

ESTIMATES OF REVENUE AND EXPENDITURE

Consideration of Tabled Paper

Resumed from 26 June on the following motion moved by Hon N.D. Griffiths (Minister for Racing and Gaming) -

That pursuant to Standing Order No 49(1)(c), the Council take note of tabled paper No 1428 (2002-03 *Budget Statements*), laid upon the Table of the House on 16 May 2002.

HON PETER FOSS (East Metropolitan) [10.17 am]: I intend to give a traditional budget speech. The historical reason annual grants of revenue were made to the Crown was that it was the only opportunity the people had to complain about the multitude of grievances they had against the Crown. They would not give that money until such time as the king had agreed to hand over or deal with a certain person, or had satisfied their grievances, often by enactment, which became known as an Act of Parliament. The people made certain that they had this annual opportunity to air their grievances by only ever giving the Crown the money for a year. I have a grievance about the Crown. The particular area of the Crown I wish to complain about involves a number of its ministers.

Hon Simon O'Brien: Just pick on the worst 14.

Hon PETER FOSS: I have only four points that I wish to make. I will ask that the Attorney General be dismissed for his breach of ministerial oath, his dereliction of duty as first law officer and his blatant use of confidential information for party political purposes. I will discuss the involvement of the Minister for Health in the Mickelberg trial, but I do not intend to make that a major part of my speech, except to explain why I am upset with the Attorney General. The Minister for Health will face questions about what he did, in another place, and the answers will be determined in another place. However, we cannot understand what the Attorney General has done unless we understand the questions that will be asked of the Minister for Health. I will look at that and give members some understanding of that.

Secondly, I will say that the Minister for Health should be stood aside by the Premier pending those answers being given. The role of the Premier is unclear. However, by now, he should be in no doubt that he was led a merry dance by the Attorney General, and if he does not immediately dismiss the Attorney General and stand Mr Kucera down, he will be plainly complicit in the cover-up and interference in the royal commission and obstruction of justice that the Attorney General has - if he has not already - become complicit in.

Finally, I will call on the Government to immediately extend the terms of reference of the royal commission to include an inquiry into the role of the Government in dealing with the Lewandowski affidavit and its release along with transcripts and statements to the Minister for Health and others, and its leakage to the media.

I have a lot of documents here, although I hope not to have to read them out to the House. I will, to the extent possible, rely on my memory and merely take a few excerpts to prove the points that I make. The reason is that I believe this is not the place for a minute examination of the evidence; this is a place to look at the gross nature of the facts that have occurred. I now have some of the transcripts of the 1998 appeal and of the 1983 Mickelberg trial. Again, I will not go into great detail about those, simply because I have not had the chance to read them completely. Also, I want to draw to the attention of the House those matters that are clearly obvious to anybody giving this the slightest amount of attention. I do not want to say that, from a minute examination of all the words, this is what can come out; I want to tell members what should have been obvious to the Attorney General when he was given those same papers by the Solicitor General on the weekend of 8 and 9 June. I want members to understand why the Attorney General suddenly went into an absolute frenzy of activity, which included trying to contact the Premier wherever he was - including in those most improbable of places, at home at 6.00 pm on a Friday night. I would have thought that was the last place he would look to find a Premier at 6.00 pm on a Friday night, but that was one of the places he tried. He finally caught up with the Premier at midnight Sydney time, which is where the Premier was. His frenzy also included multiple calls to the Minister for Health until he finally contacted him, and then several discussions with the Minister for Health, including one at which he met with him and handed to him the Lewandowski affidavit, which he had received from the Solicitor General, plus a whole lot of other documents that he had also received from the Solicitor General. They included the transcripts of Mr Kucera's evidence in 1998 and, as I understand from what the Attorney General has said elsewhere, other transcripts of what other witnesses had said at that appeal and possibly at the original trial. As soon as I heard that he had these documents - he was in the other place boasting about how he was so diligent that he spent the whole weekend reading transcripts - I wondered where he had got them from, because he did not tell us. Mr President, I can tell you that those things do not suddenly become available. It has taken the Opposition, for instance, nearly three weeks to get them from the Attorney General. However, having first learnt on Thursday night of the Lewandowski affidavit, the Attorney General had them on Friday and the Minister for Health had them on Saturday. How did the Attorney General get them so quickly? It was obvious to me the Solicitor

General had come to him with those transcripts. The question members must ask is, why? The Premier and the Attorney General in the other place consistently said that the Lewandowski affidavit made no mention of the Minister for Health - to Sergeant Bob Kucera or to Assistant Commissioner Kucera; he is not implicated. One wonders why they were so loud in saying that, if that was the case. How did the Attorney General, brilliantly, suddenly think that the Minister for Health would be subject to a cheap political attack? How did that strike his mind? What was it that caused the Attorney General to go into that frenzy and to contact the Minister for Health to give him all those documents, yet he did not contact the Minister for Police? If something were coming up about police corruption, I would have thought if the Attorney General contacted anybody, his first thought would be the Minister for Police. No, she was not consulted; the Minister for Health was. By the time I get to the end of my speech it will be patently clear why that was the case.

Hon Norman Moore: You might also find that nobody from the Labor Party is in here.

Hon PETER FOSS: Attendance is rather sparse. I know they do not like hearing about their hero.

Hon Norman Moore: They do not spend much time in here either.

Hon Sue Ellery: That is not fair.

Hon PETER FOSS: Hon Sue Ellery is a notable exception. Most of the time, she is the only person in here and I give her credit for that. She is a lonely soul on the government benches.

It seemed to me obvious, when I heard that Mr Lewandowski had said this. When I learnt that Assistant Commissioner Bob Kucera had given evidence at the 1998 appeal to the effect that he had seen notes being taken during the interview, put with the suggestion that no notes were taken, which is what Lewandowski said in his affidavit, that could not have happened, there had to be a dispute. I did not know that Assistant Commissioner Bob Kucera gave evidence in 1998.

What I intend to do honourable members is to take this story through from two points of view. The first is from the point of view of an ordinary member of the public and what the public learnt from the papers about what happened, and then to go into the detail from the point of view of someone who happened to have a little extra specialist knowledge of what happened. Let us go back in time.

In 1982 there was the Perth Mint swindle and, ultimately, the Mickelbergs were charged with that. During that investigation, Peter Mickelberg was taken to the Belmont CIB office. The officer in charge there was Sergeant Bob Kucera. He was taken into Sergeant Bob Kucera's room. I do not fully understand this, but I take the word of the Attorney General that it is very important to understand the layout of this office. He was saying this on the Tuesday in Parliament, so obviously he had read the transcript very carefully. After I had read the transcripts I understood the importance to him of the layout of the office and why he said that. Obviously, when the Attorney General spoke in Parliament on the Tuesday it is clear that he had read that part of the transcript. He said that he had been reading the transcripts, and he proved it by saying it was important to know the layout of Sergeant Bob Kucera's office. That was raised in the appeal. There was an interview room off Sergeant Kucera's office. The interview room was very small, not big enough to swing a cat or, it would seem now, a punch. They went in there. One of questions that everybody asks is, why go there? We have had that answered in the newspaper. Somebody said that when detectives want to rough up people they take them into one of the suburban offices and do it there.

Sergeant Bob Kucera moved out and let them have his office. By Mickelberg's account, he was stripped naked, initially put in the little room, pulled out by his throat and "punched up". The Court of Criminal Appeal outlined that no notes were taken and at the end, he was put back in a little room and Sergeant Kucera came in.

Mickelberg complained about being beaten and Sergeant Kucera said, "Don't tell me; I cannot do anything about it."

In 1998 a Court of Criminal Appeal trial was held because my colleague Hon Cheryl Edwardes, the then Attorney General, had given leave for the matter to go to the Supreme Court and when I became Attorney General I provided the funds to the Mickelbergs for that appeal.

It became known at some stage during the hearing that there were problems. At the interview with Mr Mickelberg, Mr Lewandowski supposedly took notes that indicated the questions and answers. At completion of the interview, it was acknowledged by Mr Mickelberg that that was the case, but he refused to sign the document. Some evidence then emerged that Lewandowski had been getting drunk and confessing that Mickelberg had been stitched up. It then emerged that, to their horror, an English expert had submitted the notes to what was called electrostatic deposit analysis, which could reveal the order in which the notes were written. I am sure members will recall reading this in the newspaper.

I will now deal with what the public can recall. Notes written on pages that belong in a pad of paper create an imprint on the pages underneath. As a result, a clear record or, I suppose, a palimpsest on the notes underneath show the order in which they were written. Unfortunately for Sergeant Lewandowski and Detective Sergeant Don Hancock, the expert who did the ESDA indicated that the notes had been substantially rewritten. That caused some concern for Mr Lewandowski and Mr Hancock. However, they worried not. One of the good things about being a policeman is that if a policeman gets into trouble with his evidence he can always produce some more! *The West Australian* of Friday, 8 May 1998 reports -

“I was wrong: ex-CIB head”.

A former head of the police CIB changed his evidence in court yesterday - admitting that he got his events out of sequence in a 1982 interview with convicted Perth Mint gold swindler, Peter Mickelberg.

Donald Hancock, now retired from the police, apologised to the Court of Criminal Appeal for not paying sufficient attention to the details when he swore an affidavit for the court this year.

But Mr Hancock rejected a suggestion from Peter Mickelberg’s lawyer that he changed his evidence only to bring it into line with expert document examiners who studied the 14 pages of handwritten notes.

An expert said that he could prove that the evidence was wrong, so the detectives had adjusted it to bring it into line with the expert document examiners. What a suggestion! To continue -

He said he realised at the weekend that he had got things wrong -

That was 16 years after the event.

and told lawyers from the Director of Public Prosecutions on Tuesday afternoon.

Is that not nice?

Further on the article reads -

This week, Robert Radley from Reading in England, testified that impressions from page 14 were on the rewritten page two. One page had been on top of the other at a particular angle.

Mr Radley said that, after what was said to have been a break to read the document, it would have been an enormous coincidence for page two to have been put under page 14 again at exactly the same angle before the interview continued. Yesterday, Mr Hancock testified that a 20-minute break - when Mr Lewandowski rewrote some pages and the notes were read to Peter Mickelberg - occurred later.

Mr Hancock said he did not ask Mr Lewandowski why he was rewriting the pages but as soon as Mr Lewandowski finished, the document was read to Peter Mickelberg. He never checked the rewritten pages and did not know what happened to the originals.

Is that not nice. Peter Mickelberg has always said that no notes were taken. Now Mr Lewandowski has confessed that he concocted them later.

However, in 1998 they had another story. An article in *The West Australian* of 7 May reads -

An expert document examiner suggested yesterday that there had been a wholesale refabrication of a police interview

The article indicates further on that there were no impressions from page 1 on page 2, no impressions from page 2 on page 3 and no impressions from page 3 on page 4. Page 4 contained many impressions from a different page 3 and some from different pages 1 and 2. Impressions from page 14 were found on page 2. Page 14 was in different ink and produced at a different time from the other pages. Pages 2 and 3 were written on a different surface.

Mr Lewandowski’s reason for rewriting them at that stage was that the handwriting was illegible. Mr Richard Radley of Reading said that that was nonsense; there was no difference in the legibility of writing on those pages from that on all the others. At that stage the situation for Lewandowski and Hancock was not looking too good. It seemed possible that they might not convince the Supreme Court that they were telling the truth. It looked suspicious. No mention had been made of the rewriting. Expert evidence indicated that there was rewriting and a different story was given to explain it. It sounded a little bit false.

Hon Derrick Tomlinson: Especially when you know that the so-called allegation that they had read the confession to Peter Mickelberg did not match his record.

Hon PETER FOSS: That is interesting. They knew that, and we also now know that they knew that Mickelberg was correct and that they had lied. This is the difference. They did not know what view the court would form, but they did know the truth. We know that Lewandowski knew that Mickelberg did not do that and he knew that

he needed to fabricate more evidence. It is easy to see things in hindsight with 20-20 vision. What was in the minds of those two crooked detectives in 1998 when they were caught out, and had to fabricate some evidence, but did not know what the Court of Criminal Appeal would do? In that situation one brings in the cavalry; and the cavalry came, magnificent in uniform, silver braid and probably gloves - I do not know about the gloves, that is a little elaboration on my part - in the form of an impressive character no less than the Assistant Commissioner of Police. He gave evidence. Sergeant Bob had been examined by police internal investigations in 1985 and had made a statement because allegations had been made by Peter Mickelberg that he had been stripped naked and beaten and that the confession had been fabricated. We now know that there is a high probability that those allegations are correct. He had been questioned about it, because he was the officer in charge, but at that stage he very kindly corroborated the fact that he had been in and he had seen them. I say that because I have derived it from the documents; I have not actually seen that statement because the documents have not been given to us. I am waiting to get them; there may be another interesting instalment, but that is what I understand it is all about.

Hon Derrick Tomlinson interjected.

Hon PETER FOSS: Yes, his original statement was that he went away. The interesting part is that he said he entered the room three times during the interview. This is all put up in an affidavit which is tendered as evidence in chief. It is marvellous; it is really fine detail. He was not a light witness; he was a very strong witness. He gave evidence the first time about making notes, the second time about making notes and reading them back, and the third time they were read back - marvellous detail! Interestingly, I am reminded of Pooh-Bah. Those who are Gilbert and Sullivan fans will recall the situation in which residents of the town of Titipu are in trouble with the Mikado because they had not executed somebody, so they agree to say that they have. When the Mikado turns up, they supply in great detail how this criminal was executed, and Pooh-Bah provides wonderful detail and says that after the head was cut off it had bowed to him three times in deference. They then find out that the person they supposedly executed was the Mikado's son. They thought it was a bit difficult to explain to the Mikado how they had executed his son, but then not be executed themselves because they executed his son. There is a bit of recrimination between the three who gave these wonderful descriptions, but the one I think suits Sergeant Bob is this -

Ko. Well, a nice mess you've got us into, with your nodding head and the deference due to a man of pedigree!

This is the answer which I think aptly tells what happens -

Pooh. Merely corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative.

Is that not exactly what happened in 1998? Pooh-Bah strode into the court and gave corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative.

Hon Derrick Tomlinson: In other words, a lie.

Hon PETER FOSS: I have not said that; that will be determined elsewhere. But it worked! For that reason and for other reasons the appeal was dismissed. One of the things we should understand about this is that there were many other reasons the Mickelbergs could be convicted, which the court in fact upheld, but at the time of the appeal, Lewandowski and Hancock did not know that was what the court would do. They were very concerned about their supposed confession being undermined and removed. They were not to know what the court would say, but they did know it would be handy to have the assistant commissioner give evidence. As I said, I did not know that Assistant Commissioner Kucera gave evidence. I have checked the papers and cannot find any reference to the fact that he did, which is strange. All the other witnesses seem to be mentioned in the papers, but he is not. I do not think there is anything sinister about that; I just mention it, because I did not know. I have checked with my staff and they did not know; I have checked with the Minister for Police at the time and he did not know; I have checked with a later Minister for Police and he did not know. I just wanted to get a bit of an idea about what the public knew about this. I do not know whether Mr McGinty knew more, whether he was aware that Assistant Commissioner Kucera - or if I can call him Sergeant Bob Kucera, because that was his relevant title - gave evidence, but we do know that he knew after Thursday night, on 6 June, when he was briefed by the Solicitor General. That is when the Attorney General went into a frenzy. He met with the Minister for Health and said, "Have these documents." He said in the other House, "I spent the whole weekend reading transcripts; I have familiarised myself with the layout of the Belmont CIB station", and at the same time the Attorney General and the Premier keep standing up in the other House saying that there was no mention in Lewandowski's affidavit of the Minister for Health. They parroted it all the way through. Obviously, what would be said had been agreed. They kept hammering the point, "He is not mentioned; he is not involved". However, he was. He was involved because his evidence corroborated that of the crooked detectives and was inconsistent with the new version, and was inconsistent with the consistent version that Peter Mickelberg gave at the 1983 trial. It must follow that the now Minister for Health will have to be questioned about that; he cannot

get away from it. Blind Freddy, without the benefit of a briefing from the Solicitor General, could see that. The Solicitor General could see that. They tried to tell me they were not advised by the Solicitor General that Kucera was involved. Rubbish! What sort of a lawyer do they think the Solicitor General is? What sort of dumbcluck do they think I am to believe it? Nobody with half a brain would have missed the point: Hang on, did Bob not give some evidence that was going to be undermined by this; will he not have to give an explanation? He may give an explanation. I can see the explanation already, because I can see Lewandowski now saying, "Well, we did take some notes, and he could have come in." That was not what he said in 1983; that is inconsistent with what he said in 1983. I am not surprised that Mr Lewandowski is making it up as he goes along. He appears to have always made it up as he went along. The concern is that Sergeant Bob did too. If this is a valuable document for use for inquiry by the royal commission, give me the name of one person in the whole world - only one name - to whom that affidavit should not have been given. There is only one person who under no circumstances should have been given that affidavit, and that was the first person to be given it. There is no doubt in my mind that the Minister for Health should have been examined about his evidence in 1998 without the benefit of the knowledge that what he had said had been undermined by Lewandowski. However, he was given the affidavit and all supporting documentation including his previous evidence in the Court of Criminal Appeal, his previous affidavit, his previous statement and I understand - I have not yet seen it - other transcripts of evidence from the appeal in the 1983 trial. Why? We did get an explanation in the first instance from the Attorney General - I think one that he now regrets - on radio. He said he gave the Minister for Health the documents so that he could prepare his version of the events and tell the truth! Little did the Attorney know how truly he had described these events and how truly he had described his acts. He did it - he said this too - because he was a colleague. He said he did it to allow him to prepare his version of the events. He did it - if I may substitute my words - to allow him to prepare some corroborative detail intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative.

Here we have a document that was given, as I understand it, in confidence to the Director of Public Prosecutions. As we know, the DPP has an independent prosecutorial function. The Director of Public Prosecutions obviously regarded this as so important that he hand-carried the file to the Solicitor General. The Solicitor General on Thursday night briefed the Attorney General. So far, one would think that we are dealing with people who have a clear idea of their duties as independent prosecuting officers. When I was Attorney General, on more than one occasion I received confidentially - I do not think they were confidential; in fact, people wanted me to publicise them - documents that would have been evidence of police corruption. I handed those documents immediately to the Anti-Corruption Commission and the police, intending that the people be examined on the matters raised in those documents without being aware of what was in the hands of the examiners. I did not tell any of my colleagues in Cabinet. The reason I did not tell them is that I did not think it appropriate that matters of that confidential nature be bandied around. As Attorney General, in matters relating to prosecution, one has not only the right but also the duty to remain independent of Cabinet. Politically, I am sure my colleagues in Cabinet would have liked to know that some sort of bombshell was coming out about police corruption. I am sure the then Minister for Police would have loved to know, just to have advance notice. However, I did not tell him, because I did not believe it was within my capacity, professional duty and ministerial oath. A minister swears an oath to administer his or her portfolio without fear or favour and not to use it for his or her own advantage.

However, the mind of this minister, who calls himself the Attorney General, flew instantly to looking after Bob. That is a breach of his duty. It is a disgraceful departure from ministerial standards. It certainly does not match what that hypocrite of a Premier says he demands of his ministry. The Premier now knows the situation. Why does he not dismiss this man? He now knows that Pooh-Bah gave evidence that will be questioned. Why does he not set him aside? I am not saying Bob Kucera will be found guilty, but with a bit of luck he will now get off! In some ways I am sorry for former Sergeant Kucera, because now the world will never know whether the story that he will tell before the royal commission and the Court of Criminal Appeal is fabricated, based on the ample notice that has been given to him by the first law officer, or is the truth. We will never know. If he gets off, rather than get off on the merits, people will say, "Well, he would not have got off if they had been able to spring it on him". There will always be a sneaking suspicion that the reason he got off is that he was given ample time to prepare and get all the corroborative detail. I am a bit sorry for Mr Kucera. Whether I remain sorry will depend on how the evidence comes out in the royal commission and the Court of Criminal Appeal. At the moment, giving him the benefit of the doubt, I am sorry for him. If he gets off, his name will never be cleared, because no-one will ever know why he got off.

I went to the other place and watched the smirking of the Attorney General as he told us about how he had spent his time reading the transcript and said, "Have you read the transcript? I have read the transcript. I have spent a lot of time reading the transcript. I know all about this", and as he stood up and tried to act in a very superior way about how he knows what it is all about and we do not. The difference between the Attorney General and me is that I know how to behave -

Several members interjected.

The PRESIDENT: Order! The parliamentary secretaries will come to order. I give them one warning now. We have followed this debate in silence, and if the two parliamentary secretaries want to interject, they will be leaving the Chamber the next time they do it.

Hon PETER FOSS: I give the Attorney General credit for diligently studying the transcript. He also had the benefit perhaps of being directed to the correct places by the Solicitor General. I asked the Attorney General in a question on notice whether the Solicitor General had advised him - because remember he made a big point of saying he had asked the Solicitor General, the Director of Public Prosecutions and the royal commission before he released the Lewandowski affidavit to the public - before he released that affidavit to the Minister for Health. I got a lovely answer. Keep in mind that throughout all this the Premier and the Attorney General have been making a big play about how they will tell all the story; we can ask them any question, and they will answer it. The record does not show that. As soon as I asked about that, the Attorney General said that discussions between him and the Solicitor General are legally privileged. They are. He was prepared to tell us about everything else that he had been told by the Solicitor General. When it suited him, he was fulsome in his description of his discussions with the Solicitor General. However, when it came to asking about what advice he had been given by the Solicitor General, suddenly it was privileged.

I then asked a question on notice about why one thing is privileged and the other is not. I asked the Attorney General for an assurance that he did not receive advice from the Solicitor General. That is when I received this really fascinating answer. I still intend to try to find out what happened. Having asked for an assurance, I received the answer that the Solicitor General had advised the Attorney General that Kucera was involved in the 1998 appeal. That is what I call an ambiguous answer. It does not actually address the point. When I got the written copy of that answer, it had on it the word "Yes", meaning "Yes, I can assure you I was not told." However, the word "Yes" had been crossed out, and the answer that I was given was written in the Attorney General's handwriting. That is curious, I thought. That may mean a couple of things. He has crossed out "Yes". Does that mean "No"? Does that mean "Yes, but he did tell me that he was involved in the 1998 appeal, but he did not tell me anything else"? We do not know. I asked about that yesterday, and I will follow up on it. What one really needs to know is whether the Attorney General is being a bit dodgy or evasive. We will find out, no doubt, in due course. The reality of the matter is that I believe it is clear from the record that he was told by the Solicitor General that Bob Kucera was to be examined, because his evidence had been called into doubt, and that is why he went straight to Bob Kucera to tell him all about it. I intend to keep going on this matter, because we still have a mystery.

I asked the Attorney General whether the answer means yes or no. The answer I was given yesterday was -

To the best of my knowledge I did not type or cross out the word "Yes."

The Attorney General did not type the word "Yes". I believe him. However, somebody crossed out the word "Yes". I would like to know who and why. I will keep asking the Attorney General until he is prepared to put on record whether or not he was advised by the Solicitor General. I do not know whether I will believe his answer, unless it is that he was told, but, for obvious reasons I want his answer on record.

I will refer to parts of the transcript, although I will not go into in great detail. I want to highlight a couple of aspects of which members should be aware. I refer to the type of information that might have been brought to the attention of the Attorney General over the weekend when he was studying the transcripts. I understand that he had the transcripts. I will read out some excerpts, because the impact they have on some people is quite interesting.

I refer to Mr Kucera's cross-examination at page 508 of the transcript. It should be borne in mind that in his affidavit, which was tendered in evidence, he stated that he went into the room three times. Mr McCusker had the opportunity to cross-examine Mr Kucera. Despite the unbelievable collaborative detail of what took place 16 years ago, it has become clear that Sergeant Bob is not good at remembering things. Where have we already heard the notion that people have scintillating, clear and defined memories when it comes to favourable events; however, on occasions when it does not suit them, they do not seem to have any recollection? Somehow, this rings a bell about a situation involving a former Labor Government and the royal commission into WA Inc, when ministers had a clear recollection of some events and no recollection of others. Mr McCusker asked -

Before you made that statement, which was converted into an affidavit, had you spoken to Detective Sergeant Lewandowski?

The obvious implication was that he had done a bit of fabricating. It continues -

No, not that I recall. In fact, I worked very little with Lewandowski during the time that I recall he was in the detectives.

You see, I just want to put this to you to see if this in any way alters your view of things,

That is what lawyers say when there is a slight inconsistency with some of the evidence; in other words, in lawyers' terms, the person is lying. However, lawyers are never so impolite as to start off that way. The evidence continues -

... Lewandowski said at the trial - and maybe you were told this and maybe you weren't. It's at page 942 of volume 4, line A. Mr Davies asked him at the trial:

Was he bought any lunch at any stage, Detective Sergeant Lewandowski?---Yes, he was.

At what stage was that?---That was after the interview had finished and after the notes had been read to him.

That is interesting, because we know that the notes were not read to him, but it was after the interview had finished and after the notes had been read. If that is the case, how did Mr Kucera manage to give evidence about seeing it three times, when he did not go into the room until afterwards? Believe it or not, Malcolm McCusker thought likewise and he asked -

If that's right, then you would have come in with the lunch after the notes had been read to him?--- I can only tell you what my recollection is, Mr McCusker.

What I am asking you is this; how strong is your recollection?---About as strong as anybody else's 16 years later.

16 years later?---Yes.

Is it possible that, given the difficulties of memory, particularly of things that are not recorded and not doubt you were a very busy police officer at that stage - would that be right?---Yes.

Given all those difficulties, is it possible that the sequence of events actually was that when you brought in the lunch the reading of the notes was not taking place, but it had been completed, as Lewandowski said at the trial?---My recollection is on both occasions I actually interrupted their interview.

Is it not funny how people can remember when it matters. Mr Kucera's recollection is as good as anybody else's 16 years after an event, except on this occasion. That document is the one the Attorney General had; maybe that is the reason he wanted to speak to Mr Kucera. Could it be that having read that document, the Attorney General realised that he would be asked the same question again and that people would want to know how Mr Kucera saw the notes in light of the fact that no notes were taken. I would have thought that that was a pretty obvious question, even to a mock lawyer such as the Attorney General, one who has never practised. If we were to read the transcript of evidence from Mr Kucera alone, we would know that he was challenged by McCusker and that he would be further challenged. As members are aware, the appeal was dismissed, for good reasons that were outlined by the Chief Justice. It is interesting to see how he was influenced. The Court of Criminal Appeal did not have to determine whether the detectives were lying - that is along the way. It had to determine whether evidence existed upon which the Mickelbergs could be convicted. I will now read evidence given by Peter Mickelberg at the trial, which states -

Hooft and Henley then took Peter to the unit in Rupert Street and thereafter to the Belmont CIB where he was put in a small room. Tovey was there and Peter asked him if he minded if he (Peter) went to sleep. Peter put his head on his arms and he dozed off on the desk. He was then grabbed around his throat by Lewandowski who pushed him into a large room where the interview took place. Peter was made to take all his clothes off and he was handcuffed while naked. He said Hancock punched him in the solar plexus two or three times. He was hit on the breastbone and he was chopped in the throat. Lewandowski then grabbed him by the hair and banged his head on the window sill. He had a small bruise on his hip where he landed after Lewandowski had thrown him. He said that he had no other bruises but was slapped innumerable times to the side of his face, 15, 20 times or more. He said that the only visible effect of the slaps was to redden his ear.

He said that Hancock asked him a number of questions and produced some photographs and asked him about them. He said that at no time did Lewandowski or Hancock take notes.

At no time did they take notes! It continues -

He said that there were threats from Lewandowski who said, "If you don't give us the gold, the toecutters will get definitely get you."

That is a nice little threat. I think I know who the toecutters were, because, given his record, Mr Hancock, was probably after the gold himself. Who knows, he might have found it. We shall never know, because, unfortunately he is dead. The only other person who should not have been given the affidavit is dead. The evidence continues -

He said that Lewandowski hit him a few more times with his open palm. In cross-examination he said that Hancock gave him a “few thumps” but he would not call it a beating.

In this passage he appears to be referring to the assaults by both Hancock and Lewandowski. He said that the punches left bruises on his breastbone. (This was not mentioned in examination in chief).

At about 1.00pm, Hancock told Lewandowski to dress Peter and take the handcuffs off him. He had been sitting naked with handcuffs on for two to three hours. He said he left at 6.00pm, and the interview lasted probably seven hours. Of this time he was actually interviewed for possibly two or three hours. He said that he was left sitting alone on a lot of occasions, “they just come in and come out.”

...

When the interview was over he was given a Hungry Jack’s hamburger and it was slapped out of his hand by Lewandowski. He was then taken back to the small room where he had been with Tovey. Kucera was there and he introduced himself to Peter. Peter told Kucera that he had been hit and Kucera said, “It’s got nothing to do with me” and “I can’t help you at all.” Peter was then taken by Round from Belmont back to police headquarters at Perth. As this occurred he said to Constable Cvijic that he had bruises on his chest and he undid his shirt and pointed to them.

Given that Lewandowski admits that that was true, that is chilling stuff. It was chilling enough to read when we had doubts about it, but it is extremely chilling to learn that it was true. Several pages in the judgment deal with the notes of interview, and the fact that they had been constructed. At page 25 reference is also made to the scientific evidence. I will not read it out, but it is important for anybody who is interested in this issue. I suggest that members read it; indeed, it can be found on the net. I urge Labor Party members to read it because they are being asked to support Mr Kucera, and I do not think they have been told the truth by the Attorney General - possibly not for the first time. They need to read the transcripts and ask serious questions, because this issue could cost them. It is like the Watergate scandal. What happened in 1998 might have disastrous personal effects for the Minister for Health, but not for the Government, unless it holds onto the minister when it should not, and unless it allows the Attorney General to support him in the way that he has. Members should think now; they do not have much time in which to act. If they hold on to him and he is examined on this issue and he goes down, members opposite will go down with him. It is worth keeping that in mind.

Extensive examination was conducted on that issue. The various accounts given by detectives were also the subject of some comment. Members have no idea how often the detectives changed their statements. It was extraordinary. They did it each time to match their stories to the evidence.

Hon Derrick Tomlinson: Which was changing.

Hon PETER FOSS: Yes. It was extraordinary. Surely the court was getting suspicious.

At page 40, the court states -

Lewandowski said that the first time he carefully considered the sequence of events “was only within the last week when I had discussions with Mr Hancock”. He explained that they had met at Hancock’s home. They wanted to get together “to go through the evidence, what had been given in the past, various transcripts, and discuss it”.

Does that not sound rather like what Hon Jim McGinty did with Hon Bob Kucera during the weekend?

I am running out of time and I doubt that I will get an extension given the circumstances. The court went on to state -

It did not appear to this Court that the testimony of Hancock and Lewandowski in regard to the sequence of events was obviously dishonest. There was nothing in their demeanour that suggested that they were giving false evidence.

They were good at giving evidence. The document continues -

Plainly, their evidence has altered each time Baxendale and Radley have uncovered information about the notes of interview. But this is not necessarily indicative of dishonesty.

We now know that it was. It continues -

So far as Lewandowski was concerned, we gained the impression that he did not have a particularly good grasp of the scientific issues involved.

It is hard to prepare evidence when one does not know what is coming next. The court further states -

This suggests that he would not easily have been able to tailor his evidence under cross-examination to suit the ESDA findings, and makes it easier to accept what he said as genuine recollection.

The Attorney General should be aware of those issues. Members should keep in mind that the Attorney General said he had no idea; he did not think that Hon Bob Kucera was involved. He said that he had read the transcript and Kucera was not mentioned in the Lewandowski evidence.

Page 52 of the judgment states -

Under cross-examination, **Kucera** said that he could recall the people being in his office at the time “because it was different. It was unusual”. By that he meant that it was unusual for his office to be used as an interview room. **Kucera** stated that his recollection was that on both occasions “I actually interrupted their interview”. He said that his recollection was that he entered his office in the first instance because he needed to get some papers.

Kucera said:

“On the first occasion I can recall that Hancock was talking and on the second occasion I can recall Lewandowski holding something up and speaking, and my impression was that he was reading notes back to the person Mickelberg.”

He said that he could not say what Lewandowski was reading to Peter but he was reading something to him.

Mr McCusker drew attention to testimony of Hancock at the trial to the effect that interrupting an interview is “something you don’t do in police circles”. He submitted that this convention casts doubt on **Kucera**’s testimony.

In other words, it cast doubt on the statement that Kucera had entered the room. If he had, he would not have seen anything. If he had not, he could not have given evidence about it. If he had not given evidence, the police might have been in trouble about whether they were telling the truth. The fact that they lied might have come out in 1998.

Do members think, when this case is heard again by the Court of Criminal Appeal, Mr McCusker, QC will miss that point? Do they think he will not suggest, as he did on a previous occasion, that Kucera was not in the room? Is there a weird, wild chance that he might ask? Of course he would ask! Blind Freddy would ask! Even Blind Jim McGinty would ask after having seen that page of the judgment. There is no way the question will not be asked of Hon Bob Kucera. It will be asked, and asked vigorously. Lewandowski will also be asked. They should have been asked without the opportunity to confer. It has become clear - even the Court of Criminal Appeal remarked on it - that they got together and discussed it, but the court would not allow that to be put to him in testimony.

The Court of Criminal Appeal said that Hon Bob Kucera was an impressive witness and that his evidence was critical. This man gave evidence in 1998 to support what has now been revealed as a total fabrication. Of course, these officers can come up with some nice little ad libs - they always can. I would not be surprised to find out that the police academy has a course entitled “How to adjust your evidence to keep up with changing circumstances”. That is what police officers did throughout the Mickelberg trial. Their trump card was to call in the assistant commissioner. It would have been even better had they been able to get the Commissioner of Police, but that was never going to happen.

Police Commissioner Matthews has criticised Hon Jim McGinty’s actions. He has said that the affidavit should have been given only to the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. Mr Matthews was dead right. He is the one man in this saga with integrity, who is prepared to speak out and who knows what to do. He told the Attorney General that he should not have done it, and he was correct.

Hon Bob Kucera was a critical witness. Obviously he would be challenged on his evidence. What did the Attorney General do? He handed Hon Bob Kucera every available document so that he could prepare his version of events and tell the truth and, to use the words of Pooh-Bah in the *Mikado*, to work out more “corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative”.

The Attorney General should resign from everything - not only his portfolio. He should leave this Parliament! He is a disgrace; he should go! The Minister for Health should be stood aside until we establish what he was doing in 1998. The terms of reference should be extended to allow the royal commission to inquire into every aspect of this issue. This involves corruption at the highest level. The Premier should give us an account of how far along the road he has travelled with this issue.

Hon DERRICK TOMLINSON: I seek leave for the member’s time to be extended.

Leave denied.

Debate adjourned, on motion by Hon Bruce Donaldson.