

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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**ATTORNEY GENERAL, DECISIONS ON MATTERS INVOLVING ALLEGATIONS OF CRIMINAL BEHAVIOUR BY CABINET MEMBERS**

*Motion*

The ACTING SPEAKER (Mr A.J. Dean): Before the member for Nedlands commences, obviously this will be a fairly vigorous debate, and I will not tolerate too much yahooing. I will not hesitate to call members to order.

*Point of Order*

Mr J.L. BRADSHAW: I have a point of order.

The ACTING SPEAKER: Is the member disputing my ruling?

Mr J.L. BRADSHAW: No. I would like some advice. The Acting Speaker indicated that it might be our side that does the yahooing.

The ACTING SPEAKER: I did not say that. There is no point of order.

*Debate Resumed*

**MS S.E. WALKER** (Nedlands) [4.00 pm]: I move -

That this House calls on the Premier to ensure that the Attorney General appoint some person to make decisions that would otherwise be made by him, being a person independent of government to deal with and make all decisions with relation to matters which directly or indirectly involve allegations of criminal behaviour by members of the Gallop Cabinet in view of -

- (a) the obvious perception that any member of Cabinet may be biased in favour of their cabinet colleague when making decisions;
- (b) the clear misuse by the Attorney General of a previous indirect allegation of evidence fabrication which involved the Minister for Health;
- (c) the clear attempt by the Attorney General to cover up his improper behaviour over the Lewandowski affidavit; and
- (d) the latest allegations relating to the Ripley case, the possibility that a now-senior member of the Labor Government could be one of the unnamed co-conspirators or at least would be embarrassed by any revelations.

It is clear that the Attorney General can no longer handle anything that involves any judgment about what is or is not corrupt. It is also clear from the conduct of government members in their handling of the Lewandowski matter that they are too afraid to speak up and be counted when it comes to the pursuit of justice and the conduct of their own political colleagues. They have closed ranks and have become caucused.

The public no longer finds this Government trustworthy. Support for my argument comes from the recent Westpoll. Some 406 people were chosen at random from the telephone book and 55 per cent of those were Labor people who believed that the Minister for Health should stand down, 59 per cent generally believed that the Minister for Health should stand down and 69 per cent believed that the Attorney General was wrong to discuss the contents of the affidavit with the Minister for Health. When during question time I raised these matters with the Attorney General, the backbenchers could see his reaction when he was under pressure about his conduct. It would be interesting to hear their reactions and what they think about how the Attorney General handled giving this affidavit to the Minister for Health. If I am correct, the people contacted in the Westpoll were not asked what they thought about the Attorney General handing over a full copy of the affidavit; they were asked only about the discussion of the contents. In my view, the Attorney General had no lawful authority or reasonable excuse to hand that affidavit to the Minister for Health. The Westpoll indicated that what was most disturbing for the Government was that the views were largely bipartisan. There is a general feeling in the public arena that the Attorney General has handled this matter very badly and that the Minister for Health should stand down. The Opposition's view is that the Attorney General should also stand down.

Dr G.I. Gallop interjected.

Ms S.E. WALKER: I am pleased that the Premier is in the House, because he has been totally involved in the cover-up of the tip-off to the Minister for Health.

Mr C.J. Barnett interjected.

Ms S.E. WALKER: That is right. There was a tip-off to the Minister for Health prior to the contents of that affidavit being made public. Interestingly, during the first week after that affidavit was brought to the public's

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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attention, not once did the Premier or the Attorney General mention to the public that the Minister for Health was sitting behind the scenes with a full copy of the Lewandowski affidavit. He was given a copy of that affidavit two full days before the Attorney General spoke to the Solicitor General and the Director of Public Prosecutions. In my view, the conduct of the Premier, the Minister for Police, the Attorney General and the Minister for Health shows the extent to which they are prepared to go when one of their mates is implicated in what is possibly the most serious example of perversion and corruption of the process of justice concerning the Mickelberg case. The issue here is the maintenance of the integrity of the legal process. The actions of Lewandowski and Hancock corrupted the process and that knowledge damaged the public confidence in our system.

How did the Premier of this State and the Attorney General act after they discovered these damaging revelations? It is imperative to look at how the Premier and the Attorney General - the head of the criminal justice system in Western Australia - acted. It is important that the head of the justice system display complete integrity, that he is virtuous, that he has no bias, that he is above board and that he exhibits no conflict. Not only was the Mickelberg trial corrupted, but also the whole of the appeal process that followed. I will look at the spin that this Government initially put on the handling of the role of the Minister for Health when it discovered how seriously he was implicated in this issue. I will look at how this Government reacted, what it said, what it did not say, and who said nothing when something should have been said.

I will commence with the press interview that the Attorney General gave on the afternoon of Monday, 10 June. I think it was reported in *The Australian* that he was full of glee - I cannot remember the adjective used - he was totally prepared and he thought this was absolutely fantastic, monumental and dynamite. And it was. As I said, not once during this first week, despite an extraordinary amount of detail being presented by the Government during question time, did the Premier or the Attorney General mention that the Minister for Health had been given a full copy of that affidavit. The next morning - on the Tuesday - on the John McNamara show, which was before question time, the Attorney General told everyone publicly about the contents of the affidavit and he was asked whether any other police officers were involved in this issue. He rambled a bit about the contents and he said he was not aware whether or not other police officers were directly or indirectly involved. That was a complete untruth. He knew that the Minister for Health was involved. On the Tuesday morning he knew that the Minister for Health was fully involved, because he had been briefed by the Solicitor General.

Let me pause here. I have not been told what happened at the Office of the Director of Public Prosecutions, but I worked there for 12 years and I can imagine the scenario. If we can believe the papers, we are told that Mr McCusker went into the Office of the DPP with the affidavit fully prepared - it would appear that that affidavit was not prepared at the Office of the DPP - and Lewandowski arrived shortly afterwards.

In 1988, at the time of the appeal, the lead counsel was Steve Pallaras, QC and the second junior was Joe Randazzo. Steve Pallaras, QC has left the DPP's office, but from my knowledge of what happens at the Office of the Director of Public Prosecutions, I am sure that if Joe Randazzo had been called in, the implications of the Lewandowski affidavit for the Mickelberg case would have been discussed in detail by the DPP and his officers. The first thing they would have thought about would have been the role of the then assistant commissioner, whom they had used as a crown witness in the 1998 appeal to support the evidence of Lewandowski and Hancock when it was at a critical point and was being undermined. That assistant commissioner is now a minister of the Crown. That would have been at the forefront of their minds. It is a large and complex file. If Mr Randazzo had been asked, he would have prepared a report for the DPP. The newspaper has reported the DPP as saying that he sent his secretary to the Solicitor General to give him the affidavit, and I will come back to that point. That would have happened at the DPP's office, and we know that because we have heard it by way of a long and tortuous process.

At this point I pause to say that in this place when members want to get the truth out of the Government they cannot cross-examine consistently. Question time is a brilliant forum, but it is a slow process to get the answers and to get the truth. When historians read in *Hansard* how the Opposition approached this issue, they will recognise that we were on the Government's tail from day one on this issue. I do not believe the Government expected that. At the beginning, when the Government decided how it would handle this, the Premier, the Attorney General and the Minister for Health swotted up on this issue. They referred to the Minister for Health as a peripheral player. They referred to the opposition attack as base political point scoring and twisted logic. That was said on 12 June in this House and is recorded at page 11325 of *Hansard*. On reflection, when we consider the Premier's response in question time, it is apparent that he was fully prepared. The Premier stated -

Some of my proudest moments since becoming Premier of this State have been sitting in a Cabinet with someone of the stature of the Minister for Health. I am proud to sit in a Cabinet with someone of that stature . . .

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The Premier said he was embarrassed on behalf of the people of Western Australia by the Leader of the Opposition's conduct in raising such an issue.

Members of this House did not know until 27 June that the Premier had been telephoned by the Minister for Health to reaffirm that he had not perjured himself in the Court of Criminal Appeal in 1998. The Premier had not told us that, but he knew. The Premier came into the Chamber on 12 June and when we asked the appropriate questions, he knew that the Minister for Health had a copy of that affidavit.

Mr C.J. Barnett: Member for Nedlands, it is interesting that during question time this week the Premier kept on asking rhetorically what the Minister for Health was accused of. Yet it seems from the member's comments that the Premier raised with the Minister for Health whether the minister had told the truth and whether he had perjured himself.

Ms S.E. WALKER: That is the reason I asked why the Minister for Health had to telephone the Premier in Sydney.

The Attorney General was fully prepared, and I will refer to what the Attorney General said in this House on Wednesday, 12 June.

Dr G.I. Gallop: He was totally open and transparent.

Ms S.E. WALKER: That did not come until the second week. We will get to the question of openness and accountability. We did not hear that phrase until week two.

I will tell members what the Attorney General said after he swotted up on this one. I asked the Attorney General about the role of the Minister for Health as a peripheral player. It is laughable now. The response of the Attorney General was -

One would have thought that if then Detective Sergeant Kucera was playing any sort of a role, he might have been mentioned in the trial in 1983 as having played a role. The truth of the matter - as we all know - is that then Detective Sergeant Kucera played - to say it was a peripheral role would be an overstatement; he played no role whatsoever. That is the truth of the matter and that is borne out by the evidence that was given in the trial in 1983.

I asked the Premier whether he had spoken to any backbenchers about this matter. His response was a classic defence case. The Attorney General knew when the Premier gave that answer that he had handed a copy of that affidavit to the Minister for Health. The Premier knew then. We then got a different approach, and I wondered whether the member for Innaloo had been called in. Did the member for Innaloo give them lessons on how to play down the role of the Minister for Health? We then got the classic defence line that it was a difference of recollection between two men.

Several members interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order!

*Withdrawal of Remark*

Ms S.E. WALKER: I just heard the Attorney General call the Leader of the Opposition a grubby individual and I think he should withdraw.

The ACTING SPEAKER: Does the Attorney General wish to speak? I am not ordering him to withdraw that remark. I am ordering him to cease interrupting.

*Point of Order*

Mr M.F. BOARD: Mr Acting Speaker, at the outset of this debate you made a statement to the House about the conduct of the members.

The ACTING SPEAKER: Yes, I did.

Mr M.F. BOARD: Is that the conduct that you, Mr Acting Speaker, will allow as a result of that determination?

The ACTING SPEAKER: There was a private conversation going on between the Leader of the Opposition and the Attorney General.

Mr P.G. Pandal: There are no private conversations in this place.

The ACTING SPEAKER: Member for South Perth, it was a private conversation between the Leader of the Opposition and the Attorney General.

Mr P.G. Pandal: Can you tell me where that is mentioned in the standing orders?

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pental; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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The ACTING SPEAKER: No. Is the member for South Perth contradicting me?

Mr P.G. Pental: No, I am not. I am saying you are wrong.

The ACTING SPEAKER: I am telling members what my senses perceived. There was a private conversation between the Attorney General and the Leader of the Opposition which I allowed to bubble along and I am asking them to cease that conversation.

*Debate Resumed*

Ms S.E. WALKER: On Wednesday, 12 June in this House the Premier, the Attorney General and the Minister for Health knew that the minister had received a full copy of the affidavit. He was given the affidavit because it implicated him as supporting Lewandowski's evidence, which Lewandowski now admits was perjury. That is why they gave the Minister for Health the affidavit. It is my proposition that this is all strategy. On 12 June, the Attorney General relied on the words of Mr Avon Lovell. The Attorney General is reported in *Hansard* at page 11331 as saying -

To put all of this in context, the one person in Western Australia who is arguably closer to the Mickelbergs than anyone else is Mr Avon Lovell. I will quote from today's transcript of the John McNamara program on ABC radio at 9.39 am when Mr Lovell said the following -

I find it very unfair to Bob Kucera. Bob's involvement, if any, was so peripheral as to be, you know, uninteresting. He was at Belmont when Hancock and Lewandowski turned up there. He said a few words about some other case, a bit about the men, then he went off. He came back about two-and-a-half hours later. He basically saw Peter there, he basically said can I go get you a hamburger and then he went out. Now that is the extent.

The whole ploy during this first week was to focus on making it appear that the role of the Minister for Health was peripheral. However, in the background the Solicitor General had been advised by the Director of Public Prosecutions of the implications for the Minister for Health if what was said in the Lewandowski affidavit was true.

During that first week the Premier called for advice from Professor Campbell Sharman. I feel sorry for Professor Campbell Sharman, because he would not have known that the Minister for Health had a copy of the full affidavit. He would not have known the role that the Minister for Health played in the 1998 appeal. On 12 June, when the Leader of the Opposition again asked the Premier to stand aside the Minister for Health, the Premier responded by saying, at page 11333 of *Hansard* -

I remind members of the facts of this matter. In all of the discussion about the so-called Mickelberg affair, from 1982 until this year, the name Bob Kucera has never been mentioned. There have never been any accusations about him. The Mickelbergs did not make any accusations about him in the courts when they spoke about corrupt police officers. The Lewandowski affidavit, which was the catalyst for this debate, contains no mention of the Minister for Health.

The Premier still did not come clean and tell this House and the people of Western Australia that he knew that the Attorney General, either with or without his advice - we do not know - had given the Minister for Health a copy of that affidavit. That is crucial, because it was a highly sensitive document.

The Attorney General had the bare-faced gall to speak on the John McNamara program on that Tuesday morning and tell the people of Western Australia that he did not know whether any police officers were involved directly or indirectly. That is something he will have to wear. By Thursday of that week, the Premier and the Attorney General must have realised that things were not going very well and they would not be able to get away with it. The Attorney General then started to attack the Lewandowski affidavit. He states at page 11400 -

However, there is a very big question about whether Mr Lewandowski was telling the truth.

He states also -

The affidavit from Mr Lewandowski did not mention Mr Kucera and did not indirectly implicate Mr Kucera.

If it did not indirectly implicate Mr Kucera, what did it do? Why did the Attorney General give that affidavit to the Minister for Health? Why did the Solicitor General bring that affidavit to the Attorney General's attention? Why did the Director of Public Prosecutions bring it to the Solicitor General's attention? Why did the Director of Public Prosecutions not send the affidavit to the Minister for Health?

Mr J.A. McGinty: Oh dear! You should go on stress leave again. You should go and defend murderers and forgers again.

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Ms S.E. WALKER: I have never defended murderers and forgers. I have always pursued the truth in the administration of justice. That is why I find the Attorney General's actions so difficult to handle. I believe in the pursuit of truth.

On the Thursday when things were starting to get a bit sticky, the Attorney General started to doubt the credibility of the Lewandowski affidavit. He states at page 11407 of *Hansard* -

We must now ask to what extent is his testimony credible, in which he states that he committed perjury and a number of other criminal offences. That must be done before we jump to the conclusion that what Mr Lewandowski says is 100 per cent honest, or, for that matter, what Mr Mickelberg has consistently said is 100 per cent honest. The royal commission into police corruption should look at these matters. It cannot be assumed that because somebody has come forward and said something - Mr Lewandowski was described in very unflattering terms on the radio this morning.

This is how this Government dealt with the Lewandowski affidavit during that first week. We were given a lot of detail about the first case and a lot of red herrings, but we were not told what the Attorney General did with that affidavit. The Premier did not say, "The Minister for Health phoned me in Sydney. I will be totally open and accountable when the Leader of the Opposition asks me to stand the Minister for Health aside."

Dr G.I. Gallop: I was open and accountable.

Ms S.E. WALKER: The Premier has been far from accountable on this issue.

Dr G.I. Gallop: Which questions have I not answered?

Ms S.E. WALKER: The Premier has dissembled with the truth in this place. The Premier hid from the public the fact that he had given a copy of the affidavit to the very person who is implicated by that affidavit.

By the end of the first week, the Premier and the Attorney General were fully primed and ready to bluff their way through. They had the arrogance to bluff the Parliament and the public and to pervert the administration of justice. However, by the Monday of the following week, suddenly a new position emerged. Suddenly the phrase "open and accountable" came out. Suddenly we were told that the affidavit had been given to the Minister for Health, and we were told that was in the public interest. We on this side of the House have never had a full or part copy of that affidavit, yet the very person who is implicated in that affidavit and to whom the Director of Public Prosecutions would never have given a copy of the affidavit was given a full copy of the affidavit. Why did the Attorney General give the Minister for Health a copy of the affidavit? It is because Bob Kucera is a colleague. The Attorney General is quoted in an article in *The West Australian* of 15 August as saying that he knew Mr Kucera would become a target once word of the affidavit got out. We keep hearing about leaks. However, according to the shadow Attorney General, it appears that the Press believed that it was the Minister for Health's office that had leaked the affidavit. That stands to reason, because the Minister for Health was the person who had a copy of the affidavit. We did not. The article goes on to quote the Attorney General as saying that he gave the Minister for Health the affidavit because -

"There was a predictability that there would be a political attack launched on the Minister for Health," . . . "I was aware that there would be criticism forthcoming".

He is also quoted as saying -

"I think the public interest is best served by being open and frank," . . . "In this particular matter, that was the view that I took right from the start."

That is not the view that he took from the start. The problem with the Attorney General is that he has a silver tongue. Because the Attorney General has always been in the Parliament and has never been associated with the judiciary and the integrity of the judicial system, he brings his political bent and wily ways to the administration of the office of Attorney General. That has been his total downfall in this matter.

The Attorney General is also quoted as saying - this is laughable - that he gave that very sensitive document, which was kept in a safe at the Office of the Director of Public Prosecutions, to the Minister for Health because -

"There was inevitably going to be a political attack on Mr Kucera . . . that would never have been made if he was not a member of Parliament or a member of Cabinet," . . .

He is also quoted as saying that if the affidavit had implicated an Opposition MP, he would have made it available to the Opposition. The Attorney General was saying that if he gets another affidavit across his desk that implicates an opposition member, he will get in touch with that member and give the member a copy of the affidavit before it gets to the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. I do not think so! In the second week we had a lot of cockiness

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and mockery from the Attorney General, which has flown back into his face. I do not believe that the Government thought we would get onto this issue as soon as we did.

Several members interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order!

Ms S.E. WALKER: Any historian looking back on this will see how the events have unfolded. The Government was sweating on this. The Minister for Health was given the affidavit, which was hidden from the public. He played down his role to that of a peripheral one. The Premier and the Attorney General concentrated on the first trial. Avon Lovell and Professor Campbell Sharman were pulled in and there was silence in the House from the Minister for Health. We have not heard from the Minister for Health on this, but I want to record in *Hansard* that, since I first raised this matter in the House, I have been eyeballed by the Minister for Health. I recall being eyeballed like that when I was in a court of law. He has also vacillated. The Minister for Health knows exactly what I am saying. If he thinks that he can intimidate me, he can think again.

Several members interjected.

Ms S.E. WALKER: The member for Joondalup should note that I am talking fact. On the first day, the Leader of the Opposition asked the Premier to stand the Minister for Health aside.

Mr J.N. Hyde: Did you write this script or did he?

The ACTING SPEAKER: Order, member for Perth!

Ms S.E. WALKER: I asked him on the same day to refer the issue to the royal commission. On 13 June the Opposition again asked the Premier to refer the matter to the royal commission, but nothing was done. The tip-off had been made, the cover-up was in place and everyone was caucused. It was a classic defence role. The administration of justice in this State was compromised and damaged as a result of giving the Minister for Health that affidavit. It prevented the royal commission from making a proper analysis of the evidence and it compromised its ability to pursue further evidence of police corruption in this State.

I want to look at what other law officers did with the affidavit. I have said that the affidavit was not typed at the Office of the Director of Public Prosecutions. It was complete when it arrived at the Office of the DPP. We keep hearing pompously from the Attorney General that he passed on the affidavit to people who he believed were interested. However, when I have asked him for letters to show how he did it, they have not been forthcoming. I will refer to what he said yesterday when I asked him about his position under section 83 of the Criminal Code. I still maintain that he should be looking at his conduct in relation to that section. He said that he made a copy of the affidavit available to all relevant authorities, including the Mickelbergs. I will paraphrase what he said. He said that if it was wrong for him to make a copy available to the Minister for Health, it was equally wrong for him to give a copy to the Mickelbergs so that they could prepare themselves for their public position and their appeal to the Court of Criminal Appeal. However, he did not give a copy to the Mickelbergs. I have a letter dated 10 June 2002 from the Director of Public Prosecutions to Raymond Mickelberg care of Mr Malcolm McCusker, QC. The Director of Public Prosecutions sent the affidavit to the Mickelbergs. The letter reads -

Dear Sir,

On 6 June I received the attached affidavit from Mr Anthony Lewandowski in circumstances under which I undertook to him that I would not use the statement in any prosecution of him. He has sought an indemnity from me and I have referred the affidavit to the police and requested that they provide me with advice concerning the veracity of the statements set out in it and the extent, if any, to which it implicates other police officers or other criminal activity. I expect the police to advise me of these matters in due course.

In the meantime, the affidavit may have implications for your conviction arising from the offences generally described as arising out of the 1982 Mint Swindle. The circumstances by which I obtained the affidavit and the issue of whether I do or do not indemnify Mr Lewandowski do not restrict any use you may make of it. Accordingly, I provide a copy of the affidavit to you, so you may seek advice as to its implications to your conviction.

Should it be required in any proceedings, I advise that I retain the original in my Office.

The Attorney General did not send a copy of the affidavit to the Mickelbergs. Of course, the Director of Public Prosecutions would not in a fit send a copy of the affidavit to the Minister for Health. Therefore, when the Attorney General asks in justification why would he not make a copy available to the Minister for Health when

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he would make one available to the Mickelbergs, it is an absolute nonsense. It is dissembling to people in this Assembly. In my view, the reason the Director of Public Prosecutions did not send a copy to the Minister for Health is that the minister was directly implicated in possible criminal behaviour. The Attorney General is turning red, and he should go red - he should go bright red; in fact, I am surprised he has not exploded. It was his choice to give that affidavit to the Minister for Health. The Director of Public Prosecutions sent it to the Mickelbergs, and the reasons that he did not send it to the Minister for Health are obvious.

When the Attorney General gave that affidavit to the Minister for Health he crossed the line. One can imagine what was going through his head when he received a copy of that affidavit. I will come back to that. I want to talk for a moment about the sensitivity of that document, what the Director of Public Prosecutions did with it and how he handled the issue. A *Sunday Times* article dated 16 June this year has the title "Author says hard work was key, not inducement". According to the article, Avon Lovell said -

It was the most secret document in WA from that time that (Director of Public Prosecutions) Robert Cock was given it. Mr Cock had the original on Thursday morning and I have a great deal of respect for him.

According to Mr Lovell, the affidavit was already completed when it was given to Mr Cock by Mr McCusker on Thursday morning. Mr Lewandowski went to Mr Cock's office accompanied by a solicitor five minutes after Mr McCusker. It was then that Mr Cock read the affidavit and drafted the undertaking. The article reads -

Mr Cock said he put the original copy in his safe, a copy went to one of his prosecutors, one was hand delivered to Police Commissioner Barry Matthews on Friday night . . .

It was so sensitive and so explosive that the Director of Public Prosecutions hand delivered it to the Commissioner of Police, another copy went to the Anti-Corruption Commission, and a final copy was taken by his secretary to the Solicitor General.

What did the Commissioner of Police say about this man who is the Attorney General in this State - this dodgy political salesman who has no legal nous? The article on the front page of *The West Australian* of 21 June reads -

Mr Matthews was given a copy of Lewandowski's affidavit on June 6, but left to holiday in New Zealand hours later expecting the contents to remain secret.

When Mr Matthews realised that the Attorney General had given a possible suspect a copy of the affidavit, he said, "I was just stunned."

*Withdrawal of Remark*

Mr E.S. RIPPER: I believe that the member for Nedlands has referred to another member of this House as a suspect. I do not believe it is parliamentary to refer to a member as a suspect, presumably in a crime, in that way. I ask that you ask the member to withdraw, Mr Acting Speaker.

Mr R.F. JOHNSON: Many unpleasant things are said from one side of the Chamber to the other in this place and they are particularly hurtful when they come from your way, Mr Acting Speaker (Mr A.J. Dean). I heard the member for Nedlands say that in the whole context of things he was a possible suspect.

Several members interjected.

The ACTING SPEAKER: There is a dilemma in that Standing Order No 92 relates to the substantive motion and therefore the latitude given in the debate to the content of the substantive motion allows certain things to be said. However, it does not allow the member for Nedlands to call a member on the other side a suspect. I ask the member for Nedlands to withdraw that and to be aware of Standing Order No 92. She has certainly bent the standing order and I ask her not to break it.

Ms S.E. WALKER: Thank you, Mr Acting Speaker. If I said "suspect", I withdraw that; I meant possible suspect.

Mr J.A. McGinty: You said it.

Ms S.E. WALKER: I did and I withdraw it but that is what I meant. That is why Mr Matthews was stunned.

*Debate Resumed*

Ms S.E. WALKER: The newspaper article continues -

"I got a ring in New Zealand on the Tuesday to say that the Attorney-General had released the thrust of the contents of the affidavit to the media."

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The top cop yesterday questioned Mr McGinty's motive for going public.

Do we not question his motive on this side of the House? Mr Matthews continued -

"I am very concerned about why it was done," he said. "I think it should be left to the royal commission. I didn't tell anybody in my organisation apart from Bruce Brennan. I didn't provide copies to anybody else because it was the role of the royal commission."

I refer again to the motion, which reads -

- (a) the obvious perception that any member of Cabinet may be biased in favour of their Cabinet colleague when making decisions;

The Commissioner of Police said he rang the police minister. The article continues -

He said he had complained to Police Minister Michelle Roberts over Mr McGinty's actions.

But Mrs Roberts refused to be drawn into the argument. She said the State Government had decided to release the information but Mr Matthews was entitled to his own view.

Mr McGinty said Mr Matthews was kidding himself if he thought the damning affidavit would remain secret.

That is because the Attorney General realised that the affidavit may not remain secret and he had given it to the Minister for Health.

Mr J.A. McGinty: You were out talking to the Press about it before it was released. You are a hypocrite!

*Withdrawal of Remark*

Mr P.G. PENDAL: Mr Acting Speaker, do you regard the remark that the Attorney General made as a private comment across the Chamber?

The ACTING SPEAKER: No.

Mr P.G. PENDAL: If not, I ask that you apply the rules and ask that it be withdrawn.

Mr J.A. MCGINTY: I withdraw.

*Debate Resumed*

Ms S.E. WALKER: We can see therefore that not only the Opposition, but also the people surveyed by Westpoll and the Commissioner of Police, are staggered at the conduct of the Attorney General and the Premier. I would bet my bottom dollar that Robert Cock would be too. Why did he not send a copy of the affidavit to the Minister for Health?

What was going through the Attorney General's mind when he got that affidavit? If he had any idea of how to exercise his judgment or of the level of integrity, virtuousness, lack of bias and lack of conflict that is required, he would have given that file and affidavit to the Solicitor General and the affidavit would have stayed with the Solicitor General. The Attorney General criticised the former Attorney General for raising the family connection between him and the Minister for Health. If as a Crown Prosecutor a file had come across my desk that involved a family member, I would have taken it right away to the director's office and said, "I am sorry; I have a bias or a conflict here." The Attorney General blames the Opposition for raising that conflict of interest. He brought that on himself as that was his choice. It was entirely relevant and appropriate for the shadow Attorney General to raise that conflict of interest. The Attorney General put his family in the spotlight by his conduct. It is his shame and he should wear it. The Attorney General has arrived at the position he is in today because he chose to handle the matter in a particular way and he must wear it. With the appalling gall and front that the Attorney General had in the first week that this issue was raised, he felt that he could bluff his way through it with the Minister for Health.

Before I turn to the question of the Ripley matter, I will refer to the definition of corruption in section 83 of the Criminal Code. The term "corrupt" is often linked with the word "bribery". It signifies impairment of integrity, lack of virtue or departure from what is correct. When I look at the actions of this Government, I can see how quickly it acted when a matter relating to the Lewandowski affidavit involved a government member, but how tardy it was when it was approached by a former member of the Labor Party about the conduct of the Minister for Health 30 years ago in another matter. How can the public have confidence that its voice for justice will be heard? I raise the example of two people who contacted me who were involved in a criminal offence and who are trying to get from this Government - but have had no response - a pardon for a person who they say was



**Extract from Hansard**

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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wrongly convicted. I will raise the facts of the matter. The case involved the now Minister for Health. I do not make any comment on what he did; I merely bring to this Parliament an issue brought to me by two people which has not been heard by the Premier.

I refer to the facts of a highly sensational case which involved the making of a homemade bomb by a young man called Rupert Gerritsen. He placed the bomb on the third floor of the Victoria Centre in St Georges Terrace on 23 August 1972. The building was occupied at the time by the then Department of Labour and National Service. The bomb was set to go off at 2.40 am and was placed there by Gerritsen earlier in the evening when he thought everyone had gone home. When the bomb did not go off, a phone call was made to police stating that a bomb had been planted. That caller was not Rupert Gerritsen. I was told by an Albany man who has just come forward, Mike Payne, that he made that phone call and that he was involved in that offence. He said that he did not know that the bomb had been found by a caretaker in the building and had been dismantled. That case was viewed seriously then, as it should have been, and as it would be now. The intention was to blow up the files of the department to hinder the drafting of young men into service in Vietnam. Two men have done time on this matter - Rupert Gerritsen, who was 19 at the time, and Julian Ripley. Rupert Gerritsen pleaded guilty to that offence. Julian Ripley went to trial and has always declared his innocence, as far as I know. Rupert Gerritsen, who has been in contact with me, was on the run from bail when Ripley was undergoing trial on 29 March 1973. Gerritsen was extradited from New Zealand on 23 July 1973 and pleaded guilty. He was not around when Julian Ripley was the subject of a trial. Both men had been picked up in Melbourne by detectives from WA a few weeks after the incident. One of those detectives was the Minister for Health, who was then Detective Sergeant Kucera. At the time Gerritsen and Ripley were members of the Australian Labor Party branch of the University of Western Australia, as were the Attorney General, Kim Beazley, and the Treasurer Eric Ripper. Those men provided character references for Mr Rupert Gerritsen, who has asked me to raise this in the Parliament because he cannot get the Government to act. Ripley maintained that he was innocent. Newspaper reports tell of a campaign that included posters on the wall of the Swan Brewery proclaiming, "Ripley innocent, Kucera lied" or words to that effect. In 1973, Ripley was sentenced in the District Court after his trial. It was a sensational case for Western Australia. He was sentenced by Judge Jackson to a term of imprisonment of five years, with no parole for 12 months. He was charged by then Detective Robert Charles Kucera, originally with a conspiracy offence but ultimately with an offence of wilfully and unlawfully putting an explosive substance, namely a mixture of ammonium nitrate and fuel oil, in a certain place - Victoria Centre - with intent to damage property. He was also charged at Leederville on 23 August with wilfully and unlawfully doing a certain act - constructing an explosive device by the mixing of ammonium nitrate and fuel oil - with intent to cause an explosion in Western Australia of a nature likely to cause serious injury. He pleaded not guilty. The circumstances in which he was convicted would not apply today, mainly because processes have moved on. We now have video recordings of interviews. Video records of interviews were introduced because of the isolation in which people in police stations found themselves. Ripley was convicted on admissions alleged to have been made by him to then Detective Kucera. Hugh McLernon was the counsel for the Crown, and he had this to say before the trial -

It is obvious at once that the major part of the Crown case against Ripley is the statement alleged to have been made by him and the Crown therefore has the task of establishing the credibility of that statement before the jury . . .

That statement was taken by Detective Kucera in the Russell Street headquarters. Prior to Ripley giving evidence-in-chief during his trial, Detective Kucera read to the court an unsigned record of interview with Ripley, said to have been made, and taken by him, at the Russell Street headquarters on 15 September 1972. After the alleged record of interview was finished, then Detective Kucera left the room for coffee, and a Detective Markham stepped in for 10 minutes. Detective Kucera then returned to the room and handed Ripley the record of interview. Ripley wrote at the bottom of that record of interview words to the effect that it was a true and correct record, but he refused to sign it. In his evidence, Ripley told how that record of interview came about. The Crown accepted during the trial that Ripley did not place the bomb in the building. None of the fingerprints on the bomb belonged to Ripley. The Crown accepted that there was never any intention to harm anyone. In his evidence-in-chief, Ripley talked about the making of the record of interview, the phone call that was alleged to have been made, and who he believed had made it. I refer to page 179 of the transcript -

Who accompanied you to the headquarters?---Kucera and a Victorian police officer.

Were you in the car together?---Yes.

. . .

Before we get to the record of interview, first of all what did he -

That is, Detective Sergeant Kucera -

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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do when you first got in about these notes?---Well, he just sat down and got a typewriter. He had to get a second one because the first one didn't work and said "We are going to have an interview and I am going to keep a record of that interview." He then proceeded to type out a record of interview.

Peter Dowding was representing Ripley, and he asked -

How did the interview proceed?---He would ask a question typing it while he asked it, wait for a response and if I did not make an answer, he would write in one himself.

Dowding asked Ripley to look at the record of interview and asked -

Have you seen that record of interview before?---Yes, this is what he typed out at that time.

Just looking at it first of all, perhaps we can go through it. First of all he has typed down there a question: "You know your, rights, Julian. You don't have to say anything unless you want to but anything I do say will be taken down in writing." Did he say that to you?---Yes, he typed that out saying it while he typed it.

How did you know he was typing that out?---Well, he said whatever he was typing as he was typing.

Did you respond?---No, I did not.

What did he type down?---"Yes."

And did he tell you what he was typing down for the answers?---Yes.

What about the next question: "Who made the bomb?"---He asked the question.

What was the response from you?---I didn't make a response.

What did he put down?---"Rupert and myself.

I have received fresh evidence that I believe the Premier should consider. It relates to what was said in that interview between Detective Kucera and Ripley. It was alleged that someone other than Ripley made the phone call. Gerritsen and Mike Payne say that Ripley could never have known who made the phone call because he was asleep and not involved.

A member interjected.

Ms S.E. WALKER: No, it is not. The member is mocking this. I do not have time. I have only nine minutes remaining, but I am happy to debate this another time. I am presenting that new evidence to this Parliament. I have a statement from Michael John Payne of Albany. He rang my office about a month or so ago and told me that he thought I should be given evidence about this matter that had been troubling him for a while. I asked him to see a lawyer. He said that he would speak to his family about it and get back to me. He has sent me a signed statement, which I am happy to tender. Rupert Gerritsen tells me that he has been trying to raise this. I have asked the Premier in this House to look into this matter and refer it to the appropriate authorities. Part of the statement by Michael Payne states -

On Wednesday 23 August 1972 Rupert Gerritsen planted his bomb in the Department of Labour and National Service. That night there was a party. I think it was held somewhere in Leederville. I was told that we would definitely be able to hear the explosion . . . from this location.

During the party I believe that I remember that Julian said he had to go to bed early as he had to get up for work the next morning. The time fixed for the explosion passed and it became apparent that the bomb had not gone off. I remember saying that someone would have to ring the authorities to give warning in case the device was in an unstable condition and therefore liable to go off when the office was open for business. I had to walk home so I offered to ring the police and my offer was accepted.

This is the statement of a grown man living in Albany. He says that he made that phone call. The statement continues -

I suggested that I claim the action for Unit C 10 of the Peoples Liberation Army or some such name. There was of course no group but Unit C 10 had been claimed for actions in the past.

. . .

I remember making the telephone call. I made it from a public telephone box. There was a certain amount of adrenalin involved as I thought that telephone calls could be traced quite easily. Although I cannot remember the exact words I did mention Unit C 10. Briefly I told them of the situation.

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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This man has come forward.

I raise another issue. I have received correspondence from Rupert Gerritsen, which I am happy to table so that the Premier can send it to the appropriate authorities. He used to be the Premier's neighbour. I put on record that Mr Gerritsen has told me that the members on the other side of the House are his friends and that he has tried to tell them that an innocent man was convicted, but they have done nothing about it. That is why I raise this, and why I think that matters relating to the responsibility of the Attorney General for certain actions should be given to the Solicitor General or another such person. I will not go into Rupert Gerritsen's comments because I do not have time; however, the statement he gave me states that Ripley was not involved in the incident and did not leave any fingerprints. Gerritsen was the only person who left fingerprints on the bomb, and he said that was because he believed that the bomb would go off.

A compelling document landed on my desk. It is a matter of public record. It is an oral history from the Battye Library of Western Australia. In 1992 Rupert Gerritsen sat down with people from the library, not knowing who would be the Minister for Health today. They wanted to find out how a person reacted when he went to Fremantle Prison. This powerful document was created in January 1992 and I want to read some of what was said. The question was asked -

What was it then that led you into the actions that finally led to you going to gaol?

Gerritsen replied -

It was a bit more complicated than that because the other guy who'd been arrested with me (a Canadian guy named Julian Ripley) in actual fact had nothing to do with the whole bombing thing, and they contrived to basically frame him up. When they were in Russell Street they threatened to throw him out of the fourth storey window unless he signed a statement which they prepared for him and that sort of stuff, and told him to do certain things on it.

I could advance my argument with a lot of this material but I do not have time. I have lost a lot of respect for the Premier - I do not know whether I will regain it - because of the way he has conducted himself about the tip-off and cover-up. He now has the opportunity to redeem himself and come out and be totally frank. The Premier's ratings have previously soared, but they have come down. The public's estimation of the Premier and the Attorney General over this issue has come down.

Mr J.N. Hyde interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order, member for Perth!

Ms S.E. WALKER: I have been contacted by these two men. One is a family man who is prepared to put his name up front and in Parliament. He knows the Premier, the Attorney General and the Minister for Health - Rupert Gerritsen tells me he has had words with him about his conduct. I do not have time to go into that matter. Members of this Government are not students; they are now in Government in the real world. They are expected to behave with integrity and to protect the interests of justice in this State. We on this side of the House do not see that forthcoming. I commend this motion to the House.

**DR G.I. GALLOP** (Victoria Park - Premier) [5.02 pm]: The fact that a member of the Liberal Party has moved this motion is an indication of where the party is at politically. This motion is an indication of the leadership its members are getting from the member for Cottesloe. We have discussed the Lewandowski affidavit on many occasions. Questions that have been asked of government ministers have been answered fully and properly, and the Liberal Party is still going on about the matter.

I wish to put this proposition to the Parliament today: this is a cynical exercise by the Liberal Party to smear the character of one of its political opponents.

Mr P.D. Omodei interjected.

Dr G.I. GALLOP: The member should listen.

The ACTING SPEAKER: Order!

Dr G.I. GALLOP: I will show this Parliament by way of argument how that is the case. I will start with the facts. The first fact is that former detective Mr Lewandowski presented an affidavit to the Attorney General saying that -

Mr P.D. Omodei: Who is lying?

Dr G.I. GALLOP: Mr Acting Speaker, what sort of an interjection is that?

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Lewandowski has presented an affidavit saying that he and former detective Don Hancock conspired to have the Mickelbergs stitched up. In effect, that is what he says in his affidavit. Secondly, we know that the now Minister for Health gave evidence to the Court of Criminal Appeal and it was used in the defence of Lewandowski and Hancock. That is the way it transpired in the court. What has happened? This has provided a wonderful political opportunity for members of the Liberal Party to smear one of their political enemies. Sometimes the temptation is so great that it overwhelms the political or ethical judgment of those involved and they cannot resist. In this case members of the Liberal Party could not resist. I suspect there are differences of opinion about this matter within the Liberal Party. I suspect there are some within the Liberal Party who are uncomfortable with this smear campaign against the Minister for Health, but they could not resist the temptation. I know that some members opposite are concerned about the way in which a former distinguished police officer has been subjected to this smear campaign, but in the upper House they have someone who is out of control, who is not subject to any discipline for his actions - that is, the shadow Attorney General - and this Leader of the Opposition does not have the ability to discipline him. Whatever members of the Liberal Party thought, the shadow Attorney General ran with this campaign and nothing was going to stop him - because he is, after all, a bit better than the rest of us, is he not? This smear campaign was taken up; the temptation was not resisted. People get tempted all the time in politics. Information about politicians comes along, rumours are spread, and we must look at whether we pursue these matters.

Mr R.F. Johnson: You did that when in Opposition.

Dr G.I. GALLOP: Did I? That is interesting.

First, members of the Liberal Party pursued this campaign even though the Minister for Health was not mentioned in the affidavit. Secondly, they persisted with this campaign. We are debating this matter because a certain Mr Lewandowski has put forward an affidavit saying that he conspired with the late Mr Hancock. That is the basis upon which we are debating this matter. He said that the Minister for Health was not involved in this conspiracy in any shape or form. The Minister for Health is not mentioned in the affidavit and is not involved in this conspiracy, yet the Liberal Party continues to pursue this matter. Why? Because it wants to smear the Minister for Health. However, members of the Liberal Party have a problem. There is no basis for their smear campaign. What do they do? They muddy the waters and embellish their arguments.

We have seen two phases of that embellishment. The first phase shocked many members of this Parliament, and the comment involved has never been retracted - it has not been used as an argument any more, but it has never been retracted. That was the disgraceful episode when, in front of the television cameras, the Leader of the Opposition said that the Minister for Health was in the room when a suspect was bashed. The Leader of the Opposition knew exactly what he was saying and he has never retracted it.

Mr C.J. Barnett interjected.

Dr G.I. GALLOP: The Leader of the Opposition knew what he was saying. He was trying to imply that somehow or other the Minister for Health was implicated in this affair.

Ms S.E. Walker interjected.

Dr G.I. GALLOP: What was he saying?

Ms S.E. Walker interjected.

The ACTING SPEAKER: Order, members!

Dr G.I. GALLOP: Let me move to the second part of the argument.

Mr P.D. Omodei interjected.

The ACTING SPEAKER: Order, member for Warren-Blackwood!

Mr P.D. Omodei: It is shown in the Westpoll.

Dr G.I. GALLOP: These polls that people refer to are very interesting. We should debate this issue on its merits, not according to what a particular poll says. The argument is this: the royal commission will look into the Mickelberg affair. The Minister for Health is a potential participant in that process; therefore, he should be stood aside until it is finished. Let us explore that argument. By that logic, which is being used by the Opposition, every police officer in Western Australia should stand aside from the Police Service until the royal commission is finished. That is what members opposite are saying.

Several members interjected.

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Dr G.I. GALLOP: Yes, they are, by the logic of their argument. Opposition members do not like logic, because they are smearing someone. All of this is pure politics. They use the coincidence of events to smear a political opponent and they adhere to the old saying, "Throw enough mud and some of it will stick." Everyone in this Parliament knows that is what is going on.

Mr C.J. Barnett: Tell us your role.

Dr G.I. GALLOP: I have answered all the questions about that.

Mr C.J. Barnett: No, you haven't.

Dr G.I. GALLOP: Which one have I not answered?

Mr P.D. Omodei interjected.

Dr G.I. GALLOP: I think the member should read the *Hansard*. The first part of the argument is that somehow the Minister for Health has a case to answer. As I said yesterday, no evidence for that proposition has been put forward.

Mr C.J. Barnett: The Minister for Health has a clear conflict of interest, and he knows it.

Dr G.I. GALLOP: The Minister for Health has a clear conflict in relation to this matter, does he? I will be very interested to hear the Leader of the Opposition expound on that point of view, given that the affidavit does not mention him, Mr Lewandowski said that he had nothing to do with the conspiracy against the Mickelbergs and members opposite have not made any accusation against him.

Mr C.J. Barnett: So why was it necessary to give him the affidavit if he had nothing to do with it?

Dr G.I. GALLOP: We will come to that issue. This is pure politics. No accusation was made against the Minister for Health, and there has been no evidence that he has been engaged in any misconduct. However, members opposite are still running the smear campaign, and they embellish it a little to dramatise it.

I turn now to the Attorney General. The Attorney General's actions in this matter have always been based upon one principle alone - being open with the people of Western Australia. Let us address the openness principle, as the member for Nedlands is keen on it. When did the member find out about the matters that were in the affidavit?

Ms S.E. Walker: I have told you.

Dr G.I. GALLOP: The member needs to tell me again. When did she hear about it?

Ms S.E. Walker: I have told you.

Dr G.I. GALLOP: On 22 August the member for Nedlands told us in answer to my question asking whether she knew before the Attorney General -

Ms S.E. Walker: What are you implying?

Dr G.I. GALLOP: I was about to say that the member contradicted herself in this Parliament, because on 22 August in answer to my question, "Was the member for Nedlands aware of that affidavit before the Attorney General announced it publicly?", she said, "Everybody was!" However, yesterday, when I asked the member whether she was aware of it before the Attorney General announced it, she shook her head, and everyone in the Parliament saw it. Which is the correct answer? Did the member know or not?

Ms S.E. Walker: He leaked it. Do you know why? Because he had it.

Dr G.I. GALLOP: Members should note the contrast: when the Government is asked questions about this matter, either on notice or without notice, we answer them. The Attorney General has gone into precise detail.

Ms S.E. Walker: Come off it!

Dr G.I. GALLOP: This is pathetic. The Opposition is pathetic! Every question that has been asked has been answered. When I ask members opposite which one has not been answered, they come up with this absolute rhetoric. When did the member for Nedlands hear about that affidavit?

Ms S.E. Walker: You are a little boy in a suit.

Dr G.I. GALLOP: A little boy in a suit! This is the standard of debate in the Chamber now.

The SPEAKER: The level of interjection is too high. I am sure the member for Nedlands can think of something better to say than her recent comment, and I ask her to think of something better to say.

**Extract from Hansard**

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Dr G.I. GALLOP: The Attorney General has been open and transparent. The member for Nedlands will not answer the question. When did she learn about the affidavit? Why will she not answer that question?

Ms S.E. Walker: I have told you.

Dr G.I. GALLOP: What is the answer? She has another opportunity.

Ms S.E. Walker: You look it up.

Dr G.I. GALLOP: I have looked it up, but there are two answers.

Ms S.E. Walker: What are you implying?

Dr G.I. GALLOP: When did you learn about the affidavit? The Attorney General has made it clear that he will be open and accountable. He has been open and accountable on this matter. Do members know what the Opposition has done? It is the oldest trick in the book and it is an absolute disgrace to this Parliament. Yesterday, members opposite came into this Parliament and linked the actions of the Attorney General to the Criminal Code. Why did they do that? They did it to smear the Attorney General. They knew exactly what they were doing. They made that link, just as the Leader of the Opposition made a link between the bashing of a suspect and the Minister for Health. This is what this is all about - smearing. It has nothing to do with substance; it is about smearing. I can imagine the meeting: opposition members are sitting around, going nowhere as a party, and one person says, "We have a wonderful political opportunity; there is a coincidence of events that relate to the Minister for Health and we have to maximise the political gain from that by smearing him." I wonder who was the first to say that. Was it the shadow Attorney General, the member for Nedlands, the Leader of the Opposition or the shadow Leader of the House? Who came up with this brilliant strategy to smear one of my ministers? It is very transparent.

Let us get to the guts of this issue. No evidence has been put forward. No person outside the Liberal Party of Western Australia has claimed that the Attorney General has acted improperly. In fact, I will quote the senior law lecturer at the University of Western Australia.

Mr C.J. Barnett: Does he know all the facts? When did he make that comment?

Dr G.I. GALLOP: I am quoting the senior lecturer of law, Martin Flynn. The newspaper reports him as saying that based on what was known there was no reason to question Mr McGinty's conduct in the Mickelberg saga. He is an independent commentator.

Mr A.J. Carpenter: He is beyond reproach.

Dr G.I. GALLOP: He is beyond reproach. Yet members opposite are trying to smear the Attorney General.

Mr R.F. Johnson: When did he say that?

Dr G.I. GALLOP: On 25 July, when this matter was being debated in this Parliament. Further to that, it is obvious that the attempt made yesterday somehow or other to link the actions of the Attorney General to the Criminal Code has fallen absolutely flat.

Mr P.D. Omodei: Has it?

Dr G.I. GALLOP: Last night I watched the news on television and I did not hear any references to it. Of course, the local newspaper, which feels it has a responsibility to report what happens in the Parliament each day, had a reference to it. However, not one commentator on the television channels of Western Australia referred to it. Did the Leader of the Opposition reflect on that? The commentators said to him by way of their non-involvement in this issue that he had it completely wrong; his priorities were wrong, his logic was wrong and his argument was wrong. He was not trying to contribute to a sensible debate about how to solve problems in Western Australia; he was trying to smear someone. We all know that was the case. It is so transparent that it is obvious.

Mr P.D. Omodei interjected.

Dr G.I. GALLOP: Is the member for Warren-Blackwood saying that that is the case? Is that exactly what happened?

Mr P.D. Omodei: I have never smeared anybody in my life.

Dr G.I. GALLOP: Is the member saying that that is what was going on in this case?

Mr P.D. Omodei: I am saying that you gave him the document and you should not have. You know it and you cannot defend that.

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Dr G.I. GALLOP: The member is very up to date. He has obviously read all the *Hansard* on this issue. The Attorney General has always been clear on this and he made a judgment.

Mr P.D. Omodei: You are as guilty as sin, Premier.

Dr G.I. GALLOP: Guilty as sin! Guilty of what?

Mr P.D. Omodei: The Minister for Health was pivotal to the court case in 1998 and you knew it; that is why you gave him the document.

Dr G.I. GALLOP: The Attorney General made a judgment that this would be a matter of political controversy. He also made a judgment that it was inevitable that this matter would be out in the public and, therefore, he should do all that he could to get it out for public debate. On those two matters he was absolutely right. On the second judgment, he was so right that on Monday morning the member for Nedlands was ringing around the media trying to drum up this story.

Ms S.E. Walker: Rubbish!

Dr G.I. GALLOP: What was the member for Nedlands doing then?

Ms S.E. Walker: You tell me! Come on!

Dr G.I. GALLOP: I am asking the member for Nedlands whether she rang the local journalists.

Ms S.E. Walker: You tell me! Tell me what you are saying.

Dr G.I. GALLOP: I just told the member for Nedlands. Did the member for Nedlands ring up a journalist on this issue? Will the member for Nedlands answer me?

Ms S.E. Walker: You tell me.

Dr G.I. GALLOP: The member for Nedlands is pathetic.

Mr C.J. Barnett: So what if she did?

Dr G.I. GALLOP: It proves the point that the matter was inevitably going to become public. Therefore, the Opposition's argument that it should have been kept secret is fallacious.

There is further evidence to prove my point that this is a smear campaign. When someone sets up a course of action, the motivations for that course of action are usually revealed by what they do.

Dr E. Constable: Who are you talking about now?

Dr G.I. GALLOP: I am talking about the Liberal Party.

I will tell members what they did. I have established a pretty good argument that it was a smear campaign, but there is further evidence. The first piece of evidence is the statement by the Leader of the Opposition that the Minister for Health was in the room when a suspect was being bashed.

*Withdrawal of Remark*

Mr C.J. BARNETT: The Premier has, I suspect deliberately, impugned my reputation. Never at any stage have I said the Minister for Health was in that interview room when a prisoner was being bashed; never! I request that the Premier immediately withdraw that and apologise.

The SPEAKER: Order! The point of order raises a debating point as to whether certain comments were said or not. I do not think the member can stretch the rules governing our standing orders to say that that was unparliamentary.

*Debate Resumed*

Dr G.I. GALLOP: I base that statement on what was reported in the newspapers and on the television.

Mr C.J. Barnett: That was never said. The Premier has come into this Parliament and has failed to tell the truth.

Dr G.I. GALLOP: I have the transcript of the Channel 10 interview. The Leader of the Opposition stated -

A member of Cabinet, by clear fact, was present during the interview when a prisoner was bashed.

The Leader of the Opposition is sensitive to that issue. Let us get the further evidence that this is a smear campaign. The Liberal Party deliberately and consciously dragged into this matter the families of the Attorney General and the Minister for Health.

Ms S.E. Walker: It is relevant.

**Extract from Hansard**

[ASSEMBLY - Wednesday, 11 September 2002]

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pental; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Dr G.I. GALLOP: The member for Nedlands has just confirmed what I said. She has just confirmed the depths to which they will go.

Ms S.E. Walker: Did you listen to what I said in my speech?

Dr G.I. GALLOP: I heard what the member for Nedlands said. Where is the leadership being shown by the Leader of the Opposition? I thought that he said it was improper to raise the family of the Attorney General. What discipline will the Leader of the Opposition now apply to the member for Nedlands? This is a leaderless, rudderless Opposition. The strategy for this issue has not been determined in the office of the Leader of the Opposition but by people around him, and he has no power to stop it. This is a smear campaign and nothing more.

I will re-emphasise my arguments. There is absolutely no evidence to support the view that the Minister for Health is in any way “a suspect” as the member for Nedlands claimed by interjection.

*Point of Order*

Ms S.E. WALKER: I withdrew that and said “possible suspect”. If the Premier is going to quote me he should get it correct.

The SPEAKER: I was not in the Chamber when that was said but I believe that comment was withdrawn.

*Debate Resumed*

Dr G.I. GALLOP: I will put it in different terms. There is no evidence that the Minister for Health has engaged in any wrongdoing. It is the classic situation of a coincidence of events that is wonderful ammunition for the Opposition. The member for Nedlands could not help herself when the Minister for Health was mentioned. The point that was made by way of interjection earlier was a true one. If the Minister for Health was not sitting on the frontbench, does anyone think his name would have been mentioned in this matter? Does any member think the newspapers or the Liberal Party would have referred to it? Of course they would not! What the Opposition is trying to do is political.

The Opposition embellishes its political campaign against the Minister for Health and then tries to smear the Attorney General by making reference to the Criminal Code. That was pretty low. It was low enough when they brought in the family of the Minister for Health and the Attorney General which, according to the member for Nedlands, is relevant. I would like to know the views of the Leader of the Opposition on that because we all need to see him show some leadership on those issues, and it will be interesting to see whether we get any. The Opposition tried to smear the Attorney General by that reference to the Criminal Code. It really was a low act on the part of the Liberal Party.

There are many important issues in Western Australia today that we are happy to debate. We are happy to debate our forest policy with the member for Warren-Blackwood, the Mandurah rail line, which we were talking about earlier today, the 6.6 per cent rate of growth in this State, the Leader of the Opposition’s attitude to development on the Burrup, to Oakajee, to Geraldton and the issue of hi-smelt in Kwinana. We are happy to debate all those matters and the general direction in which we are taking the State. What does the Opposition bring up? It starts a smear campaign against the Minister for Health and then spreads it to the Attorney General.

Mr P.G. Pental: That is what you used to do.

Dr G.I. GALLOP: I will ask the member for South Perth what the accusation is against the Minister for Health.

Mr P.G. Pental: Never mind about that!

Dr G.I. GALLOP: Never mind about that!

Mr P.G. Pental: It is called Parliament. Do you remember learning about that at Oxford?

Dr G.I. GALLOP: Here we go.

Mr P.G. Pental: This is Parliament, so do not come that nonsense here.

Dr G.I. GALLOP: The only person who ever supports the Leader of the Opposition in this Parliament is the member for South Perth. That is sad because the Leader of the Opposition sets very low standards for the Parliament. He engages in these gutter tactics and the member for South Perth will not attack him on it. As the Bard said, this is “much ado about nothing”.

**MRS C.L. EDWARDES** (Kingsley) [5.28 pm]: I will bring the House back to the motion, which calls on the Premier to ensure that the Attorney General appoints some person to make decisions that would otherwise be



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made by him. I refer the Premier to section 13 of the Solicitor-General Act 1969, which allows for the power of the Attorney General to be delegated and reads -

The Attorney General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand delegate to the Solicitor-General all or any of his powers and functions under all or any of the laws of the State, except this power of delegation.

No-one but the Attorney General can delegate the power of the Attorney General. He can delegate his powers to the Solicitor General indefinitely or for a temporary period. It can also be revoked by the Attorney General at any time. That is covered in subsection (3).

I will go back to the reason this is important. It was obviously contemplated when this legislation was drafted that there would be times when the Attorney General would need to delegate his powers. As the Attorney General well knows, because he has stated it in this place many times, the Attorney General is the first law officer of the Crown. As the first law officer, he has a quasi judicial role to preserve some sort of independence. He can give ministers advice of a legal nature, because he is the State's senior legal adviser. However, he also has a political role. He is politically responsible for the advice that reaches ministers and Cabinet. The system enables the Attorney General to add a political perspective to any advice that is given to ministers if it is necessary to alert ministers to any sensitive legal issues that they may otherwise not appreciate. I can tell members, and probably the Attorney can tell members also, that sometimes that advice is not welcomed by our ministerial colleagues.

Under the Westminster system of government, at the heart of the functioning of Cabinet is the notion of cabinet responsibility. Every member of Cabinet must accept responsibility for every decision that is made by Cabinet. The statement that comes up time and again when people blame the system is that the system fails when people fail. Therefore, when we are talking about cabinet responsibility, it is essential that cabinet ministers understand any proposal that is before Cabinet so that they can explore the implications and raise any objections before a decision is made. It is essential also that there is frank disclosure by ministers of the potential practical and political implications of any proposal that they put before Cabinet, particularly when it may have adverse implications for another minister or for the Government.

With regard to the Lewandowski affidavit and the potential implications for the Attorney General's ministerial colleagues, in this case the Minister for Health, and the Government, it was essential that all cabinet ministers were made fully aware of those implications and had the opportunity to express their concerns, because otherwise the system will fail when people fail. It may not be immediately obvious, but there should be no need to emphasise the problems that can be created when a minister thinks he can outsmart his cabinet colleagues by disguising any potential implications or by not putting all the facts on the table. The courteous thing to do is to put all the facts on the table. If a minister thinks that he can outsmart his cabinet colleagues by disguising the problems, being less than frank about the implications of a proposal or not putting forward all of the facts, then that can strike at the heart of cabinet responsibility. It can also lead to a potential political embarrassment for the Government.

Cabinet responsibility also requires that ministers be frank in disclosing any real or potential conflict of interest on any matter before Cabinet. In determining whether there is a conflict of interest, it is important - I am sure the Solicitor General has advised the Attorney General of this - that ministers try to anticipate whether others may have the perception that there is a conflict of interest. One critical element to consider in determining whether there may be a perception of a conflict of interest is the media. For example, if a matter is likely to be on the front page of *The West Australian*, that may help determine whether there is likely to be a perception of a conflict of interest. Another element to consider is what is the Opposition likely to say about a matter.

There is a perception of a conflict of interest in the way in which the Attorney General has dealt with this matter. He has handed to the Minister for Health the Lewandowski affidavit and supporting documents. The question that must be asked, if we are to believe the Attorney General's statement that the Lewandowski affidavit does not mention the Minister for Health, is at what point in time would it have clicked in the mind of the Attorney General that there may be a perception of a conflict of interest. If there is a perception of a conflict of interest, there is no difficulty, because, as I have pointed out, under section 13 of the Solicitor-General Act the Attorney General does not need to deal with the matter. If there was the potential for a conflict of interest and the Attorney General believed the right thing to do was to give the Minister for Health the Lewandowski affidavit and the supporting documents, then he should have delegated his powers to the Solicitor General to make that decision. When we are talking about a perception of a conflict of interest and the damage that is likely to cause to not only the role of the Attorney General but also the operation of Cabinet and the Government, the Attorney General has a very clear out; namely, to delegate his powers in this matter.

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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The member for Nedlands raised the Ripley decision. If that decision is too hard for the Government to deal with, then the Attorney General, because of a perception of a conflict of interest, or because it is likely to have implications for one of his ministerial colleagues, or because he does not want to damage his role as Attorney General and does not want to damage the Cabinet and the Government, again has a clear out under section 13 of that Act. The delegation of powers under that section has been found to be very convenient in the past when the Attorney General has felt that a conflict of interest has made it undesirable for him to deal with a matter. It is relatively routine and is not a big deal. For the benefit of the Attorney General, I could dictate a simple letter for the Attorney General to delegate to the Solicitor General under section 13 all his powers and responsibilities on any particular matter. The then Attorney General, Hon Joe Berinson, made such a delegation of power in February 1991 because of the existence of allegations that he had been a party to improper conduct in connection with Petrochemical Industries Co Ltd and WA Inc matters, which were the subject of an inquiry by the royal commission being held at that time which was established in January 1991. Temporary delegations have been made by other former Attorneys General; indeed, I also used that power in one case. The power is therefore nothing difficult and was anticipated to be used by Attorneys General. It is contained in section 13 of the Solicitor-General Act. I suggest that the Attorney General is leaving himself, and, more particularly, the role of Attorney General and that of Cabinet and Government, open to criticism because he has failed to delegate. The basis of our concern is the perception that a conflict of interest has arisen.

A minister has had allegations made against him, which the Government has not yet dealt with. The Lewandowski affidavit gives rise to the potential for the Minister for Health to be asked about those matters. Therefore, the conduct of the Attorney General in giving the Minister for Health the affidavit and other supporting documents has put his own role and that of Cabinet at risk. I believe that all people want out of those excesses of the WA Inc years is some honesty and integrity. What came through from those days was the secrecy; that is, that if people hid something, they thought they could get away with it. Obfuscation occurred once matters came to light. We do not want to go back to those days.

The Attorney General has open to him a very simple process. He has a way out and he does not need to be involved any further in decision making in respect of the Lewandowski affidavit and the Mickelbergs. He does not need to be at all involved in respect of Julian Ripley. He can delegate to the Solicitor General by virtue of section 13 those matters and any other matters that involve allegations against ministerial colleagues and/or others in which there might be a perception of conflict of interest. I urge the Attorney General to think very carefully about what he is doing to the role of the Attorney General as well as to cabinet responsibility, which is at the crux of the Westminster system and, of course, government. The Premier referred to a coincidence of events. However, there is a perception of a conflict of interest. The Attorney General and the Government have a way out by using section 13 of the Solicitor-General Act.

**MR J.R. QUIGLEY** (Innaloo) [5.44 pm]: I want to concentrate on the motion and the way in which it has been advanced by the member for Nedlands, the mover of the motion. The manner in which the member for Nedlands has advanced the motion is twofold. First, she has set herself up as a person of integrity and as the benchmark of propriety. She says that she is a redoubtable prosecutor and has worked in the office of the Director of Public Prosecutions, that she knows Mr Stephen Polaris QC and has worked with him, and that she knows Mr Joe Randazzo and Mr Robert Cock.

Ms S.E. Walker interjected.

**Mr J.R. QUIGLEY:** The member will become very shrill as this matter is exposed. I ask all members to show a bit of patience to the member for Nedlands.

She says that she can anticipate what Mr Cock, Mr Randazzo and Mr Stephen Polaris would say because she is a redoubtable prosecutor and a person of integrity. She said when she was moving the motion that she was interested in only one thing; that is, the pursuit of truth and propriety. In such circumstances it is quite proper to examine the character of the mover of the motion, to see whether in setting that benchmark she is trying to pull the wool over the eyes of this Chamber and the public. It was only on 5 December of last year that she sought to mislead the Chamber about her experience with the Office of the Director of Public Prosecutions when she is recorded at page 6523 of *Hansard* as saying -

I understand the amendments the Bill will make to the Criminal Code - which was my bible for 12 years - but it is clear that there is a tension in the community about this issue . . .

I come from a very conservative background, but I have had the experience of working in the criminal justice system as a prosecutor for 12 years

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I then raised with her later in debate in this Chamber the fact that she had not been admitted to the Bar until about 1993 or 1994.

*Withdrawal of Remark*

Ms S.E. WALKER: I responded to this. The member for Innaloo is questioning my integrity. My position was explained in a grievance and a 90-second statement, and he is going through the same old argument, which has already been responded to. I ask him to withdraw.

The SPEAKER: At this stage the member for Innaloo has been quoting from the records of this House. I will keep an eye on making sure that the debate does not lead to impugning the member's character by way of incorrect parliamentary language, but there is nothing wrong with quoting from *Hansard*.

*Debate Resumed*

Mr J.R. QUIGLEY: After I raised the fact that the member seemed to extend the period of her experience as a prosecutor by doubling it, the following day she came into the House and said -

I said -

. . . I have had the experience of working in the criminal justice system as a prosecutor for 12 years.

The *Hansard* should have read, "I have had the experience of working in the criminal justice system in prosecutions for nearly 12 years". In July 1989 I commenced work as a legal professional assistant to the then Crown Prosecutor, Graeme Scott, QC. For the three years from January 1990 I continued in that role full time under John McKechnie, QC . . .

Mr P.D. Omodei: Why don't you tell us about the experience of the Attorney General?

Mr J.R. QUIGLEY: I will get to the member for Warren-Blackwood in a moment. I have a special one for him. She continued -

. . . while completing my law degree at the University of Western Australia. In 1993, I believe I did my articles at Crown Law and the Office of the Director of Public Prosecutions, and was admitted in that year.

That reveals that at the time the member made the speech she had been admitted for far less a period than that which she originally told the House. She concluded by saying -

I remained as a crown prosecutor until March or April 2001, when I resigned on good terms.

Of course, she failed to reveal to the House that prior to her resignation there was an extended period of sick leave of some 18 months. I have no complaint about a person having to take a genuine period of sick leave.

*Withdrawal of Remark*

Ms S.E. WALKER: There was never an extended period of sick leave for 18 months. I ask him to withdraw that. It is absolute nonsense.

The SPEAKER: Whether the statement is correct or incorrect, it is part of the debate. It may well be incorrect, but the fact that the member for Innaloo has stated it does not breach standing orders.

*Debate Resumed*

Mr J.R. QUIGLEY: It was an extended period of sick leave in any event. Of course, it was a matter of public controversy at the time that during that extended period of sick leave when the member was in the employ of the State and in receipt of wages from the State she was working for a member of the Liberal Party, one Peter Collier, and appearing for him before the Liberal Party's appeal and disciplinary committee. I have been advised by members of that committee that the member, while on sick leave and in the employ of the State, wrote a submission on behalf of Mr Collier to the Liberal Party's appeal and disciplinary committee. Not only that, while she was too sick to lift a pen to work for her wages but was able to work for Peter Collier - we do not know whether for a fee or for pro bono - she also appeared before the disciplinary committee on two occasions. I am told that on one occasion she appeared for half a day or in excess of two hours and on the other occasion for in excess of five hours. Therefore, although she was too sick to attend her employer's premises and pick up a pen to earn her wages paid by the taxpayers of Western Australia, she was not too sick to act for rump elements of the Liberal Party before their appeal and disciplinary committee. I am also advised by members in the Liberal Party that during that period of incapacity she was also busy working in branch and divisional meetings of the Liberal Party.

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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When the member seeks to publicly vilify the Minister for Health and sets herself up as the standard setter, I bring to the attention of the House these matters which I believe to be true on the basis of information given to me by members of the Liberal Party. When she moves her motion and delivers her allegations aimed at damaging the Attorney General and the Minister for Health, the Chamber should bear those things in mind. Having set herself up as the standard setter, she advances the motion which relates to all decisions on matters that directly or indirectly involve allegations of criminal behaviour by the Gallop Government. She then says that the Attorney General must delegate his powers.

After decades of controversy about what had happened under previous Attorneys General, it was a Labor Attorney General who did just that. He divested the Attorney General of the power to institute prosecutions and established the independent Office of the Director of Public Prosecutions for that purpose. Therefore, in relation to the hypothetical circumstance of an allegation touching upon criminal behaviour by the Gallop Government - of which there is none, and no such charge has ever been levelled against Dr Gallop's Cabinet - a previous Labor Government has already established a completely independent statutory regime for those allegations to be dealt with; that is, the independent Office of the Director of Public Prosecutions. As for the contents of the affidavit and what the Attorney General did with them, I can do no more than lend my weight and support to the comments of the Premier of Western Australia when he said that the affidavit did not mention by name or inference the Minister for Health; that there was no allegation against the Minister for Health in it; and that Mr Lewandowski, the deponent of the affidavit, had said that there was no allegation against the Minister for Health. The Attorney General was not called upon to exercise a power or discretion vis-à-vis the Minister for Health. I take on board what the member for Kingsley said about the problem being not in the system but in the people who went wrong. I am only in my first term in this Parliament and I rely on my memory of public controversies prior to my entering this hallowed Chamber. I recall two prospective prosecutions that were the subject of public controversy, both of which involved the Environmental Protection Act, when the member for Kingsley - I stand to be corrected by the member - was the Minister for the Environment. I recall that the first of those matters involved an allegation that the member for Warren-Blackwood had, without authority, cleared trees and shrubbery from a portion of verge outside his property, which clearing would have required clearances under that legislation.

Mr C.J. Barnett: Was it native vegetation?

Mr J.R. QUIGLEY: I recall that a controversy arose because the minister intervened to ensure that the prosecution did not go ahead.

I also recall that close on the heels of that controversy, or just preceding it, was another involving the publication of a submission from the member for Stirling - a member of the National Party - that he made for and on behalf of one of his constituents, Goundrey Wines Pty Ltd. That was the subject of the same sort of investigation; it related to the clearing of vegetation from the verge outside the company's property, which it was able to do without the necessary clearances first being given. The minister ensured that a prosecution did not proceed on that occasion.

I heard the interjection of the Leader of the Opposition, who referred to the fact that the prohibition in the legislation is on native vegetation being cleared or something else. That is the very factual question that the courts are charged with determining. It is not a matter for a member of the Executive to determine and it is certainly not a matter on which a member of the Cabinet should seek to prevent a prosecution. The member for Kingsley stood in this place and pontificated that it is not the system that is wrong but the people who go wrong within the system. She had the temerity to point a finger at the Attorney General, while she in her Cabinet ensured that prosecutions did not go ahead on two occasions when departmental officers -

Mrs C.L. Edwardes: That is not correct.

Mr J.R. QUIGLEY: I stand corrected on that and I will take an interjection from the member.

Mr C.J. Barnett: No, we will take an apology in writing in due course, otherwise you are fair game for anything.

Mr J.R. QUIGLEY: As I said, I am going on my recollection of the press coverage at the time on those two matters.

The comments by the member for Nedlands on paragraph (d) of the motion beggar belief.

An opposition member interjected.

Mr J.R. QUIGLEY: I think a member in the back row wants to go to the toilet, Mr Speaker, and he can be excused.

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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The allegation made and the comments on paragraph (d) of the motion raised by the member for Nedlands beggar belief. She asks what the Attorney General will do with the evidence now brought forward by Ripley. She cited as evidence a hearsay document prepared by an oral historian at the Battye Library. It was not a sworn document but someone else's account of what Ripley may or may not have said during an interview in 1992. That is the first piece of evidence that came forward.

Mr R.C. Kucera: 1972.

Mr J.R. QUIGLEY: I thought the member said 1992 when Ripley spoke to the Battye Library. However, the member for Nedlands knows that is not evidence. It beggars belief that she would even bother to raise the matter in this Chamber.

Secondly, she says she has received some correspondence or a statement. Again, she has not sought the leave of the Chamber to lay the documents on the Table for the balance of the day so that the rest of the House can inspect the documents but instead refers to the document as evidence. It is not said to be a sworn document. The member then holds herself out as a person well experienced in the Office of the Director of Public Prosecutions. She has not - as I did on behalf of Mallard, as Mr McCusker, QC did on behalf of the Mickelbergs and as Mr Percy, QC did on behalf of Button and Beamish - gone to the extent of preparing a petition of clemency and a document attaching evidence to the Attorney General. She just waves around a paper from the Battye Library and asks what the Attorney General has to say about it. I do not want to take the words right out of the Attorney General's mouth, but I think he would say, "Not much until I receive a proper petition appending proper evidence; and when I receive a proper petition appending proper evidence, I will probably do what I have done in all the other cases." If he received a proper petition, he would send it to the Solicitor General for an opinion. That is what he did in the Mickelberg case, and it was referred straight to the Court of Criminal Appeal. It has not been said that the Attorney General exercised any discretion one way or the other to protect the Minister for Health. None of the documents contained any allegation against the Minister for Health.

The motion is fatuous, and the argument behind it is misleading and absolutely ridiculous.

Mr C.J. Barnett interjected.

**MR J.N. HYDE** (Perth) [6.00 pm]: I urge members to vote against this motion. I thank the Leader of the Opposition for noting that this is a circus. We are wasting three hours of valuable private members' time. We should be debating a matter of substance. For example, the member for Nedlands and I have been working on a local issue concerning helicopter flights. That is a local issue which affects both our electorates and which the member should be raising in the House. Instead of dealing with an issue like that today, we have a stunt. Issues without any substance are being debated. That is the real tragedy. This House is wasting three valuable hours instead of using them to debate a matter of substance that could progress the lot of Western Australians. We should be using this time to vent and raise issues of substance for the people in this State. The Opposition is not dealing with the issue of health care; it is going for the man. It is trying to attack the Minister for Health, not for his responsibilities as the minister but for something that probably did not happen 30 years ago. The Opposition has not produced a smoking gun. The Opposition has displayed its political imbecility by wasting these three valuable hours. If a book has been written about how to be in opposition, those opposite should read it because they are not writing the right one. We should be discussing health, education, sports and arts issues. Let us have a matter of public interest debate on the arts for a change. Let us deal with some matters of policy that can make a difference to the lot of Western Australians. I do not think it is appropriate for the Parliament to be used for innuendo.

I was a mayor. I and other people who were involved in local government have been approached by people who were aggrieved. They genuinely believed that people in the system had wronged them. It might be the result of little green men or their own incompetence. Sometimes there might be a kernel of truth to the issue. Members of Parliament and local councillors and mayors have several avenues for dealing with this. They can perform a cheap stunt by going to the Press and having their pictures taken or by coming into forums like this and using for their own purposes the grievance of somebody who genuinely believes he has been wronged. If the member for Nedlands honestly believes there is an iota of truth in that person's statement and that there is even a tinge of corruption or improper behaviour, she has a responsibility to direct that constituent to the Anti-Corruption Commission. I remind the members who were in this Chamber when the Parliament set up the ACC, that it was deliberately established as a body that would maintain secrecy. That was done to protect people who are innocent or have not been charged. The Parliament set up that body so that wild innuendo, improper accusations and wrong and unfounded allegations could be treated with respect and looked at properly, and so that if such allegations were ultimately rejected, the innocent parties would not be trampled on or any worse off for the experience. The member could have used that proper system. She did not. She came into this Parliament and

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held up a section of a transcript of a trial and a transcript of an oral history and suggested that it might be a smoking gun. She gave no evidence of where, why or how it is a smoking gun. This is a fishing expedition. The member has trawled along the bottom of the harbour and come up with some amoeba. That is about it. There is no substance to the member's allegations. The Opposition is using three hours of this Parliament's time on a matter for which it does not have solid proof. There should at least be some substance to the allegation. There should at least be a hatstand on which to hang a hat. There should be information that might cause a reasonable person to think that someone has not been treated by the system with respect. This Parliament has set up a variety of oversight bodies, including the Anti-Corruption Commission, the Ombudsman and the Commissioner for Public Sector Standards. That person has not been referred to those bodies. Rather, the Opposition has come into this place and misused three hours of the Parliament's time on a stunt. That is the real tragedy here. The tragedy is not that there is substance to the allegation, because there is none; it is that the Parliament has been misused. Many other important issues need to be discussed.

Another tragedy is that the government back bench is the real Opposition in this Parliament. The backbench and the parliamentary committees are raising issues of substance. Where are the issues of policy that the Opposition should be raising in question time? Where are the issues of substance that could have been raised in private members' time today? The Opposition has no policy substance; it just plays the man. Yet again, it is left to the parliamentary committees and the backbench to do the hard work of Opposition in keeping the Cabinet on its policy toes. It is not being kept on its policy toes by members opposite.

If the Opposition honestly does not believe that the ACC, the Commissioner for Public Sector Standards, the Ombudsman or any of the other oversight bodies have the ability to do the job, why does it not recommend to Parliament that a body that oversees members of Parliament be set up?

Ms S.E. Walker: I have two points. First, you have been very quiet on the issue of helicopters. Second, what is it about the Gerritsen case that you do not believe?

Mr J.N. HYDE: I said that we should have been debating an issue such as the activities of Preston Helicopter Services Pty Ltd.

Ms S.E. Walker: You have gone quiet.

Mr J.N. HYDE: The member should have been here. I have raised this with the local papers in my electorate. The member thinks that the activities of Preston Helicopter Services is an important issue. I want to debate it next week. I want to see the helicopters flying during private members' business. The member knows that that is an important issue. I do not want to be quiet on the helicopters - I want them to fly next week. I thank the member for putting that on the agenda; for giving notice that next week's private members' business will be devoted to debate on helicopters. Let them fly. Let us expose that company. Let us do our proper oversight and policy job and talk about helicopters instead of this silly stuff.

If the member seriously believes that the existing structures of this State -

Ms S.E. Walker interjected.

Mr J.N. HYDE: I ask the member to listen.

Ms S.E. Walker interjected.

Mr J.N. HYDE: If the member genuinely believes that some of her constituents have a relevant concern, she should take it to the ACC. Has it been taken to the ACC?

Ms S.E. Walker interjected.

Mr J.N. HYDE: No. Instead of doing that, she raised it in this place as a stunt. She wants to misuse people who believe they have a grievance. She is misusing their emotional state to perform a stunt instead of letting them know that they should go to the ACC or the Ombudsman.

The ACTING SPEAKER (Mr P.W. Andrews): Order, members! The member on his feet should address me. I stopped members from interjecting on the member for Nedlands. I am now finding it difficult to hear the member for Perth. Members should address the Chair.

Mr J.N. HYDE: The member for Nedlands has been missing in action. She is good at throwing hand grenades and running away. I am glad the retort is there. I stress that I will not, in an arrogant way, give advice to every parliamentarian as has my colleague and friend, the member for Nedlands. Before again moving a motion that wastes hours of the time of the House, members should consider using government agencies in this State such as the Anti-Corruption Commission, the Commissioner for Public Sector Standards and the Ombudsman. The member for Nedlands has admitted that this matter has not been referred to those bodies. If this were a genuine

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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issue, rather than a stunt, it should have been referred to those bodies. People's real and emotional attachment to this issue should be treated with respect, and not misused in the Parliament of Western Australia.

**MR J.A. MCGINTY** (Fremantle - Attorney General) [6.11 pm]: The motion before the House is dependent on the existence of allegations of criminal behaviour by members of the Gallop Cabinet. The motion states -

That this House calls on the Premier to ensure that the Attorney General appoint some person to make decisions that would otherwise be made by him, being a person independent of Government to deal with and make all decisions with relation to matters which directly or indirectly involve allegations of criminal behaviour by members of the Gallop Cabinet . . .

It continues and refers to other matters. The point made with some force by the Premier in his substantive contribution to this debate and through his interjections is, what are the allegations of corruption; what are the allegations of criminal behaviour made against members of the Gallop Cabinet?

Ms S.E. Walker interjected.

Mr J.A. MCGINTY: What are the allegations of criminal behaviour, member for Nedlands? If the member will not answer, perhaps the Leader of the Opposition will.

Mr C.J. Barnett: I will speak after you finish.

Mr J.A. MCGINTY: It would be handy if, after two hours of debate, the House knew what were the allegations of criminal behaviour given that is the central point of the motion. No-one has yet identified an allegation of criminal behaviour. That is the profound stupidity of this motion.

Mr P.D. Omodei interjected.

Mr J.A. MCGINTY: Member for Warren-Blackwood, what is the allegation? What is the crime alleged to have been committed?

Mr P.D. Omodei: Why did you give the document to the Minister for Health?

Mr J.A. MCGINTY: Can the member identify the subject matter of this motion?

Mr P.D. Omodei: The Attorney General may think he is a lawyer, but he has never practised. Why did the Attorney General pass on the document?

Mr J.A. MCGINTY: Can the member for Nedlands specify any criminal behaviour? What about the member for Greenough? Can the member for Murdoch tell me of any alleged criminal behaviour? What are the allegations from the other side of the House about criminal behaviour? What about my good friend, the Deputy Leader of the Opposition? Is this not amazing, Mr Acting Speaker? The motion before the House is predicated on an allegation of criminal behaviour by the Gallop Government. I have now asked every member of the Opposition - Independents excused - to identify criminal behaviour or an allegation of criminality. None of them can do it.

Ms S.E. Walker: I will tell you, Attorney General.

Mr J.A. MCGINTY: Tell me what it is. Where is the criminality?

Mr P.G. Pandal: What you did was wrong.

Mr J.A. MCGINTY: Is it? There is nothing criminal in that.

Mr P.G. Pandal interjected.

Mr J.A. MCGINTY: I must clarify something with the member for South Perth. The motion is quite specific; it is about criminal behaviour. As the member for South Perth would know, it is a step up from an allegation of improper behaviour. This is quite specific; it is covered by a section of the Criminal Code.

Mr P.G. Pandal: Let us talk about the Attorney General's very special and peculiar role in the Westminster system as the first law officer of Western Australia. This concerns whether the Attorney General acted properly in discharging his duties, because he is not an ordinary cabinet minister.

Mr J.A. MCGINTY: I accept that, but it is not what the motion states. It is a different subject matter.

Mr P.G. Pandal: I know that, but he and I have prepared motions in this place. The Attorney General was very good at writing motions when he sat on this side of the House. The issue is where this is going to end up. As an outsider, I see that very serious questions remain to be answered.

Mr J.A. MCGINTY: Fine; I understand that. If the motion were to discuss the question of propriety or impropriety, that would be fine. The allegation is quite specific. The member made particular reference to the

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pental; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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position occupied in our system of government by the Attorney General. To specify criminal behaviour by members of the Gallop Cabinet is quite different from the issue raised by the member for South Perth. As we have done with matters of public importance and question time over the past few months, I am happy to debate the general question of propriety. The question before the House is an unsubstantiated allegation of criminal behaviour. No member of the Opposition can identify what it is. No-one will tell me what it is that causes the rest of the motion to come together and require certain actions to be taken. It is all predicated on the basis of an allegation of criminal behaviour.

An article appeared in *The West Australian* this morning. I drew attention to it during question time. It is titled "McGinty Broke Law: Barnett". A quick check of *Hansard* will establish that the Leader of the Opposition never said any such thing.

Mr P.G. Pental: What if an Attorney General, in his high office, did supposedly conspire to pervert the course of justice?

Mr J.A. McGINTY: That would be an allegation of criminal behaviour.

Mr P.G. Pental: A very serious one. There are people who believe that the actions taken by the Attorney General in informing the Minister for Health of the existence of the affidavit could be seen as working with him; that is, conspiring with him to give him an advantage that he ought not to have. If the Attorney General had sent the affidavit to the royal commission and done nothing more, and not had the conversations with the Premier in Sydney and the Minister for Health, he would be facing none of this.

Mr J.A. McGINTY: That is right. I consciously decided to tell everyone.

Mr P.G. Pental: No, it was more than that. Before you told everyone you told him, did you not?

Mr J.A. McGINTY: Yes.

Mr P.G. Pental: The order of events is rather important.

Mr J.A. McGINTY: To that extent, it was my intention from the moment I became aware of the affidavit that it should be made public so that, if for no other reason, there could be an informed debate.

Mr P.G. Pental: Why not just send it to the royal commission and save yourself all this? The Attorney General is not without experience in these things; he made an admission yesterday - months after the event - that this was not the brightest thing he had ever done.

Mr J.A. McGINTY: Not at all, I am being misinterpreted. I said yesterday that judgment calls are required every day of the week. The member would understand that. I made a judgment call that I stand by. Others may assess that conduct differently.

Mr P.G. Pental: Even at this stage the Attorney General does not think he did the wrong thing?

Mr J.A. McGINTY: No, certainly not. It is only from a conservative and conventional point of view. Hon Peter Foss said that I should have done what the member for South Perth suggested. He said that I should have kept the matter confidential and not participated in any way in getting it into the public arena. That is what he would have done. That is fine. I would have criticised him in those circumstances for not considering the public and not generally releasing the matter into the public arena.

Mr P.G. Pental: Don't you think you would have covered yourself? You would have been in the position of standing in this House and saying, "Mr Speaker, I have sent this affidavit containing serious allegations to the one group charged now with the responsibility of inquiring into police corruption - the royal commission."

Mr J.A. McGINTY: Yes, I did that.

Mr P.G. Pental: I know, but the problem is that you did it after the event.

Mr J.A. McGINTY: No.

Mr P.G. Pental: Yes, you did.

Mr J.A. McGINTY: No, I did not. I will correct the member. The first group to whom it was sent was all the relevant authorities.

Ms S.E. Walker: You didn't do it.

Mr J.A. McGINTY: No, the member for Nedlands is wrong.

Ms S.E. Walker: Why didn't you table it?



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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pental; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Mr J.A. McGINTY: That is another issue. I was made aware of the affidavit on the Thursday. On the Friday, I rang Peter Hastings, counsel assisting the royal commission, in Sydney. I rang him personally and advised him of the existence of the confession and arranged for it to be delivered by my office, by hand, to the royal commission here.

Mr P.G. Pental: So far, very proper; top marks.

Mr J.A. McGINTY: Absolutely. The other arrangements were put in place. Either through the Director of Public Prosecutions or the Solicitor General, I was to get one to the Commissioner of Police - that was done on the Friday as well - and also one to the Anti-Corruption Commission. All those things happened. Everything was done immediately. I got the affidavit in the evening. The next day those things were all done for all the appropriate authorities. I do not think there is any other appropriate authority. It was my view then that two other people should have had it, and then I thought the general public should have it. That was my view. The two people who should have had it were, firstly, the Mickelbergs, because they were named in the confession. They were beneficiaries of that confession, and they needed it to put together their case for reference to the Court of Criminal Appeal. It was certainly agreed beforehand and, to the best of my knowledge, it was given on the Monday, and I think - although I cannot be 100 per cent sure of this - before the press conference at 3.30 pm. It was certainly set in motion. My office did not do it; the DPP did it.

Mr P.G. Pental: That is to the Mickelbergs on the Monday.

Mr J.A. McGINTY: Yes, which was the first working day that I was able to do that because I did not know how to contact them.

Mr P.G. Pental: When did you give it to the Minister for Health?

Mr J.A. McGINTY: On the Saturday. That is the sequence of events. Some significance might be drawn from that, but my view was that, within days, it would be put into the public arena. That was my view right from the start, and it was important that that be done.

Mr C.J. Barnett: Tell us why.

Mr J.A. McGINTY: No, let us go back to the motion because -

Mr C.J. Barnett: Tell us why it was important to give it to the minister.

Mr J.A. McGINTY: I have nine minutes, and I will come back to it.

Mrs C.L. Edwardes: We haven't seen the affidavit; you have. Several things come to mind. If the matter were to be investigated and opened up at the royal commission, and even before the Court of Criminal Appeal on the current petition, it may very well reveal inconsistencies between statements made in the Lewandowski affidavit and what the Minister for Health said previously in the Court of Criminal Appeal. If that were the case - and we do not know that - that might relate to the taking of the statement or to the bashing of Peter Mickelberg. Could it not be the case that your giving the affidavit and the supporting documents to the minister could be perceived as perverting the course of justice?

Mr J.A. McGINTY: Yes. The member is at a disadvantage in the sense that she does not have the affidavit in front of her. However, the proposition on which she bases her comments is not true. I have said from the start that the Minister for Health, or Detective Sergeant Kucera as he was at the time, was not mentioned directly or indirectly. There was no reference to any involvement or any time at which Mr Kucera was involved.

Mrs C.L. Edwardes: That is not necessary, because if there were inconsistencies between -

Mr J.A. McGINTY: There is no inconsistency.

Mrs C.L. Edwardes: The minister does not need to be mentioned in the Lewandowski affidavit.

Mr J.A. McGINTY: I agree with that.

Mrs C.L. Edwardes: However, if things that Lewandowski said in his affidavit contradicted the Minister for Health's evidence in the Court of Criminal Appeal, isn't there a possibility of some inconsistent statements?

Mr J.A. McGINTY: There is no inconsistency. That is the advice I have received, and that is my reading of the plain English contained in it. Had there been, it could well have been a different proposition. There is no reference, direct or indirect, and there are no potential or actual inconsistencies in the statement. If there were, that would have made it a different proposition, because that would start to become an allegation.

Mrs C.L. Edwardes: You can understand why there might be a perception of that.

Mr J.A. McGINTY: I know that there is not. That is the issue.

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Ms C.L. Edwardes: However, there might be a perception of that by people in the community.

Mr J.A. McGINTY: Sure. Significant parts of the affidavit were reported in *The West Australian*. With the passage of time, it may well be that that is a scandalous and false allegation.

Ms S.E. Walker interjected.

Mr J.A. McGINTY: The member for Nedlands is up to her old tricks.

Ms S.E. Walker: Did you give it to *The West Australian*?

Mr J.A. McGINTY: No, I did not.

Ms S.E. Walker: Who did you give the affidavit to? Tell us.

Mr J.A. McGINTY: Who told the member for Nedlands about it? She is the one who was talking to the media. The member for Nedlands was the first member of this House to go to the media and speak to them about the existence of that affidavit.

I will return to the motion and tell the House why the Government cannot support it. If it were the case, as has been suggested by the member for South Perth, that this is a debate about propriety and whether the actions taken were proper, that is fine. However, it is not. The member for Nedlands has drafted a motion - and she has not sought to amend it today - that is very specific. It is homed in on a slur to undermine me in my job, because it refers specifically to allegations of criminal behaviour by members of the Gallop Government. Those allegations are unspecified. Not one member of the Opposition can put his or her finger on anything that is criminal.

Since we are focused on an allegation of criminality, and given that that was the gist of the quite defamatory and false article in today's *The West Australian*, I will refer to section 83 of the Criminal Code. It provides that any public -

Ms S.E. Walker: Did you go and bully that reporter? Tell us, Attorney. Did you?

Mr J.A. McGINTY: Please, go away. Is the member for Nedlands embarrassing the rest of the Opposition? Is she embarrassing any opposition members? There is silence on the other side of the Chamber. It is about time the member for Nedlands stopped squawking.

Section 83 of the Criminal Code, briefly paraphrased, deals with a public officer who, without lawful authority or a reasonable excuse, does certain things for either benefit or detriment. We will work our way through the three essential elements of section 83 of the Criminal Code; and it must be borne in mind that it is not even alleged by members opposite that there has been a breach of section 83 of the Criminal Code.

Ms S.E. Walker: Is there a prima facie case against you?

Mr J.A. McGINTY: No.

Ms S.E. Walker: In your opinion, there is not a prima facie case against you.

Mr J.A. McGINTY: No - but not only in my opinion -

Ms S.E. Walker: In whose opinion?

Mr J.A. McGINTY: The crown counsel -

Ms S.E. Walker: What did you say to the crown counsel?

Mr J.A. McGINTY: I would like to put on the record what the three leading law officers in Western Australia had to say, and I do not want to be squawked at as I am doing so because it is very important. The crown counsel was asked for his opinion today. He said that there is -

Ms S.E. Walker: What facts did you give the crown counsel?

Mr A.D. McRae: Be quiet, for heaven's sake!

Mr J.A. McGINTY: Go away! I have asked the member for Nedlands to please respect the fact that I want to get these matters on the record, and she is not showing any respect whatsoever.

The ACTING SPEAKER (Mr P.W. Andrews): The Attorney General has clearly indicated that he does not wish to take an interjection at this stage.

Mr J.A. McGINTY: Do I have the capacity to ask for an extension of time?

The ACTING SPEAKER: Extension granted.

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Mr C.J. Barnett: Much as we would like to give you the opportunity, we will give you a chance next week.

Mr J.A. McGINTY: I think I just got it. Did the Acting Speaker say no?

The ACTING SPEAKER: No, I said extension granted.

Mr J.A. McGINTY: Section 83 of the Criminal Code has three components, each of which must be satisfied. I reiterate that nobody opposite has alleged that there has been a breach of section 83 of the Criminal Code. The questions were worded in such a way as to simply raise, in the same sentence, how section 83 might operate. If members opposite believe there has been a breach, they should make the allegation. I gave each member opposite the chance to make the allegation a minute ago, and if a serious allegation were made, we could look at it.

Ms S.E. Walker: I have mentioned a prima facie case. Is there one?

Mr J.A. McGINTY: No is the answer. The point that I wanted to make is that the three independent senior law officers of government, each exercising independent statutory authority - the Director of Public Prosecutions, the Solicitor General and crown counsel - have each provided advice that the release of that document was proper and that there was no legal impediment to so doing.

Ms S.E. Walker: Released to whom?

Mr J.A. McGINTY: There was no impediment to anyone: release it to the world.

Mr P.G. Pandal: This is not a dispute about the Attorney General releasing it to the world. The dispute is about the Attorney General's conduct in disclosing to his colleague the Minister for Health at the weekend a document that should not have been disclosed to him. That is the issue.

Mr J.A. McGINTY: It could have been and should have been disclosed to him. Crown counsel advised today that it was nonsense to suggest there could conceivably be any breach of section 83 of the Criminal Code. There is no foundation to it.

Ms S.E. Walker: Table it.

Mr J.A. McGINTY: That is the advice he gave. Previously the Solicitor General has given the same advice. There is no impediment, legal issue or obligation of confidentiality associated with this.

Ms S.E. Walker: You are a silver tongue.

Mr J.A. McGINTY: If I had the choice of accepting legal advice from crown counsel, the Solicitor General and the Director of Public Prosecutions -

Ms S.E. Walker: I would not get it from you.

Mr J.A. McGINTY: I am taking advice from them. If I had a choice of taking legal advice from those three bodies or the member for Nedlands, who is not even prepared to make an allegation, she would not rate.

Ms S.E. Walker: You are an embarrassment to the legal profession in this State.

Mr J.A. McGINTY: This motion is about allegations of criminal behaviour. Where are they?

Ms S.E. Walker interjected.

The ACTING SPEAKER (Mr P.W. Andrews): I have really tried to push this debate forward by making sure that the Attorney General has the capacity to accept interjections, but the interjections from the member for Nedlands are becoming too repetitive.

Mr J.A. McGINTY: The three top law officers in this State are each saying that the actions taken could not possibly constitute an offence under section 83 of the Criminal Code, not even remotely, for three reasons. They are the three key elements of what constitutes an offence under section 83. First, it was done with legal authority; it is as simple as that.

Ms S.E. Walker: Whose authority?

Mr J.A. McGINTY: Mine as the Attorney; it is as simple as that. That is the defence; end of argument.

Mrs C.L. Edwardes: The Attorney General can do whatever he likes with any document he has in his possession.

Mr J.A. McGINTY: I agree with the member for Kingsley -

Ms S.E. Walker interjected.

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Mr J.A. McGINTY: Mr Acting Speaker, can you shut the member up?

*Point of Order*

Mr J.C. KOBELKE: We all know that interjections are disorderly. From time to time, they can enhance a debate and therefore whether they continue requires fine judgment, but there comes a time when interjections become annoying and disruptive to the debate. We have gone past that stage. The interjections from the member for Nedlands constitute a disgrace to this Chamber; it is embarrassing and appalling that the member continues to interject in such an inane and nonsensical way.

The ACTING SPEAKER: We have reached that stage. I will not call the member for Nedlands to order at this stage, but I will call her to order if these interjections persist. I am trying to make sure that the interjections are taken well, because I know the Attorney General wants to respond to them. I will call the member to order next time.

*Debate Resumed*

Mr J.A. McGINTY: In answer to the member for Kingsley, during discussions about this matter with crown counsel today and on previous occasions, he drew a very clear distinction between an affidavit normally lodged in a court with conditions of confidentiality attached and the affidavit referred to in this case. In my view, that would be a serious breach. I do not know technically whether it would be criminal, but it would certainly be a most serious breach that could arguably fit within section 83 if it were a document of that character. This document was simply a confession that was made before the DPP, who passed it to me through the Solicitor General. Tony Lewandowski expected it to become public. He left the country forthwith because he knew what would occur. The DPP raised with him the need for this document to receive some significant circulation and therefore it would become public. Tony Lewandowski said that would be fine. There was no expectation that it would remain confidential.

Mrs C.L. Edwardes: So in fact you could give us a copy, based on the advice you received today?

Mr J.A. McGINTY: Not at this stage because the royal commission or the police might take a different view from when they were first made aware of the document. When they have had a chance to look at it they might think it has received so much publicity that they are more relaxed about it. I am happy to make that inquiry and, if they are, I will make a copy of it available to the member.

The important point is that it would not be proper to disclose every document. This was a confession about which there was massive public interest. I took that judgment call; Liberal Party members obviously disagreed, and a significant section of the population disagreed, but I made it with the best of intentions, and that was to be open and say, "Here it all is."

I have covered the first component of section 83 of the Criminal Code, which is lawful authority. There is no doubt that I have the lawful authority to act in respect of this document in the way in which I did as a matter of law for the purposes of section 83. The second component is the existence of a reasonable excuse. In my view, there was also reasonable excuse; that is, public interest and those sorts of matters which came into play.

If there were to be any allegation of criminality, I presume the argument would be that somehow or other the Minister for Health obtained a benefit from that disclosure.

Ms S.E. Walker: He did.

Mr J.A. McGINTY: The difficulty with that proposition is that the position of the Minister for Health was locked in stone. It was written down in an affidavit lodged in the Supreme Court; it was on the record in the transcript of proceedings in the 1998 appeal; he had nowhere to go. He could not change his story, otherwise he would be perjuring himself. Where was the benefit? It might be very remotely argued that by putting on notice that this matter was to become a matter of public controversy, the document was somehow or other of benefit to the Minister for Health. As a question of law, I do not think that is the case, and that is the general advice I have received. The general view is that on each of those criteria, this was an absolute furphy.

Ms S.E. Walker interjected.

Mr J.A. McGINTY: From whom did the member for Nedlands receive the legal advice to raise this section 83 issue?

Ms S.E. Walker: Who did you get it from?

Mr J.A. McGINTY: There we go again. She is as slippery as a snake.

Ms S.E. Walker: Tell me what you told George Tannin.

Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Mr J.A. McGINTY: I just have. I asked him whether there was a section 83 issue.

Ms S.E. Walker: Did you tell him you gave the Minister for Health the affidavit before anybody else in the world; that you gave it to a man who was implicated?

The ACTING SPEAKER: The Attorney General invited the interjection and the answer was given, and it was an interesting exchange, but I ask the Attorney General to chat with me.

Mr J.A. McGINTY: Thank you, Mr Acting Speaker. In conclusion, I make these comments: no-one is prepared to make an allegation against me; no-one is prepared to make an allegation against the Minister for Health. I have asked every member sitting opposite whether they can identify an allegation of criminal behaviour. I have heard none whatsoever.

Mrs C.L. Edwardes: We have identified what could be perceived.

Mr J.A. McGINTY: However, there is no allegation, because we are dealing with allegations of criminal behaviour by members of the Gallop Government. If the member wants to use those precise words to specifically make an allegation that criminality was involved in all of this, then the member had better back it up. To allege that the Attorney General or any other cabinet minister has been involved in criminal activity is about as serious as it can possibly get in this place, and no-one is prepared to identify the allegation of criminality. It is an absolute joke!

I again extend the opportunity to any member of the Opposition who can identify a breach of the Criminal Code or any other criminal behaviour to please do so now.

Mrs C.L. Edwardes: How would you interpret the words in the motion - "directly or indirectly" - that come before the allegations of criminal behaviour?

Mr J.A. McGINTY: Fine, but we still need an allegation of criminal behaviour.

Mrs C.L. Edwardes: I have identified the perception that could well be the case; and, given the fact that we do not have the affidavit, that is all we can refer to.

Mr J.A. McGINTY: I can say to the member with complete honesty and candour that there cannot possibly be any inconsistency, directly or indirectly, in the contents of that affidavit. I have undertaken to make inquiries about whether the passage of time has changed the view of the police or the royal commission on that matter. I will move on.

Ms S.E. Walker: I will take you through the Criminal Code.

Mr J.A. McGINTY: The member for Nedlands is not prepared to identify an allegation of criminal behaviour. I asked the member to do so before, but she would not.

Ms S.E. Walker interjected.

The ACTING SPEAKER (Mr P.W. Andrews): Members!

Ms S.E. Walker interjected.

The ACTING SPEAKER: No, the Attorney General did not. At that point he said that he would move on. I call the member for Nedlands to order for the first time.

Mr J.A. McGINTY: The Leader of the Opposition said that this matter had involved significant elements of smear. There is no greater example of that than the way in which the issue was picked up yesterday. I did not object to the question itself, but to the false and defamatory way in which the issue was picked up and portrayed in the public arena. That was a smear of significant proportions.

Mr C.J. Barnett: I asked a question in the Parliament and you answered. I did not speak to a journalist.

Mr J.A. McGINTY: As I said, I do not have an argument with that. It was the way in which the issue was picked up and run outside the Parliament that constituted a significant smear.

I was angry when Peter Foss sought to bring my daughter and the son of the Minister for Health into this debate. It was an absolute disgrace. They are young adults of whom the Minister for Health and I are incredibly proud. Anyone in this House would be extremely proud to have those young adults as their children. They are getting on with their lives and their jobs. They have the right to not have their lives dragged into the public arena by a member of the Opposition who is simply trying to score a cheap political point. They have a right to privacy, as indeed do the children of other members of this House. I can give an example of when that type of relationship is relevant. Two years ago I raised a question about Doug Shave's father-in-law, who benefited to the tune of \$100 000 from an approach the minister made on a matter that concerned the finance broking scandal. That

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relationship was relevant. The mere existence of a relationship is not, in itself, relevant. That is the principle at stake here. The shadow Attorney General got down into the gutter on that day. He did a disservice to me, my daughter and to the Minister for Health and his son.

Mr C.J. Barnett: Do you see the Minister for Education in the same light?

Mr J.A. McGINTY: I am dealing with the current issue. If it has some relevance to the issue, that is fine. I am deliberately not entering into that other debate because I have just one minute left in which to speak. That is the view I took. It was a further part of the smear campaign that took place on this occasion. As to Ripley -

Ms M.M. Quirk: Believe it or not.

Mr J.A. McGINTY: Believe it or not!

Several members interjected.

Mr J.A. McGINTY: That comment was made by the member for Girrawheen. I did not say it; I echoed it. The simple point is that the dogs might bark but the caravan has moved on. That was 30 years ago, and I fail to see any relevance that it has today. I cannot understand why people are putting so much time and effort into an event of 30 years ago and an allegation by a confessed criminal against the copper who brought him to justice. This will not be the last time that the allegation will be made against the Minister for Health, because he was a very effective copper; he locked up crooks in this State and made our streets safer over a number of years. People continue to make those comments.

**MR C.J. BARNETT** (Cottesloe - Leader of the Opposition) [6.43 pm]: I will go over a bit of the background, which most members will recall. There is no dispute that an interview was conducted with Peter Mickelberg at the Belmont Police Station in July 1982. The current Minister for Health was at that time Detective Sergeant Kucera, and he was in charge. Peter Mickelberg claimed during his trial and the various appeals that during that interview -

*Point of Order*

Mr R.C. KUCERA: I would like to make a correction. I was not the officer in charge of the police station.

Mr R.F. Johnson: It is not a point of order.

Mr R.C. KUCERA: I need to put the position correctly.

The ACTING SPEAKER (Mr P.W. Andrews): The minister called a point of order, and I ask him to make it.

Mr R.C. KUCERA: The point of order concerns the correctness of what was said. The Leader of the Opposition is well aware of what I am on about.

Mr C.J. Barnett: What was your position?

Mr R.C. KUCERA: I was the officer in charge of the detectives office; it is as simple as that.

The ACTING SPEAKER: There is no point of order. Other mechanisms are open to the Minister for Health through which to make explanations.

*Debate Resumed*

Mr C.J. BARNETT: The current Minister for Health was at that time Detective Sergeant Kucera and the officer in charge of the Belmont Criminal Investigation Branch. In his trial and various appeals, Peter Mickelberg stated that he was stripped naked and beaten during the interview conducted on 26 July 1982. At his media conference, the Attorney General described the Lewandowski affidavit as chilling reading. He said that Mickelberg was subjected to continual humiliation and beating. Mickelberg had claimed that he met Detective Sergeant Kucera only after the interview was completed. He maintained that line consistently throughout his trial and the subsequent appeals. Lewandowski claimed that the so-called confessions and evidence provided in that interview were recorded on notes, which became a key element in the 1998 appeal. Mickelberg claimed that the notes of the interview were fabricated.

During the 1998 appeal, Assistant Commissioner of Police Kucera was called as a star witness. He had not been called as a witness at the trial or the appeals that had taken place between 1982 and 1998. He was a significant witness. He testified to the effect that he had entered the room during the time in which the apparent beating and continual humiliation, in the words of the Attorney General, were supposed to have occurred. He claimed that he entered the room on three different occasions. He also testified, under oath, as Assistant Commissioner of Police, that he had seen notes being taken and that Lewandowski had read back from those notes to Mickelberg. That was a significant testimony to the 1998 appeal. It vindicated or supported the version of events of

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Acting Speaker; Mr John Bradshaw; Ms Sue Walker; Mr Mike Board; Mr Eric Ripper; Mr Rob Johnson; Mr Phillip Pandal; Mr Jim McGinty; Dr Geoff Gallop; Speaker; Mr Colin Barnett; Mrs Cheryl Edwardes; Mr John Quigley; Mr John Hyde; Mr John Kobelke; Mr Bob Kucera

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Lewandowski and Hancock, the detectives involved. These are not my words. The Supreme Court found that Kucera's evidence was critical in quashing the 1998 appeal by Mickelberg. The decision states -

The most powerful individual factors rebutting the case made out by the appellants -

The Mickelbergs -

are the testimony of Mrs Holz and Kucera -

Kucera was no longer a peripheral player, as he no doubt had been in 1982, but a star witness of the 1998 appeal. He was a witness who saw the Mickelberg appeal quashed. That was the first time he had appeared in the witness box at an appeal on that matter.

Lewandowski now supports the version of events to which Peter Mickelberg always kept. As I said in this House about two months ago, I do not today know whether Peter Mickelberg or Assistant Commissioner Kucera told the truth in the 1998 appeal. However, I know that they cannot both be telling the truth, unless there has been some unexplained memory loss for both of them. One was telling the truth and one was not. Both appeared in the witness box under oath. If a person does not tell the truth when he is under oath in the witness box, he commits perjury. If the Attorney wants to know the relevance or seriousness of this situation, I put it to this House that either Assistant Commissioner Kucera or Peter Mickelberg perjured himself at the 1998 appeal. That immediately raises the significance of this matter. It is made even more significant because the Supreme Court saw Assistant Commissioner Kucera's evidence as pivotal. This matter is of public importance and involves conflicts of interest because the Assistant Commissioner of Police in question is now a member of Cabinet, the Minister for Health and a member of this Parliament. He is in the public domain because he stood for Parliament. He faces a conflict of interest because he is a member of Cabinet. This side of the House has done nothing to affect that. Those matters concern this Government and administration. The Attorney General asks what is the accusation and where is the conflict. I refer to an article in *The Australian* of 13 June. The second paragraph reads -

Conflicts in the testimonies of convicted gold swindler Peter Mickelberg and Health Minister Bob Kucera, a former senior policeman, should be evaluated in the light of new evidence, Attorney General Jim McGinty said yesterday.

"It is a matter that should be investigated by the royal commission, and it will be investigated by the royal commission," he said.

The Attorney General recognised that in 1998 someone was not telling the truth. He went public in the media and said there were contradictions and inconsistencies between statements made by Mickelberg and then Assistant Commissioner Kucera. The Attorney General recognised how serious it was. When he received the affidavit, he took the trouble of contacting the Premier in Sydney to discuss it with him. I imagine they discussed the political situation, the issues of what should happen to the affidavit and whether the Minister for Health was telling the truth in 1998. It is not just a matter of whether someone had told a fib; it is whether perjury was committed by either Mickelberg or Assistant Commissioner Kucera, who is now a member of the Gallop Government. That is why it is serious and why the Opposition raises these issues continually in the Parliament and will continue to do so until it receives answers to these questions.

Did the Premier and the Attorney General discuss giving the affidavit to Minister Kucera? I will bet they did. The Attorney General gave the affidavit to the relevant investigative authorities. However, he also gave the affidavit to his friend and cabinet colleague on a Saturday. The Attorney General gave the minister not only the affidavit and the transcripts of the 1998 appeal, but also statements of evidence. The Attorney General contacted the minister and gave them to him. The Attorney General gave the minister the affidavit, but he also pre-armed and prepped him for anything that might come out in the public domain or in the royal commission. The Attorney had already sent the documents to the royal commission.

What is the Attorney General of Western Australia doing pre-arming, prepping and preparing the point of view and the comment that the Minister for Health may make? It was a tip-off. The Opposition has made that accusation. It was highly improper. The Attorney General then makes some of this public on Monday to try to say he has been open and accountable. Hang on! The Attorney General had given a tip-off - a privileged position - to a key witness whose evidence was now in contradiction to both Mickelberg and Lewandowski. I put it to you, Mr Speaker, that if it is the case - I do not make this accusation - that then Assistant Commissioner Bob Kucera perjured himself in 1998, did the actions of the Attorney General act to conceal that crime? That is the implication and the importance of this issue. We have heard about the conflicts of interest in Cabinet, the evidence given by Assistant Commissioner Kucera in 1998, which would be perjury if shown to be inaccurate, and the actions of the Attorney General to give him advance warning, which may pervert the course of justice or

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even conceal what is perhaps a criminal act by the Minister for Health. I do not know who was telling the truth in 1998, but we will find out; it will come out.

The Attorney General and the Premier should have done what the Opposition suggested on day one. This is a serious issue. The only coincidences are that then Assistant Commissioner Kucera is now in government, Don Hancock was murdered and Lewandowski went public by making an affidavit. They are coincidental events. Clearly, the conflicts of interest and the improper conduct by the Attorney General were there. The Opposition did not do what the Labor Party did when it was in opposition. We did not come in here crying for blood with dramatic, over-the-top statements. We simply said that the Minister for Health should stand aside. We did not even call for the Premier to sack the Minister for Health. We said he should stand aside the Minister for Health until these inconsistencies could be investigated by, presumably, the royal commission. Why not the royal commission? The Attorney General had already boasted that the affidavit was going to the royal commission, the Mickelberg case was going to be investigated by the royal commission and the inconsistencies in the evidence would be sorted out by the royal commission. All the Opposition said was that the Minister for Health should be stood aside until that was done. That was a moderate, considered and responsible position. It was very modest and careful.

We find that the Government is in denial. We have not heard the Minister for Health on this issue. He has not told this House whether he was telling the truth, whether his evidence got confused or what happened in 1982. Did he really go into the room or did he not; was Mickelberg naked; had Mickelberg been beaten up? I do not know, but the Minister for Health was there. It is a serious issue; yet the Minister for Health has not spoken and I assume he will not. The Attorney General has not been open.

I am pleased the Attorney General is back in the Chamber. I understand from his previous answers that on Saturday, 8 June he gave three documents to his cabinet colleague, the Minister for Health: the Lewandowski affidavit, the statements of evidence, and the transcript of the 1998 appeal. However, on 14 August this year, the Attorney General told the House that the Solicitor General had given him only the transcript of the 1998 appeal and the affidavit. Where did the statements of evidence come from? It is interesting that the Solicitor General had given the transcript and the affidavit to the Attorney General on the Friday, but somehow by the Saturday he had managed to get his hands on not only the affidavit and the transcript but also the statements of evidence.

Mr J.A. McGinty: I think that came from the Solicitor General.

Mr C.J. BARNETT: I hope the Attorney General will explain, because I am interested. Did it perhaps happen that the Minister for Health requested the statements of evidence from the Attorney General? Did the Attorney General seek those out and give them to the minister?

Mr J.A. McGinty: No.

Mr C.J. BARNETT: The Attorney General can explain later where they came from. I am also interested in the fact that the Attorney had these conversations on the Friday night with the Premier in Sydney. I understand - if the Premier were here he could correct me if I am wrong - that the Premier took the time to pick up the phone and speak to the Minister for Health to ask whether he told the truth in 1998?

Mr J.A. McGinty: No, that is not what has been said on the record. The Minister for Health rang the Premier.

Mr C.J. BARNETT: Did the Premier ask the Minister for Health whether he had told the truth or did he ask him whether he had perjured himself?

Mr J.A. McGinty: I was not party to that conversation. It would be sensible to say, "You are aware of these issues; what is your point of view on them?" That would be logical. However, I was not party to them.

Mr C.J. BARNETT: I hope the Attorney General can explain where the statements of evidence came from.

Mr J.A. McGinty: I am pretty sure they came from the Solicitor General.

Mr C.J. BARNETT: I understand the Attorney General has given contradictory answers.

Mr J.A. McGinty: Do you have the answers there?

Mr C.J. BARNETT: I have the questions and the answers and the two answers are inconsistent. It may be an error on the part of the Attorney General.

Mr J.A. McGinty: To the best of my recollection it came from the Solicitor General.

Mr C.J. BARNETT: I am curious. The Attorney General is saying that he has made this issue public and has been open and accountable about it, and gave the affidavit out. It did not happen like that at all. The Attorney General was on the phone to the Premier. They had several conversations. A telephone conversation took place



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between the Minister for Health and the Premier and the next day the information was given to the Minister for Health. I bet there was a lot of scurrying around within the Labor Party and the Premier's office. No-one can tell me that within the Labor Party there were not all sorts of questions being asked. No-one can tell me people were not reading that evidence, going through it and looking to see how much trouble the Minister for Health may have been in.

Mr J.A. McGinty: I will tell you exactly that. You are wrong, Leader of the Opposition.

Mr C.J. BARNETT: If the Minister for Health perjured himself in 1998, he is gone from this Government and from this Parliament. If the Attorney General did anything at all to stop his being brought to account for that, he is gone also!

Mr J.A. McGinty: Are you suggesting the Minister for Health perjured himself?

Mr C.J. BARNETT: The Attorney General should have stayed in here and listened to what I said. I will repeat what I said. In 1998, in the words of the Court of Criminal Appeal, the Minister for Health was a key witness in the appeal. The evidence he gave contradicts the evidence given by Peter Mickelberg. The Lewandowski affidavit now supports Peter Mickelberg. I do not know whether in 1998 Peter Mickelberg was telling the truth or whether Assistant Commissioner Kucera was telling the truth. However, I know that they were both under oath in the witness box and one of them perjured himself, although I do not know who it was.

Debate interrupted, pursuant to standing orders.

*House adjourned at 7.00 pm*

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