your answer, but did you have a general ranging discussion about the story you were going to or had proposed to be in the paper?

Mr SYNNOTT: Yes.

Mr JOBLING: In your career as a journalist, and you are obviously a very senior journalist nowadays, have you ever used in-camera evidence before in a story?

Mr SYNNOTT: None comes to mind.

Mr JOBLING: In your experience, are you aware of other colleagues who have done so?

Mr SYNNOTT: This same Committee has had two other major leaks which have appeared in the press. So, there was the one in the Herald about an aspect of the Committee's deliberations. No, one other leak of in-camera evidence. There is also the premature release of the findings of the Committee, which I think was in the Telegraph.

Mr JOBLING: Looking at it, would you agree there could be said to be a similarity between in-camera evidence given to a parliamentary committee and evidence which is taken in a closed court?

Mr SYNNOTT: I do not know.

Mr JOBLING: You have never thought about that matter?

Mr SYNNOTT: I have not.

Mr JOBLING: If you were in court and evidence was given in a closed matter, would you adopt the same approach as you did in this case?

Mr SYNNOTT: I do not think I would, really.

Mr JOBLING: Why would that be?

Mr SYNNOTT: Because I have been in a closed court and I have not.

Mr JOBLING: But could you tell me what is the difference between in-camera evidence given to a parliamentary committee which is in a closed session and having been in a court closed session? One you say you have and one you say you would not. Why is that so and why do you see the difference?

Mr SYNNOTT: I am not sure why but, in fact, I have not. I can see the point you are making, but I have not.

Mr JOBLING: You see the difficulty that confronts us?

Mr SYNNOTT: Yes.

Mr JOBLING: Would you not concede though that the particular evidence in camera given by Mr Pickering contained a number of very specific references to police inquiries that were ongoing which had the potential to identify witnesses, to endanger witnesses and obviously to endanger the inquiry when, as you report, in some cases some of these matters dealt with crime, corruption and drugs?

Mr SYNNOTT: Such as what?

Mr JOBLING: I am not going to repeat what was in the in-camera evidence but you will recall in your particular article there were references to certain police that could only come from in-camera evidence?

Mr SYNNOTT: I was not aware that any were ongoing, of the articles, of the items that I published.

Mr JOBLING: If I put it to you that some of those items were ongoing and in fact one still is, how would that affect your approach?

Mr SYNNOTT: That was a consideration, but the way the article was presented by removing names in specific incidents, in particular cases, was designed to generalise.

Mr JOBLING: With the knowledge that you have now been given of this in-camera evidence, the fact that it did refer to ongoing investigations, and what you know now, would you have printed such an article as you did?

Mr SYNNOTT: Well, it would depend on the particular item of those five items that constitute the article and on the circumstances that were chosen from the information I got to run in the paper.

Mr JOBLING: So even knowing that it could constitute a breach of parliamentary privilege and thus contempt of the Parliament, you would still do the same again?

Mr SYNNOTT: It really depends on the public interest.

Mr JOBLING: You believe that subsumes the inquiry's confidentiality in relation to a parliamentary inquiry, and yet you would not do so in a court inquiry?

Mr SYNNOTT: There is a big difference between the two, in looking at these historical cases and a court, which is contemporaneous.

Mr JOBLING: Can I put to you one final question. Do you agree that of the three people—the person who leaked it to yourself, yourself as the author, and your acting editor who ultimately agreed to the publication of the material—each one has in fact potentially constituted a contempt of Parliament?

Mr SYNNOTT: That is a question for the Committee, I think.

Mr JOBLING: Will you tell the Committee who leaked the article to you?

Mr SYNNOTT: No.

Mr DYER: You have just responded that you will not advise the Committee of the identity of the person who leaked the material to you. Could you indicate to the Committee the reasons for giving that response?

Mr SYNNOTT: I have given an undertaking to the person who leaked the information that I would not reveal identity. I have an agreement of confidentiality with the informant.

Mr DYER: Do I take it that you regard that agreement of confidentiality as overriding any other legal or moral obligation you might have regarding this particular matter?

Mr SYNNOTT: In this particular matter.

Mr DYER: Did you, from time to time, attend open hearings or meetings of the Joint Select Committee upon Police Administration?

Mr SYNNOTT: Yes.

Mr DYER: Did you, from time to time, report some of those proceedings?

Mr SYNNOTT: I think I did.

Mr DYER: Were you present at a time during those committee hearings at which you became aware that the committee might be about to, or did subsequently, go into an in-camera session? Was that brought to your notice in any fashion by attending meetings of the committee?

Mr SYNNOTT: I do not think I did attend in camera—I do not think in-camera sessions were in fact open to the press.

Mr DYER: I am not suggesting the in-camera sessions were open to the press. I am asking you at such time as you attended open ordinary public meetings of the select committee, did you become aware by any means that the committee had it in mind from time to time to go into an in-camera session?

Mr SYNNOTT: Certainly. In fact, some of this information was flagged by John Hatton, a member of the committee, in open hearings, I presume because he felt there was some public interest.

Mr DYER: You have referred a number of times, particularly in response to questions by Mr Jobling, to the concept of public interest. Do I take it that in making a decision whether you would forward this material for publication, you considered where the public interest might lie as between breaching an in-camera hearing of this parliamentary committee on the one hand, or publishing the matter of public information on the other; that you gave that matter some consideration?

Mr SYNNOTT: Could you repeat that question?

Mr DYER: I am asking you, in effect, at the point you received this material emanating from an in-camera hearing of this parliamentary select committee, did you weigh up in your mind the competing interest of maintaining the privacy of that in-camera hearing on the one hand, and the public interest or right to know on the other?

Mr SYNNOTT: I weighed up more the question between the public interest and the likelihood that the information might prejudice police inquiries and anyone else. For instance, I rang Clover Moore, who is mentioned in the story, to see whether publishing that material would prejudice her position as an informant.

Mr DYER: Would it be true to say that in weighing up the matter in your own mind, you had more regard to a public interest consideration such as potential damage being done to police inquiries, rather than damage being done to the system of parliamentary committees?

Mr SYNNOTT: Yes.

Mr DYER: I put it to you that a number of matters emanating from the in-camera evidence deal with quite sensitive police investigations, for instance, the matter of a paedophile protection racket. Do you recall that that appeared in the *Sun-Herald* article?

Mr SYNNOTT: Yes.

Mr DYER: In response to the last question but one, you dealt with the question of police inquiries potentially being interfered with or damaged. Do you

think that there was a potential for that to arise in connection with a matter such as this; that is, the paedophile protection racket?

Mr SYNNOTT: The item that we have published here is very general, and the paedophile protection racket investigation has been going on for years and there is a public interest in it, and there has been very little information available about what is happening. So the answer to your question, I suppose, is that I did not think that would prejudice any police inquiry really. There is nothing there except to say that the police Minister had a report which showed that there were corrupt practices existing between serving police officers and paedophiles.

Mr DYER: So you took the view that no particular harm would be done arising out of the publication of this material, in terms of warning someone who might be under investigation, for the sake of argument?

Mr SYNNOTT: Yes, I took that view.

Mr DYER: Did you apply a similar test to each of the other subheadings, if I could use that expression, appearing in the *Sun-Herald* report, such as Operation Asset, Kings Cross Police, and Senior Constable X? Did you weigh in the balance where the public interest might lie in regard to each of those matters?

Mr SYNNOTT: In general, yes.

Mr DYER: What do you mean by in general, yes?

Mr SYNNOTT: Well, I did, yes.

Mr DYER: Could I put it to you that what are commonly called leaks could be described as a stock in trade of both members of Parliament and journalists?

Mr SYNNOTT: Certainly.

Mr DYER: In agreeing with that proposition so readily, do you think also that there are sometimes categories of information where, though material has been leaked, it might not be in the public interest to further publicise or circulate that material? Do you think the occasion ever arises where that is the case?

Mr SYNNOTT: I beg your pardon?

Mr DYER: Do you think the occasion ever arises where such sensitive material, although leaked to you as a journalist, ought not to be published?

Mr SYNNOTT: Yes, certainly. One overriding consideration about these items was that the police Minister preferred to have them revealed in private because it reflected on his position as head of the force. In other words, quite apart from the content—and a lot of them are old hat—they were making a general point about whether he could trust the force. That was the main thrust of the article, that the police Minister was saying that the New South Wales police force was not necessarily trusted by him. The point that I thought drove these cases underground was that he may have thought for political reasons, and to keep the loyalty of his troops, that it was not wise to say that in public.

Mr DYER: Do you think that the police Minister and, for that matter, the select committee, might have had other motives for going in camera, such as the protection of sensitive material and not allowing the trail to go cold regarding some particular lines of inquiry?

Mr SYNNOTT: Certainly. I was told by the leaker that there was material that was not made available, which was very sensitive. The indication was that this was not material that would do any harm in a general sense to police investigations.

Mr DYER: Do you think that your actions in receiving and forwarding material given in an in-camera session at a parliamentary committee are less serious than the actions of the person who leaked the material?

Mr SYNNOTT: I am not in a position to answer. It is a matter for the Committee, I think.

Mr DYER: You are not able to assign any level of seriousness as between leaker and leakee in general terms?

Mr SYNNOTT: I think they both had responsibilities.

Mr DYER: They certainly both had responsibilities. I am just wondering whether you can prioritise those responsibilities as between the person who leaks the material and the person who receives it. Would you not agree that the action of the person who initiates the leak could be regarded as more serious than the recipient?

Mr SYNNOTT: Yes.

Mr DYER: You do agree with that. Mr Synnott, I have the impression on the basis of some responses you gave, to Mr Jobling I think, that you draw a distinction between using material emanating from a parliamentary committee sitting in camera and using material used in a court of law where the court is closed. In the latter case you appear to be saying that you would never do that or, at the very least, you never have done it. Could I ask what is the basis for that distinction?

Mr SYNNOTT: I have not thought it through but I have sat at ICAC and at courts when they have been closed and not reported, but I did in these circumstances report on this. A contempt of court is common and a contempt of Parliament is relatively rare in these circumstances.

Mr DYER: So are you saying that contempt of court is much more present to your mind given that judges are prone to attach people for one form of contempt or another?

Mr SYNNOTT: Yes.

Mr DYER: Even winking at an attractive female juror, for example, has been known to have some consequences.

Mr SYNNOTT: Yes.

Mr DYER: Did you feel rather more secure vis-a-vis Parliament in that you thought a parliamentary committee would be far less likely to act in that way?

Mr SYNNOTT: Well, I did not think about it. I think that is probably more of a reply but—

Mr DYER: You are a very experienced parliamentary journalist. You were telling the Committee that in effect you did not weigh up in your own mind that particular aspect.

Mr SYNNOTT: Yes.

Mr DYER: And it was never really present to your mind that Parliament via this Committee might be activated to consider your role in facilitating a leak of in-camera evidence.

Mr SYNNOTT: Well, when I was writing the story I did not say that I am risking one month's gaol by doing this.

Mr VAUGHAN: Mr Dyer said you had been here for some time. How long have you been here in the press gallery?

Mr SYNNOTT: I am not sure. I think since 1983.

Mr VAUGHAN: Ten years?

Mr SYNNOTT: It might have been 1984.

Mr VAUGHAN: When someone is sent down to the press gallery from Jones Street or wherever, are they warned or advised about parliamentary privilege, for example?

Mr SYNNOTT: I was not.

Mr VAUGHAN: Have you had any ideas as to what it is in the time you have been here?

Mr SYNNOTT: Most of it concerns getting things right that are said in the House. That is the main thrust of it. In other words, certain things said in the House are privileged and when they are privileged—it is important to make sure they are privileged if they are defamatory.

Mr VAUGHAN: That is the only reason you look at it?

Mr SYNNOTT: That is the main interest that journalists have I think.

Mr VAUGHAN: And you did not know, did you, that it extends to a committee as well, a committee of the Parliament—getting it right, that is?

Mr SYNNOTT: Yes, I knew that privilege extends to the committees.

Mr VAUGHAN: I think you told us three-quarters of an hour ago in reply to a question asked by the Chairman, when you were asked if you realised at the time that you wrote the article that the evidence had been given in camera, that you did not realise the significance of it being in camera.

Mr SYNNOTT: The significance of being in contempt.

Mr VAUGHAN: In camera?

Mr SYNNOTT: Yes. I realised the significance of it being in camera, but I did not realise the significance of it being in contempt with a possible gaol sentence.

Mr VAUGHAN: So it was the gaol sentence that actually brought you to your senses, one might say—the prospect of?

Mr SYNNOTT: I only found out about that subsequently.

Mr VAUGHAN: You have used the term or the phrase "public interest" a great deal. Does public interest mean more than something that will sell newspapers to you?

Mr SYNNOTT: Yes.

Mr VAUGHAN: What does it mean to you then?

Mr SYNNOTT: It means the right of people to know in New South Wales that the police commissioner does not trust his force, and such issues.

Mr VAUGHAN: And such issues. I want to point out to you something that you have not picked up apparently in these 10 years, that the idea of parliamentary privilege is that something must not be done which might impede or obstruct the work of a parliamentarian in his parliamentary duties. Do you concede that or do you realise that, or has it ever been put to you before?

Mr SYNNOTT: Yes. I recognise that as—

Mr VAUGHAN: So do you realise then, if not then but now, that if a committee is in camera, it is a device that a Parliament uses or a parliamentary committee uses to ensure that the sort of evidence or the disclosure of the sort of evidence that is revealed in that session of the committee would not impede or obstruct the activities of parliamentarians in their duties?

Mr SYNNOTT: Being in camera could be for several reasons, not simply to prevent parliamentarians being impeded or obstructed.

Mr VAUGHAN: What is another one?

Mr SYNNOTT: To protect the position of a police Minister politically or in relation to his force.

Mr VAUGHAN: Are you telling the Committee then that the committee at the time, of which Mr Jobling was a member, sat in camera specifically to protect the police commissioner?

Mr SYNNOTT: No, but these items were raised in camera, I suspect, to allow Mr Pickering to say things he truly felt without having to suffer the consequences if he said such things in public.

Mr VAUGHAN: I think you mentioned, in fact I am sure, that the person who leaked the information to you—we only used the word "leaked" a little later on, but you received the information by way of a fax?

Mr SYNNOTT: Yes.

Mr VAUGHAN: And you told us that you could not remember who faxed it to you?

Mr SYNNOTT: Yes, I could remember who faxed it to me.

Mr VAUGHAN: You could remember?

Mr SYNNOTT: I could remember, yes.

Mr VAUGHAN: And you think now the fax has been destroyed by Mr Skinner?

Mr SYNNOTT: Yes.

Mr VAUGHAN: Who is in Cambodia?

Mr SYNNOTT: Yes.

Mr VAUGHAN: And subsequently you had a conversation with the person who faxed it to you?

Mr SYNNOTT: Yes.

Mr JONES: You had meetings presumably with this informant before they faxed the information to you?

Mr SYNNOTT: Yes.

Mr JONES: You had known this informant for quite some time, presumably?

Mr SYNNOTT: Yes.

Mr JONES: Did you think this person was in a position to know that giving this evidence to you could constitute contempt of Parliament—this person, not yourself?

Mr SYNNOTT: I am not sure. I suspect the person did know about these issues.

Mr JONES: You discussed the sensitivity of the information with your informant?

Mr SYNNOTT: No.

Mr JONES: Not of this information, but this person was in a position to give you other information which they did not give you because it was too sensitive?

Mr SYNNOTT: Well, they said they had—they did make a distinction between this information and some other information which was sensitive.

Mr JONES: So this person refrained from giving you other information because they did not want it published?

Mr SYNNOTT: Because it was likely to endanger investigations or something. There was some general—

Mr JONES: This person then had an interest in not endangering investigations, you might say?

Mr SYNNOTT: Did this person have an interest—? I do not think this person had a particular interest in not endangering investigations.

Mr JONES: Did you discuss with this person the leaving off of certain names from your article that were in the information you received?

Mr SYNNOTT: I chose to leave names off.

Mr JONES: Why did you do that?

Mr SYNNOTT: And also some names were blacked out.

Mr JONES: They were blacked out, but did you leave other names out though?

Mr SYNNOTT: I did leave other names out.

Mr JONES: When you discussed this with Clover Moore, did she know who the informant was?

Mr SYNNOTT: Yes.

Mr JONES: She did know who the informant was?

Mr SYNNOTT: My informant or her informant?

Mr JONES: Your informant?

Mr SYNNOTT: No.

Mr JONES: You did not discuss with her who the informant was?

Mr SYNNOTT: No, I did not, no.

Mr JONES: Did she see a copy of the evidence that was faxed to you so that she could discuss it?

Mr SYNNOTT: No. I asked her whether the disclosure of the case would embarrass her and she said it would not.

Mr JONES: So she did know you were going to publish the article, obviously?

Mr SYNNOTT: She would have known because I rang her on the Saturday, the day I was writing it.

Mr JONES: Did any other people know about this article being published, apart from yourself, the editor and Clover?

Mr SYNNOTT: And the leaker. I cannot remember anyone else.

Mr JONES: Would you think the person who leaked it leaked it for political reasons?

Mr SYNNOTT: I am not sure in my mind what was in their mind exactly.

Mr JONES: Obviously there was a purpose in leaking it to you. They had a purpose other than just the public interest you would think?

Mr SYNNOTT: I think it was presented to me as the public interest.

Mr JONES: Do you think this person had an intimate knowledge of the workings of the committee?

Mr SYNNOTT: I do not think so.

Mr JONES: Were there no copies taken of the fax?

Mr SYNNOTT: I did not make any copies.

Mr JONES: Did Mr Digby see a copy of the fax before the article was published?

Mr SYNNOTT: No.

Mr JONES: No one saw a copy; he only saw the article?

Mr SYNNOTT: Yes.

Mr JONES: He just saw the article?

Mr SYNNOTT: Yes.

Mr JONES: Did any other people apart from him and you within the Herald see the article? Did your legal advisers see the article?

Mr SYNNOTT: Yes, they did.

Mr JONES: So your legal advisers were aware that this was in-camera evidence being published?

Mr SYNNOTT: That is what is said in the article, yes.

Mr JONES: Apparently they thought it was okay to do that.

Mr SYNNOTT: The *Sun Herald*.

Mr JONES: Going back to your informant, you did discuss with this informant the sensitivity of the information in the article and, as we said before, they did not give you other information because it was too sensitive. Did you as a result of having discussed that with your informant believe that it was acceptable to publish the article because if you had published other information it would have been perhaps damaging to the committee or contempt of Parliament? After your discussions with your informant, who presumably was fairly highly placed and had a reasonable knowledge of other information, did you think it was acceptable to publish this, as it were, information which had been cleansed or watered down and that this information was not so hot that it would damage the investigations?

Mr SYNNOTT: I do not know. I think a simple reading of this information shows that a lot of it is old hat. I had the impression the other stuff was. In other words this was historical 1988 stuff. I think a lot of the other stuff was more up to date.

Mr JONES: You felt that this information was perhaps already on the public record to a certain extent?

Mr SYNNOTT: No, but it was not current although I am told by Mr Jobling that might not necessarily be the case.

Mr JONES: Is it your view that this evidence was given in camera, as you said before, to save embarrassment for Ted Pickering?

Mr SYNNOTT: I beg your pardon?

Mr JONES: Was this information given in camera to save Ted Pickering embarrassment?

Mr SYNNOTT: No, that is what I thought. I thought one good reason for being held in camera was that he could say what he felt rather than say what he felt he could say.

Mr JONES: So did you think that the publication of this information would embarrass Ted Pickering?

Mr SYNNOTT: Yes, in the eyes of the police force. I think the police force would probably think less of a Minister who said that he could not trust them.

Mr JONES: So, would it perhaps have been used by someone who was intending to damage Ted Pickering?

Mr SYNNOTT: I do not know, possibly.

Mr JONES: You did not discuss this with your informant at all?

Mr SYNNOTT: No.

Mr JONES: But you would have known it would have damaged Ted Pickering's reputation in the eyes of the Police Service?

Mr SYNNOTT: Ted Pickering had other problems really. I do not know whether it was so damaging as to be, given the circumstances, at that stage, a major consideration.

Mr JONES: Other information could have been given to you that would have been damaging, perhaps to the Police Service?

Mr SYNNOTT: If it had come out of the blue it could have been different, given the circumstances of the situation that Mr Pickering and Mr Lauer were in.

Mr JONES: I see what you mean. Did you have many discussions before the information was faxed to you and after the information was faxed to you before the article was written?

Mr SYNNOTT: I cannot remember.

Mr JONES: Is it possible?

Mr SYNNOTT: With the leaker?

Mr JONES: Yes, with the leaker I mean.

Mr SYNNOTT: I don't think so.

Mr JONES: There was some discussion obviously, from person to person, face to face?

Mr SYNNOTT: When I was told that the fax was coming?

Mr JONES: Yes, face to face?

Mr SYNNOTT: No, it was not face to face.

Mr JONES: You had face to face discussion before the fax arrived?

Mr SYNNOTT: No, not on this one.

Mr JONES: On other issues?

Mr SYNNOTT: Oh yes.

Mr JONES: Okay.

CHAIRMAN: The evidence was taken on the 20th November and yet your article was published on 3rd January. Were you in contact with this so-called leaker during that time or how long was it that you had this information before you published it?

Mr SYNNOTT: It was during the week before it was published, I received the information.

CHAIRMAN: Then if it was so old hat why was it kept so long?

Mr SYNNOTT: By whom?

CHAIRMAN: Well, interesting. You seem to think it really was not important with the remarks you have made; that it was old hat.

Mr SYNNOTT: No I am saying that the particular cases referred to, a lot of them were in 1988. In that sense it was old hat, not the revelations themselves which were quite interesting. Some of these people have been to court and whatever. The so-called heroin dealer has been to court and sentenced and the whole thing is over and done with some time ago. The interesting point of the story is the involvement of the Police Minister who thought he had to get involved in that case himself to get action. That is the point of the story and the point of our interest in it.

CHAIRMAN: I accept the fact that you understood what in-camera evidence was, but that you did not understand that it would lead to a privileges inquiry. Even in your statement in the paper, and I read it to you:

This evidence resulted in charges, according to Mr Pickering's confidential evidence to the parliamentary committee . . .

Mr SYNNOTT: Yes.

CHAIRMAN: So you knew it was confidential and yet you still persisted in publishing it. Further down you said:

Mr Pickering raised in private with the committee four other examples . . .

You did not respect that?

Mr SYNNOTT: I knew it was in-camera evidence but I was not aware that publishing it was a contempt of Parliament, carrying a one month gaol sentence.

Mr SAMIOS: Mr Synnott, now that you know it carries a one month gaol sentence, given the circumstances, if similar material were to be faxed to you again, would you publish?

Mr SYNNOTT: I would consider it very carefully and take legal advice on whether—and if we did publish, it would be reluctantly, with an eye to the public interest.

Mr SAMIOS: You said earlier that if you felt an article, for example, would prejudice police investigation, you would not publish.

Mr SYNNOTT: No, if I thought it would prejudice police investigation I would be inclined to take legal advice on that, but I would be inclined not to publish it.

Mr SAMIOS: We have been told that you have been a journalist for about 10 years. Is that at the Parliament here?

Mr SYNNOTT: Yes.

Mr SAMIOS: You have never had any difficulty before in terms of publication of confidential information in the Parliament?

Mr SYNNOTT: I have had some leaks before which were at royal commission findings and stuff. But nothing to be referred to the privileges committee before.

Mr SAMIOS: No in-camera evidence from, the parliamentary committees?

Mr SYNNOTT: No, not that I remember.

Mr SAMIOS: The fax that you received, could you clarify that. Did it or did it not indicate that it was a source from in-camera evidence?

Mr SYNNOTT: It did indicate.

Mr SAMIOS: It did indicate.

Mr SYNNOTT: Yes, I remember it did indicate.

Mr SAMIOS: At whose request was the fax destroyed?

Mr SYNNOTT: Well I gave it to my colleague on the understanding that he not do anything except read it and then he left for Cambodia. As I remember he indicated that he was disposing of it.

Mr SAMIOS: The implications of in-camera evidence, have those implications ever been discussed formally with journalists and members of the press gallery; the implications at law of publishing this evidence? Has this been discussed in the various courses which are held for journalists, provided by the Australian Journalists Association?

Mr SYNNOTT: The courses they run now would do that but I have not attended one.

Mr SAMIOS: You made reference to the possibility of the Police Minister giving evidence in camera for a particular advantage?

Mr SYNNOTT: A possibility, yes.

Mr SAMIOS: Of course, you are well aware that that police committee had an ecumenical representation, politically.

Mr SYNNOTT: Yes.

Mr SAMIOS: The conversation with Clover Moore, could you elaborate on that?

Mr SYNNOTT: I informed her that I was running a story concerning her and as I remember I asked her whether publishing her name as the person who approached the Police Minister on behalf of a constituent who complained about drug dealing, would prejudice her safety or the sort of things that Mr Vaughan was talking about, impeding her position as a member of Parliament. She said no. In other words was she disadvantaged by it.

Mr JOBLING: You said at one stage in the your evidence that the Police Minister appeared not to trust the police force and at the later stage of the evidence that the police Commissioner did not trust the police force.

Mr SYNNOTT: That is a mistake, the commissioner, I did not say that. If I said that I rectify it. I meant the Minister.

Mr JOBLING: That is purely your assumption is it not?

Mr SYNNOTT: Yes, purely an assumption.

Mr JOBLING: You are aware that a number of people appeared before the Committee in camera?

Mr SYNNOTT: Yes.

Mr JOBLING: You are also aware that the commissioner himself appeared a number of times before the Committee to give evidence?

Mr SYNNOTT: Yes.

Mr JOBLING: Would you care to offer any suggestion why the commissioner might wish to appear at the Committee in camera?

Mr SYNNOTT: I presume to answer some of the allegations raised by the article; that would be one good reason.

Mr JOBLING: In fact, it was not that reason at all. But nevertheless, I would like you to tell the Committee if you can, that when a parliamentary committee takes evidence in camera, if in fact the privacy of this evidence is not respected how would you expect the Committee to have witnesses to appear before it and give sensitive evidence, if in fact such evidence; one, is to be leaked, which I do not agree with, and two, such evidence is to be published in the media.

Mr SYNNOTT: I think it would depend on what was leaked, but there is a problem there.

Mr JOBLING: Surely, that is what it is all about, is it not?

CHAIRMAN: Was the fax sent from Parliament House?

Mr SYNNOTT: I do not know actually.

CHAIRMAN: It must have had something, all faxes have where they have come from and who they come from.

Mr SYNNOTT: I cannot remember. I would just like to make one more statement, if I may.

CHAIRMAN: I was going to ask you if you wanted to do that.

Mr SYNNOTT: I would like to take further legal counsel on this issue and make further submissions to the Committee, because my liberty is potentially at stake, and I have basic legal rights in a democratic society to defend myself.

CHAIRMAN: You will put that in writing to us, will you not?

Mr SYNNOTT: Certainly. Did you wish a letter requesting that we be allowed to give further submissions?

CHAIRMAN: If you have further submissions to give us, yes.

(The witness withdrew)

(The Committee adjourned at 1.10 p.m.)

**EVIDENCE TAKEN BEFORE THE
STANDING COMMITTEE UPON
PARLIAMENTARY PRIVILEGE**

**INQUIRY INTO DISCLOSURE OF
IN CAMERA EVIDENCE**

At Sydney on Friday, 11th June, 1993

The Committee met at 10.30 a.m.

PRESENT

The Hon. Beryl Evans (Chairman)

**The Hon. R. D. Dyer
The Hon. J. H. Jobling
The Hon. R. S. L. Jones
The Hon. J. M. Samios
The Hon. B. H. Vaughan**

JOHN HUGH DIGBY, Journalist, of 17A Gardyne Street, Bronte, sworn and examined:

CHAIRMAN: In what capacity are you appearing before this Committee?

Mr DIGBY: As deputy editor of the *Sun-Herald* newspaper, acting editor at the time of the John Synnott article.

CHAIRMAN: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr DIGBY: I did.

CHAIRMAN: Are you conversant with the terms of reference of this inquiry?

Mr DIGBY: Not fully.

CHAIRMAN: I will have a copy of the terms of reference shown to you. If you consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard and seen only by this Committee, then we will willingly accede to your request. You understand that we can proceed in camera if there is something you want to tell us that you do not want to be made public?

Mr DIGBY: Yes.

CHAIRMAN: I understand you have legal advisers with you?

Mr DIGBY: I do.

CHAIRMAN: The Committee decided that your legal adviser is allowed to be here as such—that is, as an adviser—but cannot take part in the debate or address the Committee. You may refer to him at any time.

Mr SAMIOS: I notice there is another adviser present.

CHAIRMAN: Would you identify your advisers?

Mr DIGBY: Richard Coleman and Geoff McClellan.

CHAIRMAN: From where?

Mr DIGBY: Richard Coleman is the Fairfax in-house solicitor and Geoff McClellan is from Freehill Hollingdale and Page.

CHAIRMAN: Mr Digby, I will start with some questions to you and then the members of the Committee will ask you questions. Were you the acting editor of the *Sun-Herald* newspaper on or about 3rd January, 1993?

Mr DIGBY: I was.

CHAIRMAN: Were you aware of an article published in the *Sun-Herald* newspaper on 3rd January, 1993, written by John Synnott and entitled "How Ted nabbed pusher" before it was published?

Mr DIGBY: I was.

CHAIRMAN: Did you see the article before it was published?

Mr DIGBY: I did.

CHAIRMAN: In what circumstances?

Mr DIGBY: It was filed by him electronically into the directory from which the editor works, or the news editor works, for submission into the paper.

CHAIRMAN: That was his written article?

Mr DIGBY: That was his written article.

CHAIRMAN: Did you edit, amend or request the amendment of the article in any way?

Mr DIGBY: I would have read through the article. It would have been edited by our news editor. I cannot recall how extensive any changes may have been to the story.

CHAIRMAN: Did you at any time see the information upon which the article was based?

Mr DIGBY: No, I did not.

CHAIRMAN: Did you understand what it was? Was it a message or was it—

Mr DIGBY: I understood that it was a document that had been before the Lauer-Pickering committee.

CHAIRMAN: Can you give me the name of the news editor?

Mr DIGBY: Yes. His name is Jim Bruce.

CHAIRMAN: Did you discuss the article or the information it contained with Mr Synnott?

Mr DIGBY: I cannot remember discussing it at any great length with him, other than he told me he was going to write a particular story.

CHAIRMAN: Did you ask Mr Synnott where the information had come from?

Mr DIGBY: Yes.

CHAIRMAN: What was his reply to that?

Mr DIGBY: That it had come from the committee.

CHAIRMAN: It had come from the committee?

Mr DIGBY: Or a source close to the committee, I do not know.

CHAIRMAN: Do you know who gave the information to Mr Synnott?

Mr DIGBY: No.

CHAIRMAN: Can you at least exclude any categories of persons? Did you think it was from the staff or members of the select committee?

Mr DIGBY: I am afraid I have no idea whatsoever.

CHAIRMAN: Did you know that the information contained in the article was based on evidence given in camera before the Joint Select Committee upon Police Administration?

Mr DIGBY: I recall that it was a confidential document, as the story stated. I was not aware that it was specifically in camera.

CHAIRMAN: Was it your decision to publish the article?

Mr DIGBY: It was.

CHAIRMAN: Did you know at the time you decided to publish the article that the unauthorised disclosure of evidence given in camera before a parliamentary committee constitutes a breach of privilege of the Parliament and may constitute a contempt of Parliament?

Mr DIGBY: I understood that it could.

CHAIRMAN: You knew that when you were publishing it?

Mr DIGBY: It could have been a breach if those circumstances were met, that it could have been.

CHAIRMAN: Knowing that, on what basis did you decide to publish it?

Mr DIGBY: That it was in the public interest.

CHAIRMAN: So that overrides any sort of feeling you had about it being privileged?

Mr DIGBY: I am not sure that it was privileged.

CHAIRMAN: Let me ask you a hypothetical question. Under what circumstances would you decide to accept the rules of privilege and decide not to publish?

Mr DIGBY: It is a hypothetical question. I am not sure I can answer that.

CHAIRMAN: Have you ever breached parliamentary privilege before with information and published it?

Mr DIGBY: Not that I am aware of. That does not mean that I accept that we have done this time.

CHAIRMAN: Would you agree that there could be said to be a similarity between in camera evidence given to a parliamentary committee and evidence which is taken in a closed court?

Mr DIGBY: There could be, yes.

CHAIRMAN: If you were in court and evidence was given in a closed matter, would you adopt the same approach to that as you did in this case?

Mr DIGBY: This case arises very infrequently. Courts are closed very often.

CHAIRMAN: What difference do you see between evidence given in camera to a parliamentary committee and a closed session of the court?

Mr DIGBY: A court makes it very clear I think when it is closed and when it is open. I was not aware on reading the article that necessarily the committee had been closed at that particular time. It was a confidential document.

CHAIRMAN: Mr Synnott indicated to this Committee at one point in his evidence that you took legal advice before making the decision to publish. Is that correct?

Mr DIGBY: That is correct.

CHAIRMAN: Was this legal advice orally given or in writing?

Mr DIGBY: Orally.

CHAIRMAN: What were the details of the advice?

Mr DIGBY: I believe that is privileged information.

CHAIRMAN: Did you follow the advice in deciding to publish the article?

Mr DIGBY: That presupposes that the advice was to publish, and that might lead to me having to divulge details of the information.

Mr JOBLING: In your evidence to the Committee you said that you were unaware of the name of the person that forwarded the information to Mr Synnott. Is that correct?

Mr DIGBY: That is correct.

Mr JOBLING: You also said that you were not sure how Mr Synnott received that information. Am I correct?

Mr DIGBY: I was unaware, yes, until earlier this week.

Mr JOBLING: Mr Synnott indicated that it was sent to him by fax. Is that your understanding of the situation?

Mr DIGBY: That was my understanding as of this week. Before that, I did not know.

Mr JOBLING: Could you tell the Committee what the words "in camera evidence" mean to you?

Mr DIGBY: It would mean to me that it is evidence that the committee does not want to be heard in public.

Mr JOBLING: So in other words, if it is not to be heard in public, you could reasonably assume that it was a closed committee hearing?

Mr DIGBY: Yes.

Mr JOBLING: Would you like to tell the Committee why such a device might be used in your opinion?

Mr DIGBY: Maybe to protect the people giving the evidence or that the evidence was of a nature that the person giving the evidence thought was sensitive.

Mr JOBLING: Therefore what you are saying to us is that by "in camera" you would understand that it is not open to the public, it might be sensitive—

Mr DIGBY: That would be their judgment.

Mr JOBLING: —and it might be an ongoing matter involving continuing investigations. That would be a reasonable precis of what you said?

Mr DIGBY: I did not say anything about continuing investigations. No, not necessarily. It just might be sensitive material to that person who is giving the evidence.

Mr JOBLING: If that is so, can you explain how a witness giving evidence of a confidential nature to a committee could feel confident about the security of such evidence, given the views that you have expressed in relation to publishing?

Mr DIGBY: I am sorry, I do not quite understand.

Mr JOBLING: It is very simple. What I put to you is, can you tell me how a witness who wishes to give evidence to a committee can feel confident about the security of that evidence given in camera and of a sensitive nature, given your views to this Committee about publishing that evidence?

Mr DIGBY: I do not quite understand on what views you are basing the question.

Mr JOBLING: Without trying to lead you to an answer because I want your answer: why would a witness wish to give evidence in camera?

Mr DIGBY: Because he thinks that there may be something sensitive that he wants to say.

Mr JOBLING: Would a witness reasonably expect, and feel confident about, the security of such evidence being given in camera, or should they be able to feel confident about evidence given in camera?

Mr DIGBY: Yes.

Mr JOBLING: So therefore the witness has given something in camera, which is sensitive. They wish to feel confident about its security because it may be highly sensitive. Can you now tell me why a witness would give any evidence if this is to be then published in a newspaper without it being treated as a closed and confidential issue?

Mr DIGBY: It is not necessarily going to be published in the paper.

Mr JOBLING: But you did publish it.

Mr DIGBY: Depends on the circumstances.

Mr JOBLING: We have a particular circumstance that we are referring to.

Mr DIGBY: In that circumstance it was published, yes.

Mr JOBLING: You indicated that you understood the basis of a closed court hearing and what that meant.

Mr DIGBY: Yes I do.

Mr JOBLING: I understood you to say that you would respect that confidentiality?

Mr DIGBY: Yes.

Mr JOBLING: If you did not, what would you expect to happen to you as an editor?

Mr DIGBY: That it would be contempt of court.

Mr JOBLING: You suggested that because it happened frequently in court and was somehow different to a closed in camera committee of Parliament, which happened infrequently.

Mr DIGBY: In my experience it has not. I have not faced very many situations where it has happened for a parliamentary committee. But it happens all the time in front of courts.

Mr JOBLING: But basically they are the same thing, are they not?

Mr DIGBY: To a degree, yes.

Mr JOBLING: Well either they are or they are not.

Mr DIGBY: I am not sure.

Mr JOBLING: I put it to you that they are the same thing?

Mr DIGBY: I am not sure that the same rules apply to both, no.

Mr JOBLING: I will send you a copy of the Parliamentary Evidence Act. Would you like to tell me why you say they are different? I would like to understand how you are trying to say that they are different, perhaps.

Mr DIGBY: I think it is a legal question, I am not sure of the answer.

Mr JOBLING: I am not asking you to take it on a legal basis, I am asking for your opinion. In other words—and you are the editor—how do you judge those two matters in your own mind?

Mr DIGBY: I am not sure that the same rules apply to a parliamentary committee as apply to court.

Mr JOBLING: I will accept that for the moment. In his evidence to the Chairman Mr Synnott referred to the fact that you took certain legal advice about the ultimate printing of the article in question. Is that correct?

Mr DIGBY: Yes.

Mr JOBLING: Would you tell me, as the editor, what was it about the article that concerned you?

Mr DIGBY: We routinely check many articles every week with our legal advisers. This article was referred to them as a matter of course.

Mr JOBLING: I accept that you obviously have many articles on which you take advice. I presume that something in the article said to you, as the editor, "Whoops, I had better check this out". Would you tell me what it was that prompted you to seek that advice?

Mr DIGBY: I think that might intrude into the area of the advice I was given about it.

Mr JOBLING: In all honesty I fail to see how that is so because what you referred to them must surely have been a reason for concern. You do not refer every article of course, do you?

Mr DIGBY: Not every article, no.

Mr JOBLING: Yet you are unable to tell us what it was about this article that prompted you. I am not asking you what legal advice you received. I am asking you what prompted you, as the acting editor, to look at an article and say, "Yes, I had better seek legal advice about this"?

Mr DIGBY: I am advised my communication with the lawyers is as privileged as their communication to me.

Mr JOBLING: Right. Are you suggesting to this Committee that as a very senior editor, and a journalist, you are not familiar with contempt of Parliament?

Mr DIGBY: Sorry, I do not quite understand what you mean by, "familiar with".

Mr JOBLING: As an editor you must surely be aware and understand that certain things may constitute a breach of privilege and contempt of Parliament if you

do certain things as an editor. Are you saying to me that you are aware or not aware of that situation?

Mr DIGBY: I am aware there is such a thing as contempt of Parliament, yes.

Mr JOBLING: You may decline to answer this, but it would seem to me that if you sought legal advice, your legal advisers would certainly have been aware of what constitutes a breach of privilege and contempt of Parliament. I think that is a fair assumption?

Mr DIGBY: I cannot answer that.

Mr JOBLING: You do not wish to answer that question. Was Mr Synnott correct when he said in evidence:

The *Sun-Herald* did not actually have an editor. David Hickey had left, and the new editor—it did not have an editor on deck. I think the new editor had been appointed, but he had not taken up his position, so the acting editor certainly saw it.

CHAIRMAN: Did he understand that it was breaking a privilege of Parliament?

Mr SYNNOTT: Yes.

How do you respond to that evidence?

Mr DIGBY: I am not sure that I understood it was breaking—sorry, what did you say?—a privilege of Parliament?

Mr JOBLING: Breaking a privilege of Parliament. Mr Synnott's response was simple and one word "Yes", that you did understand that?

Mr DIGBY: Well, he is speaking for me. I do not see on what ground he could speak for me.

Mr JOBLING: I see. The question was then asked by the Chairman:

CHAIRMAN: I asked you if the editor saw that article before it was printed, and you said yes.

Mr SYNNOTT: Yes, he did.

CHAIRMAN: Did he understand that it was evidence that had been taken in camera?

Mr SYNNOTT: I do not know, but the article said it was, so one presumes he did.

How do you respond to that?

Mr DIGBY: The article said it was a confidential document.

Mr JOBLING: Mr Synnott suggests that it said that it was taken in camera. Could we ask you, as an editor, what responsibility you believe you personally have to the public?

Mr DIGBY: A responsibility to the public to inform them of what is going on in various areas.

Mr JOBLING: That is a simple answer. What responsibility do you believe you have as an editor, not to endanger witnesses and undercover operations that may be, at that time, still ongoing?

Mr DIGBY: I did not believe from reading that story that any of the matters referred to were still ongoing. They seemed to be, from the way the story was written, either a non-risk or historical.

Mr JOBLING: If I put to you that they were ongoing and people had recently been charged, how would you then have responded if you knew that?

Mr DIGBY: I would have to consider it at the particular time. I did not know that.

Mr JOBLING: Had you known, would you still have published or would you then not have published?

Mr DIGBY: If we had more information, we may have considered leaving out that particular section, but having read the article again this week it seemed to me that all the matters appeared to be historical.

Mr JOBLING: They were not. Were you actually shown the fax by which it is alleged this information was transmitted?

Mr DIGBY: No.

Mr JOBLING: Do the Fairfax group and the journalists using faxes keep records to confirm or verify the source of the fax?

Mr DIGBY: I would doubt it.

Mr JOBLING: You do not keep a transmission dispatch or sending report from your faxes to verify transmission?

Mr DIGBY: No.

Mr JOBLING: Are you sure of that?

Mr DIGBY: Positive.

Mr JOBLING: So you are saying to this Committee that you have no record of what you send or receive by fax at all?

Mr DIGBY: Do you mean an historical record of the last six months?

Mr JOBLING: No, each fax machine has a transmission report that will print 25 or 50, and you are saying that you do not have those?

Mr DIGBY: No, that is right. I am saying if something is transmitted by fax then obviously we get a registration of whether it has been received or not. We do not keep a log of those, daily or weekly, of what has been sent or received. No historical log is kept.

Mr JOBLING: Therefore you have no hard evidence to confirm a sending or receipt?

Mr DIGBY: No, I do not even know whether it was the machine in our office over which Mr Synnott received this fax.

Mr JOBLING: It would be an interesting way to find out if you had kept a transmission record.

Mr DIGBY: We never have.

Mr JOBLING: The evidence would be there, would it not?

Mr DIGBY: We never have.

Mr JOBLING: So, what would you say to this Committee in regard to a code of ethics for people such as yourself in dealing with either closed court or in camera evidence to parliamentary proceedings? What would you say or recommend to this Committee?

Mr DIGBY: About what should be in our code of ethics?

Mr JOBLING: I think the words "code of ethics" are clearly understood by most people.

Mr DIGBY: I am sorry, do you want my opinion?

Mr JOBLING: I can only ask your opinion, unless you speak on behalf of your board and managing director.

Mr DIGBY: I speak on behalf of myself.

Mr JOBLING: May I have your opinion?

Mr DIGBY: I do not understand whether you are referring to the AJA's code of ethics or whether you are referring to a hypothetical code of ethics that this Committee should recommend or should draw up.

Mr JOBLING: You said that you can speak only for yourself. What code of ethics would you propose in a matter such as this? Does that make it easier for you?

Mr DIGBY: I think that is a fairly complex question to which I would have to give quite a lot of thought.

Mr JOBLING: I accept that. With the Chairman's permission, would you be prepared to take that question on notice and commit to us in writing in a reasonably short time your answer to that question?

Mr DIGBY: Sorry, I am not exactly sure what you are requesting me to do.

CHAIRMAN: I intend to ask Mr Digby at the conclusion of this morning's inquiry whether he would like to give us a written submission, just as Mr Synnott intends to do later. He could answer your question in his submission.

Mr JOBLING: Just to assist, as a senior member of the journalists' fraternity and as a senior editor on a major newspaper, what would you propose to this Committee by way of a code of ethics to deal with the matter that brings you before us today? How could we find a way around it in the future so that you do not again find yourself before this Committee?

Mr DIGBY: I see your point. I would probably be willing to give a written submission on that at a later date.

Mr JOBLING: That would be most appreciated. Who do you believe would have been the beneficiary from the publication of such an article?

Mr DIGBY: The public of New South Wales.

Mr JOBLING: In an earlier answer to the Chairman you said that you saw no political intrigue in this issue being leaked from a member of the Committee.

Mr DIGBY: Sorry?

Mr JOBLING: You indicated to us that the leak had come from the Committee.

Mr DIGBY: From the Committee structure. I do not know whether it came from the Committee, from someone working for the Committee, or anything like that. I have no idea where it came from at all.

Mr JOBLING: Apart from the person, whoever it may be, who leaked that information, with what you now know would you tell me who is most responsible for a potential contempt—the journalist or the editor?

Mr DIGBY: I think it would depend on the circumstances.

Mr JOBLING: Does the ultimate responsibility to publish not rest with the editor?

Mr DIGBY: Certainly.

Mr SAMIOS: How long have you been a journalist?

Mr DIGBY: Twenty-five years.

Mr SAMIOS: And with Fairfax?

Mr DIGBY: About eight years.

Mr SAMIOS: Have you been an acting editor before?

Mr DIGBY: This was the first time, other than previous periods when the editor would have been on holidays.

Mr SAMIOS: How many days or weeks had you been acting prior to this event?

Mr DIGBY: Two or three weeks, to my memory.

Mr SAMIOS: During that period would you have received any other articles based on confidential material?

Mr DIGBY: Not that I can recollect.

Mr SAMIOS: You mentioned that you discussed this briefly with Mr Synnott?

Mr DIGBY: Briefly, but it is so long ago that I cannot honestly remember the context or the full discussion that took place.

Mr SAMIOS: Were you under the impression that what was being published by you could be in contempt of Parliament? Is that what you said earlier?

Mr DIGBY: No, I did not realise that it could be in contempt of Parliament. I did not realise that breaching a committee rule was necessarily in contempt of Parliament itself.

Mr SAMIOS: Is it fair to say that, had you really believed that it was in contempt of Parliament, you would not have published it; you would not have authorised its publication?

Mr DIGBY: I think that depends on the circumstances and on legal advice at the time.

Mr SAMIOS: If the legal advice to you is that, on publishing, you are in contempt of Parliament, would you publish it?

Mr DIGBY: I think it depends on the circumstances of the article at the time—how important the article was judged to be.

Mr SAMIOS: Presumably that is in terms of the public interest?

Mr DIGBY: Definitely.

Mr SAMIOS: So you are saying that, if in your opinion the public interest warrants it, you would authorise publication even in contempt of Parliament?

Mr DIGBY: It would be very unlikely that I would. It would depend entirely on the circumstances of the story. But I think it would be unlikely. It would have to be a very important story.

Mr SAMIOS: I imagine that, with the busy workload you have, getting a legal opinion orally is something that is done rather pre-emptorily.

Mr DIGBY: It certainly is. On that particular day it was extremely busy because we were short of senior staff. We had a lot of articles going to the lawyer on that day. So it was certainly a fairly hurried affair.

Mr SAMIOS: How would you go about it? Would you simply take the article and give it to a messenger to take to the in-house solicitor and ask for a quick perusal or a quick legal advice?

Mr DIGBY: In this case it would have been given to a messenger to be taken to the in-house lawyer. The lawyer would take whatever time he or she needed to consider it.

Mr SAMIOS: I assume that the lawyer, however, would appreciate the pressures of time on you?

Mr DIGBY: Yes, certainly.

Mr SAMIOS: To your knowledge, you were acting editor only once, or you had not been acting editor prior to this incident?

Mr DIGBY: Only filling in for holiday relief, yes.

Mr SAMIOS: Do situations like this arise regularly?

Mr DIGBY: Situations like what, sorry?

Mr SAMIOS: Where confidential information is available to journalists through leaks in parliamentary committees?

Mr DIGBY: I think I said before that this was a very infrequent occurrence.

Mr SAMIOS: From your experience?

Mr DIGBY: From my experience, yes.

Mr SAMIOS: As an acting editor?

Mr DIGBY: Yes.

Mr VAUGHAN: Do you respect the institution of Parliament?

Mr DIGBY: Certainly.

Mr VAUGHAN: Do you have any animus towards parliamentarians?

Mr DIGBY: None whatsoever.

Mr VAUGHAN: What is your notion of parliamentary privilege?

Mr DIGBY: It is usually used in the context of people speaking on the floor of Parliament and, from a reporter's point of view, of being able to report what is said on the floor of Parliament. That is the usual circumstance under which it occurs in our business.

Mr VAUGHAN: Do you mind me saying then that you have got no idea at all? What you have just put to me is what flows from parliamentary privilege.

Mr DIGBY: Sorry, I thought that was what you were referring to.

Mr VAUGHAN: No. I just asked you what your notion of parliamentary privilege was.

Mr DIGBY: Sorry, I do not quite understand what you mean.

Mr VAUGHAN: This is a privileges committee—the Standing Committee upon Parliamentary Privilege of the upper House of the New South Wales Parliament. Did you know that?

Mr DIGBY: Yes.

Mr VAUGHAN: You are not suggesting, are you, that you think that means it is a committee that deals with what people say on the floor of the House and the extent to which a journalist can report what is said on the floor of the House?

Mr DIGBY: No.

Mr VAUGHAN: I will tell you what parliamentary privilege is then. It is a very old institution. It is about protecting the activities of members of Parliament in the course of their duties. It is a tradition that comes from the United Kingdom, from the Westminster system. The Parliament has privileges so that members of the Parliament or members of this Committee can go about their legitimate work without obstruction. You did not know about that?

Mr DIGBY: Yes. That is basically what my first reply I think encompassed—the fact that when talking to Parliament or speaking on the floor of Parliament there are no obstructions.

Mr VAUGHAN: I do not think that is what you said to me. You might have intended to say it. Mr Synnott said the same nonsensical thing; that it was all about making sure that you do not report things that are said in the Parliament that might be dangerous to the newspaper. Apparently that seems to be the journalists' view of parliamentary privilege. Is it your newspaper's policy to seek and accept advice in possible contempt matters, either in a court or a parliament? Do you seek that advice from your in-house lawyer?

Mr DIGBY: Generally, yes.

Mr VAUGHAN: In what instances would you then go beyond your in-house lawyer and seek the advice of your solicitors, such as Freehills?

Mr DIGBY: The system that we use basically is that we have two in-house lawyers. If they are not on duty at the time, then we have the benefit of someone from Freehills to whom to submit stories.

Mr VAUGHAN: And stories such as this, "How Ted napped pusher", would that have been referred to one or other of your in-house lawyers?

Mr DIGBY: It was referred to the duty lawyer at the time.

Mr VAUGHAN: Who was?

Mr DIGBY: Who was actually, as I recollect, from Freehills that day.

Mr VAUGHAN: So you did not seek Mr Coleman's advice, for example?

Mr DIGBY: He was not on duty when the article was prepared.

Mr VAUGHAN: And the other fellow was not either?

Mr DIGBY: Sorry, he was not employed by Fairfax at that stage.

Mr VAUGHAN: Mr Coleman was not?

Mr DIGBY: No.

CHAIRMAN: What is the name of that lawyer?

Mr DIGBY: Leanne Norman I think was the person who saw the story.

Mr VAUGHAN: Are you aware of the fact that there is no professional privilege in this room vis-a-vis you and this Committee?

Mr DIGBY: Sorry, I am not quite sure what you mean.

Mr VAUGHAN: Sometimes, during some of your evidence, I thought you had the view that something you had been asked to say was privileged. I would not like to think that it was privileged because you sought advice from an adviser who told you that the question that had been put to you was privileged. I got that impression a couple of times when my colleague Mr Jobling asked you a few questions.

Mr DIGBY: Sorry, I do not quite understand the question.

Mr SAMIOS: I think he said that the legal advice that was given—

Mr VAUGHAN: Here in the room?

Mr SAMIOS: No.

Mr DIGBY: No, legal advice given at the time.

Mr VAUGHAN: You are not suggesting anything you have been given here today is privileged?

Mr DIGBY: Well, it would be, yes, because my solicitor's—that is my understanding.

Mr VAUGHAN: That seems to be your view and it must be their view as well?

Mr DIGBY: You would have to ask them.

Mr VAUGHAN: I cannot do that. You can ask, if you like, and I will listen to your answer.

Mr DIGBY: Yes, I think that is right. I think that if I am seeking their advice, then what they tell me would be privileged.

Mr VAUGHAN: Thank you. I make a particular note of that.

Mr DYER: Mr Digby, earlier this week you will be aware Mr Synnott gave evidence to this Committee. In the course of that evidence he used the expression "legalled" in regard to material submitted for publication. Could you inform this Committee what you understand by the term or expression "legalled"?

Mr DIGBY: Yes, that means that we submit the stories that we intend to publish to our legal advisers, usually for advice on defamation. That is the usual advice that they are giving us—about defamation.

Mr DYER: So the term legalled imports submitting the material to publishers' legal advisers for vetting rather than the process of stopping the material from being published?

Mr DIGBY: Vetting from a legal point of view, yes.

Mr DYER: The term legalled refers to that process of consulting?

Mr DIGBY: Yes.

Mr DYER: Rather than the material actually being stopped from being published, or does that include both?

Mr DIGBY: It is the editor's responsibility to actually stop the publication, acting on advice from lawyers.

Mr DYER: So the expression legalled would include cases after you have sought the advice where the advice was either to publish or not to publish?

Mr DIGBY: I am sorry?

Mr DYER: The expression legalled would include the situation where having sought advice from the publishers' legal advisers, that advice was variably either to publish or not to publish?

Mr DIGBY: Well, advice can be all manner of things.

Mr DYER: Yes, but the expression legalised only means the seeking of advice and not what the outcome of the advice might be or your action in response to that advice?

Mr DIGBY: Yes, legalling would be submitting the story to the lawyer for advice.

Mr DYER: Could you advise, in terms of your experience as an editor, under what conditions in your experience has material been stopped for publication? What classifications might be applied to circumstances where material does not in fact appear following receipt of legal advice?

Mr DIGBY: It is more usual that on the receipt of legal advice a story is edited so that it can be published in some form or other rather than stopped altogether.

Mr DYER: In what categories, in your experience, are articles or parts of articles stopped for publication?

Mr DIGBY: As far as we are concerned, usually on the ground of defamation.

Mr DYER: I take it that is the most frequent occasion by which material would not be published?

Mr DIGBY: By far.

Mr DYER: You said more than once during your evidence today that courts are closed very often but the occasion for closing a parliamentary committee is very infrequent.

Mr DIGBY: No, I am sorry, that is not exactly what I meant. In my newspaper experience I have far more experience of covering courts and courts being closed rather than covering parliamentary committees, which the *Sun-Herald* does not do to a great degree.

Mr DYER: What importance, if any, do you attach to the perceived infrequency of parliamentary committees closing their proceedings?

Mr DIGBY: I am sorry, I do not quite understand.

Mr DYER: Does it matter to you that parliamentary committees in your experience close their proceedings only infrequently as opposed to the courts that might do it rather more often?

Mr DIGBY: I do not see what you mean by does it matter to me.

Mr DYER: Does it influence your decision to publish particular material that your experience or perception is that parliamentary committees go into camera and take evidence in private rather less frequently than courts do?

Mr DIGBY: No. The point that I made earlier I think was that this question of reporting parliamentary committees just does not arise very much. That is the point I was making before: whether they have in camera evidence or not, the actual reporting of them just does not arise that often. The question of contempt or not does not arise that much.

Mr DYER: I would be inclined to agree with you that that circumstance does not arise very much. But having said that, why is it that that is an important consideration in your mind? What is the practical impact of it not arising very much?

Mr DIGBY: I suppose the practical impact is that we do not have to deal with it nearly as often as we have to deal with courts.

Mr DYER: Does that mean that you are then less aware of any obligations that might arise from the closing of a parliamentary committee?

Mr DIGBY: Because it happens less frequently it is less clear in your mind as to what is actually happening at the time. So I am not aware of that circumstance having arisen on our paper.

Mr DYER: So you are not saying to the committee, I take it, that you regard the fact of a parliamentary committee closing its proceedings to be of less importance than a court making a similar decision?

Mr DIGBY: No, certainly not.

Mr DYER: What is your general philosophy regarding the freedom of the press and the public's interest or right to know? How do you balance them against considerations of bodies, such as a parliamentary committee or a court, that have reasons important to them for closing the proceedings? How do you strike a balance

between the public's right to know and the obligation of all citizens to observe proper conditions imposed by institutions in our society?

Mr DIGBY: I think you have to weigh that up very carefully on a case-by-case and story-by-story basis.

Mr DYER: How do you in fact in your experience weigh such matters up very carefully?

Mr DIGBY: In this particular case I think care was taken, yes.

Mr DYER: Care was taken by you?

Mr DIGBY: Certainly.

Mr DYER: In your experience dealing with material emanating from the courts have you from time to time weighed up carefully whether you would publish notwithstanding the fact that the proceedings were closed by that particular court?

Mr DIGBY: I do not think that circumstance has arisen.

Mr DYER: So in your own experience you have never seen fit to publish material emanating from a court where the judge or magistrate has ordered the proceedings to be closed?

Mr DIGBY: Not knowingly.

Mr DYER: You have not knowingly published material from a closed court?

Mr DIGBY: I have not been responsible for that, not that I know.

Mr DYER: You said in response to a question from Mr Jobling—I made a note of your words at the time and recorded them as accurately as I could—that the material in the article headline "How Ted Nabbed Pusher" was either historical or did not involve ongoing police investigations. Do you recall saying that to Mr Jobling.

Mr DIGBY: Yes, I think I said it seemed to be historical.

Mr DYER: In forming that conclusion I take it that you carefully read every word that Mr Synnott submitted for publication.

Mr DIGBY: Yes.

Mr DYER: Do you recall that the article has certain subheadings within it such as "Paedophile Protection", "Operation Asset", "Kings Cross Police" and so on?

Mr DIGBY: Yes.

Mr DYER: Your statement that the material seemed to you to be historical—

Mr DIGBY: Or anonymous I think were the words I used.

Mr DYER: You are saying "or anonymous"?

Mr DIGBY: No, I think those were the words I used at the time, that they were either historical or anonymous.

Mr DYER: My recollection of what you said is that the material was either historical or did not involve ongoing police investigations.

Mr DIGBY: I would not have a knowledge of whether they were ongoing but they seemed to be historical or anonymous so they would not identify anybody.

Mr DYER: Taking the material appearing under subheading "Operation Asset" as one example, the first sentence contains a reference to Mr Pickering authorising a reference to the State Drug Crime Commission on 8th December, 1988. Would that be an example of what you mean by historical material?

Mr DIGBY: To a degree, yes, if that operation had been concluded.

Mr DYER: Could I put to you that the sentence appearing immediately before that passage—which reads as follows, "Just before my resignation as police Minister I received the internal police security unit's IPSU final report which concluded that corrupt practices did exist between serving police officers and paedophiles"—refers to Mr Pickering's resignation as police Minister?

Mr DIGBY: Yes.

Mr DYER: Would you agree with me that Mr Pickering has as a matter of fact resigned as police Minister within the last 12 months?

Mr DIGBY: Yes.

Mr DYER: Could I put it to you that that sentence, referring as it does to the receipt by Mr Pickering as police Minister of an internal police security unit final report regarding paedophile protection, could well give rise to continuing investigations?

Mr DIGBY: It seems fairly anonymous to me. It is not naming anyone specifically.

Mr DYER: I am not asking you whether it is anonymous; I am asking you whether you would agree with me that that material having been received by

Mr Pickering shortly before his resignation as police Minister could well give rise to continuing investigations.

Mr DIGBY: It might well do.

Mr DYER: To Mr Samios you said words to the effect that although it would be unlikely, you would possibly publish in contempt of Parliament if the matter happened to be of sufficient importance. What category of material do you believe would be of sufficient importance to publish even though that material might be published in contempt of Parliament?

Mr DIGBY: That is a hypothetical question. I think it would depend on the circumstances at the time.

Mr DYER: Do you believe that it would have been worth while and justifiable to publish the material in question here—that is the article headed "How Ted nabbed pusher"—even though you were immediately aware that it was in contempt of Parliament?

Mr DIGBY: Are you asking me hypothetically if I would if I had known it was in contempt of Parliament?

Mr DYER: Well, my understanding of your evidence is that you did not know that it was in contempt of Parliament.

Mr DIGBY: Exactly.

Mr DYER: Yes. I am putting to you that if, knowing what you now know—that potentially this could be in contempt of Parliament—would you regard the material here of sufficient importance, notwithstanding that it might be in contempt of Parliament?

Mr DIGBY: If it is in contempt of Parliament, if it is found to be, I am not sure that I would have.

Mr DYER: You are not sure you would have?

Mr DIGBY: No.

Mr DYER: What criteria do you think you would apply to a decision to publish or not to publish this material?

Mr DIGBY: It would be the public interest I think.

Mr DYER: How would you define the public interest in terms of this material?

Mr DIGBY: I think in the circumstances at the time it seemed to go to the heart of what the committee was investigating, and that appeared to be Mr Pickering's distrust of the police.

Mr DYER: Returning to the portion of the article dealing with paedophile protection, do you think that the public interest might be served by the investigation of that matter not being compromised by publication?

Mr DIGBY: I am sorry, could you repeat that?

Mr DYER: Do you think the public interest might have been served by a continuing police investigation into a police paedophile racket not being compromised by disclosure in the public press that this was happening?

Mr DIGBY: I am not certain that this would prejudice it.

Mr DYER: Given that the material refers to an internal police security unit report to the then Minister shortly before he resigned that serving police had been found to be involved in corrupt practices involving a protection racket between police officers and paedophiles, would you not agree with me that the publication of this material had at least the potential to compromise that very serious and sensitive continuing investigation?

Mr DIGBY: I do not think it would necessarily, no.

Mr DYER: It perhaps might not necessarily, but my question was do you think there was the potential for that?

Mr DIGBY: Possibly.

Mr DYER: What right do you think you have as the acting editor of the *Sun-Herald* to potentially compromise a police investigation of such a sensitive matter involving corrupt police behaving in that way with paedophiles?

Mr DIGBY: At that time I did not think that that would prejudice the investigation.

Mr DYER: Do you think the investigation would be assisted by publishing that material?

Mr DIGBY: No.

Mr DYER: You do not think it would be assisted?

Mr DIGBY: No.

Mr DYER: Do you apply the same or a similar test to publishing material emanating from a closed parliamentary committee to that applied to a closed court, or do you draw some distinction between the two?

Mr DIGBY: No, I do not think I would draw any distinction between the two. No, I do not think I would.

Mr JONES: When Mr Synnott was asked by the Chairman, "Are you aware that the publication of in camera evidence to a parliamentary committee which has not reported to the House might constitute contempt of Parliament?", he replied, "Am I aware now?" He said yes, he was aware that this might constitute a contempt of Parliament. Is legal advice available to writers as well as to editors?

Mr DIGBY: Yes.

Mr JONES: So he has subsequently received legal advice that this might constitute a contempt of Parliament?

Mr DIGBY: I do not know.

Mr JONES: Have you received such advice subsequent to the publication of the article?

Mr DIGBY: That it—?

Mr JONES: —might or does constitute a contempt of Parliament?

Mr DIGBY: That is surely privileged. What information I have received from the lawyers is privileged.

Mr JONES: Mr Synnott said that your legal advisers were aware that this was in camera evidence being published.

Mr DIGBY: I am sorry?

Mr JONES: Mr Synnott said that your legal advisers were aware that this was in camera evidence being published.

Mr DIGBY: I am not sure that they were. I am not aware they saw the document.

Mr JONES: The article or the document?

Mr DIGBY: The document.

Mr JONES: First of all I asked him, "Did your legal advisers see the article?" He said, "Yes, they did". Then I asked, "So your legal advisers were aware that this was in camera evidence being published?" He said, "That is what is said in the article, yes".

Mr DIGBY: He says it is confidential. The article says it is confidential.

Mr JONES: He apparently had the opinion that the legal advisers were aware that this was in camera evidence being published. Mr Synnott had the view then that the legal advisers were aware that this was in camera evidence.

Mr DIGBY: I do not know what the legal advisers were aware of or not.

Mr JONES: So you do not know whether they were aware it was in camera evidence?

Mr DIGBY: No, I do not.

Mr JONES: So when you sought legal advice from your legal advisers, that legal advice would have been deficient because they would not have known that it was in camera evidence. Is that what you are saying?

Mr DIGBY: I am sorry, I do not really know one way or the other.

Mr JONES: How can you get legal advice when that legal advice is deficient, when your legal advisers do not know whether or not this was in camera evidence and whether or not this might be in breach of Parliament? You are asking them to judge something which was not judgeable because they did not have the evidence before them. Is that not right?

Mr DIGBY: I am sorry, I think you are making assumptions about information that the lawyer did or did not have, and I do not know what information, other than this particular story, the lawyer had at the time.

Mr JONES: Who instigated the legal advice?

Mr DIGBY: Of this story, I did.

Mr JONES: You did?

Mr DIGBY: Yes.

Mr JONES: Did you not know at that time that this was in camera evidence being given before a parliamentary committee?

Mr DIGBY: I cannot recollect exactly, but I knew from the story that it was a confidential document. I cannot remember whether John Synnott told me that it had "in camera evidence" or "in camera" stamped on it or not.

Mr JONES: You did not pass the copy of the fax on to your legal advisers?

Mr DIGBY: I have never seen it.

Mr JONES: And Mr Synnott did not pass a copy of the fax on to the legal advisers?

Mr DIGBY: I do not know.

CHAIRMAN: Following on from that and returning to the article we are talking about in the paper, I would like to know how you interpreted two of the clauses in that. One was where it says in the beginning, in the third paragraph down, "This evidence resulted in charges, according to Mr Pickering's confidential evidence to the parliamentary committee into police administration". Then further down at the bottom of the page it says, "Mr Pickering raised in private with the Committee four other examples of what he regarded as—." How do you interpret confidential and private matters presented to a committee and then say that you did not know that that was in camera and therefore it should not have been printed?

Mr JOBLING: And the committee was closed at the time, Chairman, I can assure you.

Mr DIGBY: I understood that it was a confidential document.

CHAIRMAN: And therefore that means nothing to the responsible press or media, that it is not for disclosure?

Mr DIGBY: Yes, it would do.

CHAIRMAN: And yet legal advice still said that you could print it?

Mr DIGBY: That is privileged, what my legal advisers told me.

CHAIRMAN: It would be interesting to ask her.

Mr JONES: Mr Synnott says that he is aware that the publication of in camera evidence to a parliamentary committee might constitute a contempt of Parliament. Are you aware of that too?

Mr DIGBY: I am now.

Mr JONES: You were not aware prior to the publication of this article?

Mr DIGBY: No.

Mr JONES: So your legal advice was then deficient presumably?

Mr DIGBY: My legal advice at that time is privileged.

Mr JONES: And evidently deficient. When you seek legal advice, do you generally take that legal advice?

Mr DIGBY: Yes.

Mr JONES: Generally?

Mr DIGBY: Generally.

Mr JONES: Are you aware of whether or not you took that legal advice this time or are you able to divulge the information whether you took that legal advice on this occasion?

Mr DIGBY: No.

Mr JONES: You are not able to divulge that. It may have been that your legal advice was deficient. If you were not aware at that time that it might have been in contempt of Parliament, is it not possible that your legal advice was in fact deficient?

Mr DIGBY: If it is hypothetical.

Mr JONES: It is not hypothetical.

Mr DIGBY: I do not know whether it was deficient or not.

Mr JONES: You do not know? You have told us you did not know at that time that it might constitute a contempt of Parliament. Surely you would have known that from your legal advisers?

Mr DIGBY: I did not realise at that time, I think I said a breach of the Committee's rules was a breach of Parliament.

Mr JONES: But now you do know that?

Mr DIGBY: I am aware of that now, yes.

Mr JONES: As a result of legal advice?

Mr DIGBY: No, as a result of these hearings.

Mr JONES: But your legal advisers do not know that?

Mr DIGBY: I do not know what my legal advisers know.

Mr JONES: You have not sought legal advice on that?

Mr DIGBY: On what?

Mr JONES: On whether or not publishing in camera evidence might be constituted a contempt of Parliament. Do they not know this?

Mr DIGBY: I cannot speak for what my legal advisers know or do not know.

Mr JONES: Would you care to ask them now?

Mr DIGBY: Not really, no.

Mr JONES: It seems there is a bit of a gap here between whether your legal advisers actually know whether it might constitute a contempt of Parliament or not. You seem to know.

Mr DIGBY: I have been informed of it in the last week and today.

Mr JONES: Right, but your legal advisers did not know this evidently, otherwise you would have known before the article was published. You did not know before the article was published, you have told us that. I think you had better change your legal advisers. Who do you think should take prime responsibility for the publication of the article, if there were a penalty involved in the publications?

Mr DIGBY: The editor.

Mr JONES: In response to a question by Mr Samios you said that you were prepared to publish an article in contempt of Parliament, if it was an important article. Will you be prepared to do that and risk a penalty for doing that if such penalty might be forthcoming?

Mr DIGBY: I think it depends on how important the story was judged to be at the particular time and the circumstances. It is fairly hypothetical.

Mr JONES: If this article itself were to lead to some kind of penalty, would you then publish this article, as it stands now?

Mr DIGBY: Now that I realise the problems that it has caused, I may well not do so.

Mr JONES: I see you are better informed now than you were at the time of publication?

Mr DIGBY: Obviously. I have had your collective wisdom to inform me.

Mr JONES: I thought you received good wisdom from your legal advisers. I am disappointed that you had the availability of top legal advice and they did not give you that advice before the article was published.

Mr DIGBY: I cannot say what legal advice they gave me.

Mr JOBLING: If they did, you are in trouble.

Mr JONES: Did you edit or change the article as a result of your legal advice?

Mr DIGBY: I honestly cannot remember.

Mr JONES: Is it possible?

Mr DIGBY: It is quite possible. On that particular day we would have dealt with so many articles and so many things being legalised, I honestly cannot remember the circumstances on that particular day.

Mr JONES: Did it concern you at any time that the information in the article was in fact correct, that it was in fact private information? Do you ever question that?

Mr DIGBY: Usually with a journalist of John Synnott's seniority and experience, unless there was something that you had prior knowledge of, you would not normally question the facts in a story that he writes.

Mr JONES: Did it not occur to you to ask for the fax in order that you might look at that, or your legal advisers might look at the fax?

Mr DIGBY: No.

Mr JONES: Are you aware of any copies of the fax being in your files?

Mr DIGBY: No.

Mr JONES: If there were, would you destroy them? I think that is probably enough.

CHAIRMAN: Do you understand why this Committee has been given this reference?

Mr DIGBY: I do now, yes.

CHAIRMAN: What do you understand?

Mr DIGBY: I understand now that the Committee that heard the original evidence thought that there might have been a contempt of Parliament and therefore referred it to this Committee.

CHAIRMAN: That really does not answer my question. Do you not see that the reason we are doing this is because we are endeavouring to protect witnesses who come before such committee's to give evidence in camera?

Mr DIGBY: I can see that as part of your role, yes.

CHAIRMAN: And yet to you public interest is paramount in spite of the fact that possible criminals could be warned by the release of in camera evidence. Public interest to you is paramount above everything else, is that true?

Mr DIGBY: I do not believe I have said that.

CHAIRMAN: I am asking you if that is what you believe? You keep saying that everything you have done is because the public interest was important?

Mr DIGBY: I do not believe I have said that either.

CHAIRMAN: I am sure you have.

Mr DIGBY: No, I do not think I have said that.

CHAIRMAN: The Committee asked you why you did it and you said because of the public interest.

Mr DIGBY: Why I did what?

CHAIRMAN: Why it was published, why it was agreed to publish it? You said the public interest was important.

Mr DIGBY: I think the public interest was important in that case, yes.

CHAIRMAN: Therefore do you see court procedures as more important than parliamentary procedures?

Mr DIGBY: No.

Mr JOBLING: In your statement, on a number of occasions relating to this article, you have suggested to the Committee that the information in the article, précising you, was either old news or an anonymous reference. Is that the general thrust?

Mr DIGBY: Of the specific subheadings, yes.

Mr JOBLING: What do you understand by IPSU, which is referred to under the paedophile protection racket, and that means internal police security unit. Do you understand anything about that?

Mr DIGBY: Yes, I understand it is a body that investigates the police force, the internal workings of the police force.

Mr JOBLING: What more do you know about it?

Mr DIGBY: In what way?

Mr JOBLING: That is what I would like you to tell me, what you know and what you understand by IPSU?

Mr DIGBY: I understand it polices the police.

Mr JOBLING: What would you say to me if I told you that only three people are likely to see that report, produced once a month; the commissioner, the deputy commissioner in his absence, and the Minister for police; that it is locked away in a safe for the Minister's eyes only; and it contains the most highly confidential briefings?

Mr DIGBY: I did not know that.

Mr JOBLING: Yet you made no attempt to find out what it may have meant before you gaily went ahead and published?

Mr DIGBY: I am sorry, what what meant?

Mr JOBLING: IPSU—you have a reference in here to IPSU.

Mr DIGBY: You are telling me about its function.

Mr JOBLING: I am trying to find out from you. You said it was ancient history or anonymous, yet you have no idea what you put in that article and what it meant?

Mr DIGBY: Yes, I understand that they had given a report. The police Minister had received a report from them.

Mr JOBLING: Yet the very mention of IPSU would have alerted every corrupt policeman or any corrupt person who may have been involved in that file immediately, because it was not complete. What you have done in fact is publish a very confidential item, highly confidential, known to three people only, not most of the police force. Clearly this is what you have done and you are totally unaware of that?

Mr DIGBY: I did not realise it was that confidential.

Mr JOBLING: Precisely. Having now admitted that you did not know how confidential it was, you therefore equally had no knowledge as to how current it was. The answer is clearly no, because you did not know what it meant?

Mr DIGBY: I thought it was sufficiently anonymous, to publish. I did not realise.

Mr JOBLING: There are but three people who see it and it is permanently locked in the Minister's safe. It has the most highly confidential matters, which are not generally dealt with in public until the court case comes forward. Therefore you have published a very active file in that regard, knowingly or unknowingly. Quite clearly you did not know. I understand you are saying to this Committee that you did not know that this particular article was a possible contempt of Parliament, either prior to publication or at the time of publication.

Mr DIGBY: I did not realise that a breach of the committee would necessarily be held as a contempt of Parliament.

Mr JOBLING: I did not ask about the committee, I asked about the printing of the article. Specifically, you did not know that it was a possible contempt of the Parliament, prior to publishing or immediately at the time of publishing?

Mr DIGBY: No, I did not. I thought it was in breach of the committee not in breach of Parliament. I did not realise that one followed the other.

Mr JOBLING: Am I to draw the conclusion that you are in fact saying to this Committee that either your ignorance of the infrequent happenings of these breaches, as you indicate to us, should be taken as some sort of defence to publishing confidential, in camera evidence?

Mr DIGBY: To a degree, yes.

Mr JOBLING: What different action would you take being aware of the contempt and breach of parliamentary privilege, if you were now to receive in camera evidence from a parliamentary committee. What would you do?

Mr DIGBY: In the circumstances I certainly regret the trouble we have caused and I would have to certainly weigh that up very seriously in any future considerations of stories.

Mr JOBLING: Subsequent to this, irrespective of what deliberations this Committee may come to, what directions have you issued to your journalists in relation to the use of in camera and confidential evidence from parliamentary committees?

Mr DIGBY: I have not yet discussed this particular hearing with Mr Synnott and because he is our only parliamentary reporter it would be a matter of discussion with him. I have not yet discussed the outcome of his appearance before the Committee on Monday, or mine.

Mr JOBLING: I will try that in a slightly different way. Do you propose to inform your journalists of the need for confidentiality with in camera evidence before parliamentary committees on the same basis as evidence before closed courts?

Mr DIGBY: Certainly.

Mr JOBLING: You will be undertaking to do that?

Mr DIGBY: I will undertake to do that.

Mr SAMIOS: In relation to the matter of the machinery of the publication, normally the subtitle to an article is a matter not necessarily for the journalists, but for someone else within the hierarchy, perhaps the subeditor.

Mr DIGBY: It might well be, yes. What do you mean by subheading exactly?

Mr SAMIOS: To the title to the article.

Mr DIGBY: The headline for the article?

Mr SAMIOS: Yes, in this particular case we have an article by Mr Synnott. The headline, was that the work of someone else?

Mr DIGBY: It would not be his work, certainly. It would either be the work of an editor or a subeditor.

Mr SAMIOS: I presume that prior to composing the title the editor or subeditor would also read the article?

Mr DIGBY: Yes.

Mr SAMIOS: Would he normally therefore authorise the article, play a role in the authorisation of the article?

Mr DIGBY: Sorry, I am not quite sure what you mean by authorise.

Mr SAMIOS: Authorise the publication of the article?

Mr DIGBY: I am not quite sure what you mean by the word "authorised". I am not trying to be difficult, but the editor authorises that an article is published. In the general workings of a newspaper if a subeditor thinks there might be a legal problem with a story, he might on his own initiative take legal advice about it.

Mr SAMIOS: In this instance do you recall who approved of or wrote the subtitle or heading?

Mr DIGBY: I am not exactly sure who would have written the heading. It would probably have been discussed by a number of people. One of them may have been me.

Mr SAMIOS: But the title was not your work?

Mr DIGBY: I do not think it was specifically, no. It would probably have had input from several people.

Mr SAMIOS: From several people?

Mr DIGBY: I would think so.

Mr SAMIOS: But ultimately the authorisation for the article to go in would have been yours I suppose?

Mr DIGBY: It would have been my responsibility, yes.

Mr SAMIOS: Mr Jobling touched on the question about the need for journalists to be conscious of the importance of parliamentary privilege and to have respect for the laws pertaining to contempt. Can you tell me whether there is a modus operandi whereby journalists working for your company are constantly made aware of the importance of respecting such doctrines?

Mr DIGBY: I do not think you could say there would necessarily be a constant way this would be done. But I think most of them should be aware, through their training, of various things like that. But I cannot say that they are warned every week or every month about these things. As part of their training they do legal work and are given legal manuals as to pitfalls.

Mr VAUGHAN: I suppose I want to gild the lily a bit here, but may I assume that you now realise that the most important public interest of all is that the

public's Parliament and its committees continue at any time with their parliamentary activities without obstruction?

Mr DIGBY: Certainly.

CHAIRMAN: Would you like to add anything or give to us a further written submission?

Mr DIGBY: I would like permission to make written submissions, if need be.

CHAIRMAN: What do you mean by that? Are you going to make one or are you not?

Mr DIGBY: Yes, I think I will make one.

Mr JOBLING: We need also from you the code of ethics.

Mr DIGBY: Certainly. I will make a written submission. I want to clear the request from Mr Jobling about the code of ethics. Would it be possible, before I make the written submission, to have a transcript of Mr Synnott's evidence and my evidence?

CHAIRMAN: Yes. This is an open hearing. You will be able to have that evidence after it has been edited and looked at.

(The witness withdrew)

(The Committee adjourned at 12.20 p.m.)