

REPORT OF PROCEEDINGS IN CAMERA BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 3

INQUIRY INTO POLICE RESOURCES IN CABRAMATTA

¾¾¾

At Sydney on Friday 11 May 2001

¾¾¾

The Committee met in camera at 2.00 p.m.

**[Transcript later made public by resolution of
General Purpose Standing Committee No. 3 – 15 June 2001]**

¾¾¾

PRESENT

The Hon. Helen Sham-Ho (Chair)

The Hon. R. H. Colless

The Hon. R. D. Dyer

The Hon. J. Hatzistergos

The Hon. G. S. Pearce

Ms Lee Rhiannon

The Hon. I. W. West

DEBORAH WALLACE, Detective Chief Inspector of Police and Crime Manager, Cabramatta Local Area Command, Cabramatta Police Station,

CLIVE THOMAS SMALL, Commander, Greater Hume Region, Liverpool Police Station, and

FRANK ROBERT HANSEN, Superintendent of Police, Cabramatta Police Station, sworn and examined:

CHAIR: In this in camera session we are taking evidence specifically on the evidence on 23 April and subsequent events. Mr Small or Ms Wallace, what is a directive memorandum? What is its significance? Can you outline typical circumstances in which a directive memorandum is issued? What are the ramifications of failing to comply with a directive memorandum? Before answering those questions, Mr Small, I remember that you have a statement you want to make.

Mr SMALL: Now that we are in this session that can be left, and I will get on with answering your questions. Generally speaking, a directive memorandum is issued during internal investigations not only to suspects in the investigation but to all witnesses in the investigation. However, a directive memorandum has very little difference in its implications to any other correspondence that is issued. For example, if I were to say to Mr Hansen, "Please provide information about this", the fact of the matter is that that is a direction, whether it is implicit or explicit.

There is no difference between saying, "You are directed to provide me with this" and "Please provide it to me", except in one quite important way which has significant impact for the matter before us now. Generally speaking, when a request is made, "Please provide information about a matter" or "What do you know about this?", it is general practice that you have up to about 14 days to respond. There is no requirement that you respond to it immediately. In the old Police Service book there was a thing which said, "You have 14 days to respond to correspondence". That is not there, but the general principle is that you have a time lag in which to respond; it is not urgent.

As soon as I put a time requirement on it, for example, "Please provide this information by five o'clock today", no matter what the wording or language, it is a directive memorandum. So the mere fact that you put a time frame on it makes it a directive memorandum. In this case we used the words, I think, "You are directed to provide forthwith", which means that we want an answer now. If we had not included the word "forthwith" it would have implied that they had up to a fortnight or so but at least a week or so to respond. What we are seeking now was an answer to a matter that we regarded as operationally urgent, which recognised the importance of dealing with matters where our children could be at risk, and what we sought was an answer immediately. So to that extent, while the term is generally applied to internal affairs investigations or not even to internal affairs investigations but to other matters where an urgent reply is sought, the fact is that whenever we put a condition on a memorandum it becomes a directive, implicitly or explicitly. Does that answer the question?

CHAIR: Part of it. You have not answered the question about failing to comply.

Mr SMALL: Sorry. Failure to comply on either count could involve disciplinary action of failing to obey a lawful direction of an officer.

The Hon. J. HATZISTERGOS: Does that depend on the circumstances?

Mr SMALL: It would. The fact that someone does not reply does not immediately mean that you run out and launch an internal investigation and departmentally charge them or prefer charges or action against them for failing to comply. It would depend on the circumstances.

The Hon. J. HATZISTERGOS: What if they were unable to supply the information?

Mr SMALL: If they were unable to supply—

The Hon. J. HATZISTERGOS: If the response to your directive in this instance is, "I am unable to supply any information. I did not have any information", what would be the response?

Mr SMALL: Sorry, I took that another way. For example, if someone said, "I don't have access to that information at the moment and it will take me 24 or 48 hours to respond", that is an answer to the directive memorandum. If the person had said, "Look, I don't have any information that will advance the matter you are inquiring about. I have no knowledge of this matter", then that is the end of it in terms of that matter. In terms of the directive memorandum, they have responded. The directive memorandum does not dictate the answer that is required.

Ms LEE RHIANNON: Is it true that three of the four officers are on some sort of sick leave at the moment?

Mr SMALL: I understand that two of the officers have gone on sick leave.

The Hon. R. H. COLLESS: What is the nature of their illness, do you know?

Mr SMALL: They say, I think, it is stress, they say. There is a third officer—

The Hon. J. HATZISTERGOS: Which two are we talking about?

Mr SMALL: **D** and **C**.

Mr HANSEN: **D** and **C** have reported off sick and according to the records are on a stress-related condition.

The Hon. J. HATZISTERGOS: For how long? How long have they been on stress leave?

Mr HANSEN: I understand that **C** has a month and **D** I think a fortnight.

The Hon. R. H. COLLESS: With supporting medical documentation, I presume.

Mr HANSEN: I anticipate that that would be following, yes.

The Hon. G. S. PEARCE: It has been put to me that both **C** and **D** were relieved of supervisory status.

Mr SMALL: That is not true. Either officer here could answer that directly, but that is not true.

Mr HANSEN: At a point earlier in the year, because one of the duty officers was going on leave, I actually identified **C** and had him relieving in a more senior position, that of duty officer, as part of a developmental process. I recognised him as somebody who could do that job and of the officers of his rank I had there I selected **C** in particular. He did that for a period of I think about three or four weeks and then returned to his normal duties, which was team leader. **D** has remained in the same position as he was when I arrived, and that was team leader.

CHAIR: I understand what a directive memorandum is. Mr Hansen, before you issued a directive memorandum to the four officers who gave evidence to the Committee on 23 April, what alternative approaches to the investigation of the matter of criminals taking recruits from local schools did you consider?

Mr HANSEN: Following on from what Mr Small said, the difference between this and a written request for information is not a great deal. Following on from what Mr Small said, normally a directive memorandum during a departmental inquiry, from my experience, would include issues such as the time and date it was served, which does not appear on my request, and normally in a departmental inquiry the officer would be sat down in an office and required to respond to it then and there. I did not impose that sort of restriction or that sort of process on any of these officers. They were handed this document privately and discreetly, and asked to respond to it forthwith. But I certainly did not go through the process of issuing them with it in a formal way with a time and date of handing it to them and putting them in a office to respond to it, as what I think is being implied as some directive memorandum might have been used. This is simply a request which its terminology

includes the words "direct" and "forthwith". But other than that it is a normal request document that I suggest you would provide to any officers seeking information that you want from them.

The alternative was to call them into the office, one at a time, and say, "What can you tell me?". I was not comfortable with that approach, because we have seen clearly, even from stuff that has appeared in the media, that there would be a possibility that what I had asked and what had been told would be misconstrued, in whatever forum it might appear. This at least provided the questions as I wanted them very clearly, and articulated that, and they would then clearly and articulately no doubt give me a response which auditable, transparent and had a proper chain of record and what have you. I was not comfortable with simply calling them into the office. The only other alternative was to call them into the office and say, "What can you tell me about this?"—because I can see how things have been misconstrued in the past and how other things have been leaked. I did not want to be left vulnerable in the circumstances.

The Hon. R. H. COLLESS: Are you referring to the first or second memorandum?

Mr HANSEN: The first one was served on the four officers. The second memorandum, because he was the only one on duty, was served on A, but not on the other three.

The Hon. R. H. COLLESS: The other three names are on the top of the memorandum.

Mr HANSEN: Yes, but they were not served.

The Hon. R. H. COLLESS: Is that because they were on sick leave?

Mr HANSEN: No, because they did not happen to be on duty on that day. After I served it on A I then reconsidered the situation and decided not to pursue the other three with that follow-up, which simply was a confirmation of the first one anyway.

The Hon. R. H. COLLESS: The wording is slightly different.

Mr HANSEN: Yes, but it is a confirmation of the first one.

CHAIR: Before you issued that directive memorandum to the four officers, had you sought any advice or received any advice?

Mr HANSEN: I had a conversation with Mr Small earlier in the day, of course, and we discussed the matter. That was as much advice as I received. I saw it as a responsibility of mine to elicit this information if they had it.

CHAIR: I want to clarify a few points. In regard to the directive memorandums, I agree with you that it is a very serious matter and that it should have been investigated. Apart from the four officers, why were these directive memorandums not addressed to all the other officers, or at least to those officers who participated in this focus group that drafted the submission?

Mr HANSEN: The document or the submission at that stage had been prepared. I believe its status was that of a draft document. It had been prepared by a number of officers. I had a vague idea of who was there, but I was not entirely sure—not that it was a secret, but I did not know who were the 10 officers were. The original submission had the status of a draft document, which I understood was on its way to the branch for endorsement on its way to this Committee. When the matter was put before the branch and the branch rejected the submission, the submission then had no status at all. They rejected it on its contents and found that the views of these five or 10, or whatever it was, that contributed to the submission, they felt did not—

It was a draft which was not endorsed and at that stage it did not have any status. But, according to the Sydney Morning Herald report it had been tabled here, therefore it had a different status altogether in my view, and therefore it was the view being put forward by, as the Sydney Morning Herald reported, those four officers. That is when I needed to ask them what they knew of it.

The Hon. G. S. PEARCE: Did you not think you needed to ask when the draft document was prepared? Getting to the crux of the matter, the appearance that one readily derives from this is that on the day after these witnesses gave their evidence they suddenly received a directive from you. This document had been floating around at least since the beginning of April. It had been the subject of letters and correspondence from Childers of the Police Association who said he had written it. Why did you not, at that stage when the allegations were actually made, issue a directive to those officers who made the allegations that were incorporated into that draft document?

Mr SMALL: If I could respond—

The Hon. J. HATZISTERGOS: It is not in the draft document.

Mr SMALL: That is the point, it is not in the draft document and the issue that was raised in the newspaper is in the transcript of the evidence, not in the draft document. That is another point that shows that the leak occurred from someone who was present when the evidence was given.

The Hon. G. S. PEARCE: IT is in the draft that was faxed through to us by **D** on 18 April. That is the one that was circulated to us.

The Hon. I. W. WEST: The draft by the four.

The Hon. G. S. PEARCE: It is the draft that was faxed to us before the hearing on 23 April. It is the draft that was prepared by the branch—paragraph 5.3.

Mr SMALL: I have not got a copy of that. Might I have a look at it?

CHAIR: The actual submission was amended, but the amendments are fairly trivial. In fact the two are almost identical.

Mr SMALL: I cannot recall what is in the evidence now, but the newspaper report referred to claims about Cabramatta high school, and claimed to have seen reports from registered informants and intelligence reports. I referred to that earlier this morning, and that is not in here.

The Hon. G. S. PEARCE: The words of the directive notice are, "We confirm that we believe that drug criminals take recruits from local schools.". That is the issue you were going through and that is in there. It has been there all the time. Why did you issue this directive on the day after they gave evidence? Was it to intimidate?

Mr SMALL: First of all, that document was rejected.

The Hon. G. S. PEARCE: After it was published.

Mr SMALL: No, that was rejected by the Cabramatta police at a Police Association meeting. That was our understanding of the document.

The Hon. G. S. PEARCE: It was drafted by police who said that that is what they believed.

Mr SMALL: The draft was rejected on the basis of content.

Ms LEE RHIANNON: I ask for clarification on the point that you are making. I am looking at page 2 of the document entitled "New South Wales Police Service Cabramatta Local Area Command" which has in it various motions. The submission which states "rejected due to content" was a submission prepared by Greg Childers. Are you saying that that document is the same as the document that we are referring to?

Mr SMALL: On my understanding, yes.

Ms LEE RHIANNON: I want to clarify that we are talking about the same thing. That is the same document.

Mr SMALL: Except that when it was presented, as I understand it, some words were changed.

The Hon. J. HATZISTERGOS: The word "officers" was changed to "we".

The Hon. G. S. PEARCE: But my question is: Why did you not ask Greg Chilvers? He wrote that down and circulated it to the association. Why did you not ask him where he got that evidence? Where did he get that idea?

Mr SMALL: Greg Chilvers wrote it based on input from the officers but, basically, he was the writer.

The Hon. G. S. PEARCE: Why did you not ask those officers? That is the question.

Mr SMALL: The document was rejected on the basis of content. There were discussions about it at Cabramatta. Ms Wallace can give you the direct relationship to that. In effect, it was not until we read in the newspaper that these people had given evidence before the parliamentary inquiry that we knew they were persisting with the assertion.

The Hon. G. S. PEARCE: The question still is: When the assertion was made why did you not follow it up? Do you act only on something that is in the newspaper?

Mr SMALL: I think I have answered that, with due respect.

CHAIR: Order! Honourable members must not interrupt until a member has finished his or her line of questioning. That will make it easier for Hansard. My question relates to the question that was just asked. I understand that you have a directive memorandum relating to recruiting students from school. However, other serious matters are raised in the submission. Have you issued a directive memorandum to any officers in pursuing or investigating these other matters?

Mr SMALL: No. One of the matters that was raised in the newspaper, if I could put it that way, seemed to require urgent attention. This was an allegation that our young people were being put at risk and these people had knowledge of that. The other matters I believe were matters that needed to be dealt with, but not with the same degree of urgency. Some of them were clearly matters that I had to respond to in my appearance today. I have done that. With all due respect, the fact of the matter is that the Police Association in particular is jumping from one position to another. Is the issue that our directive memorandum—a lawful direction from management—was received by their members and that they are offended by the wording in the memorandum, or is the issue that there might have been some breach of parliamentary privilege? They are two quite discrete issues. The association tells us that if we withdraw the memorandum and ask them please, they will respond. I therefore have some extreme difficulty understanding how their moral high ground that this is an offence to the Parliament can stand. This is about, if you like, four people refusing to accept the legitimate authority of management. On this occasion, the reason that they refused to accept the authority of management—and to date they still have not responded—is that they cannot respond. They cannot justify the claims that they have made to this Committee. That is the difficulty that they are in.

CHAIR: That is your opinion. What is your response to this statement in a letter dated 2 May 2001 by the Police Association to me as Committee Chair:

These members are now required to respond to the directive memorandum under very clear threat from the employer. We believe that the action of the Police Service constitutes a clear contempt of Parliament.

I would like your view on that.

Mr SMALL: As I have indicated, I have some difficulty with the moving position of the Police Association and other people on this. In fact, on 4 May the Police Association advised the service, "Members have been advised to respond to the written directives that were served on each of them."

The Hon. G. S. PEARCE: Could you table that letter?

Mr SMALL: Yes. That was on 4 May. Here we are today, 11 May, and we still have not had a response, despite advice from their own association that they should respond. The fact is that this is not an issue of contempt of Parliament. What we saw was an allegation where people claim to have knowledge that our young people in Cabramatta were being put at risk and something had to be done to check that. I can imagine coming before this Parliament and not having done something about it and being asked to explain: I can imagine being asked, "When you heard about this serious allegation why did you not do something about it?" Furthermore, if we had not responded I can see people going to the media and again maliciously making leaks to the media that, notwithstanding that they now know about this matter, they have done nothing to correct it.

CHAIR: The action of the Police Service might have been lawful. The manner in which it was done might not be a matter of concern. Rather the question is whether the manner in which it was done constitutes a contempt of the Parliament.

Mr SMALL: Let me elaborate on the experiences that I have had, which are quite limited, with the core police. The fact of the matter is that because of the behaviour of these police it is difficult to trust them. You have a meeting. What comes out of that meeting 10 minutes later is not what is agreed but what is their version of events.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

That was the understanding of the meeting. What has happened is that we have kept our part of the bargain and there has been no attempt whatsoever to review the deployment practices at Cabramatta. I use that as an example to say that from my point of view discussions with these people are such that whatever is agreed is distorted or does not occur. Relations with them need to be clearly spelled out. I again make the point that the issue of the directive memorandum is being grossly distorted here. Are we being offended about the fact that a document states, "You are directed forthwith", or are we concerned about the safety of our young people? If they have evidence about our young people they have a duty to bring it forward, and they have not done so. I suggest that the reason they have not done so is that they do not have the evidence to back up the claims that they may made before this Committee, despite Police Association advice that they should respond.

The Hon. J. HATZISTERGOS: Bearing in mind that sequence, what do you now intend to do about it? Does it stand where it is, or do you intend to pursue it further? Have you made a decision?

Mr SMALL: We have not made a decision. We would be acting on legal advice.

The Hon. J. HATZISTERGOS: That is where a possible contempt might arise. You would have to check that out.

Mr SMALL: With anything that we do from now on we will be acting on legal advice.

The Hon. J. HATZISTERGOS: I ask about some information which I know is not the subject of a directive because you did not have a copy of the transcript at the time that the newspaper article came out. At the bottom of page 18 of the Hansard transcript Ms Rhiannon asked questions about the evidence of drug recruitment. Officer D, Mr D, referred to two incidences where large numbers of schoolchildren had been housed in a couple of fortified units in the company of a couple of known people. He goes on to say that search warrants had been issued and obtained and they were being executed. Juveniles were found in the premises. On page 19 I asked, "When did that occur." He replied, "Two to three weeks ago." I asked, "When you say they were school kids, how do you know they were school kids?" He replied, "From our inquiries. The average age was 14 to 15." He then goes on to talk about the use of kids to courier drugs to Brisbane. I take it that you are familiar with that evidence?

Mr SMALL: I am familiar with it.

The Hon. J. HATZISTERGOS: Where does that come from? Is it true? Has it been reported?

Mr SMALL: I do not know. Detective Wallace can answer that.

The Hon. J. HATZISTERGOS: I cannot believe that it was just made up.

Ms WALLACE: I will answer those questions for you. I do not know about the use of kids to courier drugs to Brisbane. I have never seen that. I do not have information about that at all. I can clarify the issues concerning youth in houses. There have been three specific instances. Let me put this into context. Back in December I identified that one of the things that we had to do to be diligent was not to go down the same track that we were going down in 1995. I needed police to look out for congregating groups or social congregations. I have travelled overseas to conferences on gang issues on two occasions. It is important to know that the development stages of gangs are what we should be looking out for. We need good policing and not media stereotyping and putting people into boxes. We must not do that. I asked police about this issue. We all have to be responsible for identifying these groups in the form of intelligence reports. None were forthcoming of particular groups congregating.

The drug work that we were doing was quite ad hoc. It appeared to be opportunistic and it was of groups of two or three. On occasions in premises we found perhaps four or five. When we did that we started to look for common denominators for want of a better word. Was it becoming more organised, et cetera? The group that was becoming a little more organised was actually arrested by Operation Scotsville and Operation Portville. That left another void that we needed to look into. The first emergence of that was on 6 April. A particular young fellow attempted to extort his own family by saying that he was kidnapped. He kept ringing up and saying, "Could I have \$50,000?" They would not pay it because they did not believe him. He would then ask, "Could I have \$10,000." They would say, "No, you cannot have \$10,000." He would then say, "Could I have \$2,000?" They would say, "Yes, but where are you?" He gave the address. His mother contacted the police and the police went around there. On that occasion there were 18 in that unit. All those people were what I would consider high risk in that they certainly had either a criminal history or they had come under notice. So the police on that occasion photographed every one of those people. They were 15- to 16-year-olds and one could say that they were a cause for concern.

They just took the details of everyone, checked them all out and got photographs of all of them so that we were on our way to developing our first profile. Bear in mind that my activities in 1995 for a year and a half were particularly focused on doing exactly this—developing emergent groups, including, of course, the five teams. We were starting our information gathering.

The next incident that occurred and which caused me some concern was on 12 April. On this occasion it was an incident that was related to you here. It was 2 a.m. and there was a group of 10 kids in a unit that had previously been the subject of one of our search warrants. The doors had been removed. It was now premises where people would squat, for want of a better word, or go there and just hang out. On this occasion, that is what these kids were doing. They were drinking beer, hanging out and making noises which is why the police attended. On this occasion, only one was on a breach of bail. There was only one known so, again, there was some concern: What is happening here? What is the link? On that occasion they were all removed and taken back to the police station. Their parents were all called because of the nature of these children. They were actually more lower risk kids, but there was one high risk one there.

The third incident, and the only other incident up to date of which I am aware, was on Good Friday. My covert team had been looking at a premises and the premises now were opening and shutting, depending on if there is availability, and they saw a youth whom they believed might have been involved in drugs and followed him to a unit. When they got there, they went up the stairwell and the person inside might have thought, "Who are these coming?", and has come out. He met them on the stairs and they said, "Who's in there?" He said, "Oh, I don't know. The door was open and we were just hanging out in there." So the cops have gone in and, to their credit, have got all the details. Yet again, I think it was six on this occasion. Again one was locked up for—no, there was no-one locked up on that occasion. There were no drugs on the premises but certainly the police there took all their details and submitted a report. But in all of these ones, there has been a report submitted on each of these children there so that we can start to profile and try to work out if there is any networking.

The Hon. R. H. COLLESS: Where do these kids all go to school?

Ms WALLACE: They were more school-aged, if I can say that.

The Hon. R. H. COLLESS: But they must have been at school the year before if they were 15.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

The Hon. R. H. COLLESS: I do not think that we need to be too focused on the aspect of different schools.

Ms WALLACE: That is right.

The Hon. R. H. COLLESS: We are not here to denigrate schools, school teachers or school kids or anything like that. But obviously, if drug dealers are looking for young people, they are going to be looking at school-aged kids, are they not?

Ms WALLACE: Exactly.

Mr SMALL: There is something that I do not think I have actually said in evidence, and probably I need to state it so that there is absolutely no misunderstanding. I have never suggested that we do not have school-aged druggies; that we have school-aged kids or kids going to school who are selling drugs, or are recruiting friends into drug groups. I make that absolutely clear. What has actually become the problem, if you like, for me in giving evidence here is this central claim that gangs are going to schools and are actively seeking out recruits in the school environment. What I am simply saying is that, on that issue, we do not have any evidence to support that.

CHAIR: I think we should clarify this factor. All along, from Tim Priest's evidence to the other officers' evidence, the fact that is impressed on my mind is that it is not within the school; it is outside the school.

Ms WALLACE: But the term "outside the school" is very confusing because when you say "outside the school", most people, including the subject of an information report, would interpret "outside the school" to mean—

Mr SMALL: Outside the fence.

Ms WALLACE: It should mean that. When the reference is being made by, say, some school kids who are to provide some information, it is "down at the Timezone", "down at the railway station", or it is "down in the Freedom Plaza".

CHAIR: It is outside the school grounds.

Ms WALLACE: Yes, that is right. The distinction has to be made. "Outside the school" in the some person's mind gives the perception that it is in the school gate, outside the gate, and that is not the school precinct. Outside the gate is still the school precinct and has been since I was there in 1992 or 1991. Most of the people in those days selling drugs were school aged and we have never detracted from that. That is why we have listed it as a major threat to our command.

CHAIR: I think we have evidence that has been presented to the Committee and reference has been made to "outside the school", not inside the school. I need to emphasise that point.

The Hon. J. HATZISTERGOS: There was a car taking them to the school.

Ms WALLACE: Yes. That was the case.

CHAIR: Outside the school—that is what I am saying.

The Hon. R. H. COLLESS: Can I pursue this a little further?

The Hon. R. D. DYER: Madam Chair, can I seek your guidance regarding a matter of procedure? I understand that we are supposed to be considering in closed session now matters that are relevant to the directive memoranda and the discipline issue vis-a-vis parliamentary privilege. Unless I am very much mistaken, we seem to be reverting to the questions that were asked in the open session regarding the general issues into which the Committee is inquiring. I wanted to ask some questions about the legality of the directive memorandum but we seem to be regressing, if I may say so, to the general issues.

The Hon. R. H. COLLESS: To the point of order: Madam Chair, I want to pursue a couple of questions along those lines because the subject of the directive memorandum is the words in italics that are quoted and which state, "We confirm that we believe that drug criminals take recruits from local schools." I just want to explore that a little bit further and I am quite happy then for the Hon. R. D. Dyer to go on to his line of questions that he wishes to take.

CHAIR: I will allow the Hon. R. H. Colless to ask those particular questions and then I will allow the Hon. R. D. Dyer to ask his questions.

The Hon. J. HATZISTERGOS: I have not finished my questions either, but go ahead.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

The Hon. R. D. DYER: Could I put to you the terms, in part, of clause 9 of Police Service Regulation 2000, namely, "That police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them." Could I take it that you regard the contents of the directive memoranda as comprising lawful orders within the meaning of the regulation which I have just referred to?

Mr SMALL: Yes, I do.

The Hon. R. D. DYER: Could I ask you in regard to this expression "directive memoranda", whether that term is one that is defined in a regulation or whether that is something that has grown up as a matter of practice that gives effect to an order made under your authority?

Mr SMALL: Look, it is a practice that has grown up and what I think it does so is it makes clear what is expected. In internal affairs investigations, generally speaking—in all those that I know about—the term "directive memoranda" where it is meant in that strictly enforcement way is actually headed "Directive Memoranda To". This memorandum did not have those words typed on it, so what am saying to you is that the fact of the matter is that in almost any bit of correspondence I issue which says, "Provide me with this", that is in fact a direction in a letter or a memorandum, whatever you want to call it.

The Hon. R. D. DYER: I asked the question because repeated reference has been made during the course of this hearing today to the expression "directive memoranda" and I was simply wondering whether that was some formal term that arises out of the regulation or whether it is more of a procedure that has been traditionally adopted.

Mr SMALL: It is the latter and its purpose is to simply make clear, I think—for any purposes or any actions that follow—that this is a direction and that you are required to follow it.

The Hon. R. D. DYER: Suppose that the directive memoranda is lawful within the terms of the police regulation to which I have referred; and suppose further that the officers to whom it was directed failed to comply with it; and suppose finally that some penalty or retribution of some sort is visited upon those officers flowing from that failure to respond appropriately, in your view. If all of those things happened, would it be your contention to this Committee in regard to the privilege issue that those penalties would be visited on those officers not arising out of the fact that they gave evidence here but arising out of your perception that they had failed to comply with a lawful direction to, in effect, prosecute crime or investigate crime?

Mr SMALL: Yes, to report their knowledge of, that is correct. It is not connected—it is not connected—with anything they have said or done at this hearing or at this Committee at all.

The Hon. R. D. DYER: I am seeking to draw a distinction between the two.

Mr SMALL: It is completely independent and unrelated. I am sorry—it is a completely unrelated issue. It is not in any way, shape or form connected with their appearance before this Committee or the evidence that they have given.

The Hon. R. D. DYER: And in support of that—

CHAIR: In relation to your answer, I am not really clear on the Hon. R. D. Dyer's question. Can you clarify that once again for my benefit because you are saying that it is absolutely unconnected but I do not see how they are not connected.

Mr SMALL: The action that is being referred to here is failing to comply with a lawful direction, and that lawful direction is about providing a response to a directive memorandum.

CHAIR: But that memorandum is connected to the evidence.

Mr SMALL: No. What we have asked them is whether they have knowledge of this matter. They could write back in response to that memorandum saying no. That is all they have to say, "We do not have any knowledge of this matter", sign it, and they have complied with their obligations.

The Hon. R. D. DYER: How could they say that if they have given evidence here that, for example, in one instance, certain events occurred in the vicinity of Cabramatta High School?

Mr SMALL: That is what this failure to respond to the memorandum is all about, with due respect. It is about the fact that they have made claims before this Committee. They have been asked whether they have knowledge of the matters and they cannot respond to this memorandum without directly or indirectly admitting that they have been untruthful do this Committee. That is the long and the short of it.

The Hon. G. S. PEARCE: You are trying to use it to attack the evidence to the Committee. That is intimidation. That is the breach of privilege.

Mr SMALL: No. Let us take this another way. The Police Service Act, which was passed by this Parliament, imposes a range of duties and responsibilities on police to do certain things. That is to investigate, prosecute and do all those things. If these people have evidence that has put and continues to allow our young people to be put at risk of being dragged into a life of drugs, crime and violence and do nothing about it and do not tell management about it, so that nothing can be done, then there is a severe dereliction of duty that cannot in my view be countenanced by the community nor the Parliament of this State. With all respect, that is the bottom line.

CHAIR: Do you think that the police officers could see the directive memorandum as censoring them in the course of their appearance before the Committee?

Mr SMALL: That might be the excuse they use but there is no justification for it. Let us put at its simplest: if they have information, why can they not tell us about it?

The Hon. G. S. PEARCE: Why did you not ask for it when you first became aware of it?

CHAIR: There are two issues here. I said it before. You may see it as a lawful course of action to issue a directive memorandum. There is another matter that the police officers may perceive the manner in which you are dealing with this as censoring them or tampering with their evidence.

The Hon. R. D. DYER: What I was trying to put to you before is that a distinction can be drawn between the giving of the evidence here and the failure to comply with the directive memorandum. The directive memorandum may well arise out of the evidence. However, it is presumably common ground among all of us that the Police Service is there to suppress and to fight

crime. That being the case, if a serving officer gives evidence to a parliamentary committee that X has occurred it seems to me—and I am asking you to assent or otherwise—that it is legitimate for a superior officer in the Police Service to ask what the basis of that is and to use that response, if any, from the officer in question to follow up in terms of investigating the particular criminal activity.

Mr SMALL: That is correct. And additionally I should point out that I have had legal advice that it is not a contempt of Parliament, and it was in the newspapers as well.

The Hon. J. HATZISTERGOS: I do not think it is. I think the critical thing is the information upon which the comment was based even if you are going to investigate it. He says, for example, at the bottom of page 19 that there were intelligence reports where registered informants give information saying that there is current activity in the school to recruit kids for different gangs. Where does that come from?

Mr SMALL: I do not know because we have checked the informants register and there is no evidence of that in that register. We have checked the COPS events again up to the other day and there is no evidence of it. Ms Wallace was at a meeting at Cabramatta where a conversation took place about this. I believe it is directly relevant and she may well be able to give some evidence on that. To just elaborate on that about the issue of perceptions and intimidation, Mr Hansen has had a number of meetings with all the police in an open forum at Cabramatta and discussed the issue. Perhaps he can give evidence of that. I should not say that it puts it to rest but it might ease your mind on the issue.

Mr HANSEN: On the Saturday that it was reported or intimated in the Herald article that this process was part of an intimidation to deter police going to give evidence here I went out to Cabramatta and spoke to all the police on duty. I have done that on three other occasions as well. So bearing in mind that there are different rosters and people are not always on duty at the same time, hopefully by going through with them on four separate occasions I will have covered everybody in the command. I worked through them on each of those occasions. I certainly made it very clear that the privacy of those four officers would be maintained and I would not disclose their identities. But I explained through the process of the directive memorandum the concern that we had that there was information that would be valuable to us. I then went on to say that this was in no way and in any way an effort to deter or discourage people from giving evidence before this inquiry. In fact I encouraged them to do so. That was on four occasions, to make sure that there was no misapprehension about where we were coming from. The general feedback from those meetings was very positive. The police had an understanding of where I was coming from I am sure. With my relationship with them I am sure that they would tell me if that was not the case. They were telling me that they had some understanding of that. I wanted to put any of those other fears to bed.

The Hon. J. HATZISTERGOS: Reading the transcript, as I am sure you have now, you can see that the specific evidence relating to alleged recruitment from schools came from one police officer of the four. Is it necessary now for the directive to remain in place in relation to all four officers as opposed to the one who maintained that allegation?

Mr SMALL: Not if we are told who the four officers are, bearing in mind that—

The Hon. J. HATZISTERGOS: I think it is pretty clear from the transcript that you would be aware who A, B, C and D are.

Mr SMALL: We would be happy to do that.

Mr HANSEN: It was "we".

The Hon. J. HATZISTERGOS: Would it be reasonable to, say, leave the directive in place—

Mr SMALL: While that is correct, the evidence earlier says "we believe".

The Hon. J. HATZISTERGOS: I know it says that but in reading the submission its meaning is a bit ambiguous.

Mr SMALL: We would be happy to do that.

The Hon. J. HATZISTERGOS: I know that it has been alleged that you should have issued a directive following being aware of the submission but I am not sure that you really needed to in the light of that because it was so broadly phrased that it could mean anything. In relation to the specific evidence that was given at the last hearing I just wonder why you need to maintain a directive against everyone.

Mr SMALL: We would be happy to withdraw it with respect to the others provided the Committee knows that we name the person. We leave it with the one person and we understand that relationship.

The Hon. J. HATZISTERGOS: You would be aware who is.

Mr SMALL: We would be happy to do that. At a more general level, I have a concern about the attitude to the management and the legitimacy of management in this matter because these are lawful directions and, as I said, a simple answer from three of those officers of "we know nothing about this matter" or "we do not have any evidence to put" would have sufficed.

The Hon. J. HATZISTERGOS: They could easily give that. I do not know why they do not do that. They have been told by their association to do that.

Mr SMALL: That is correct.

CHAIR: I said before on that point that the Committee will consider releasing that officer's name in view of the undertaking that you have made.

The Hon. J. HATZISTERGOS: We were going to consider releasing all their names. We have deferred that until this meeting.

Mr SMALL: Whilst there is a sense in which we might well know the names, with all respect, I do not want to be back here again explaining perhaps another contempt of Parliament or whatever.

The Hon. J. HATZISTERGOS: In open session I asked you about the impact this has had on the rest of the station, particularly if we were to release the names of the officers involved. I am sure they are all aware who the four are.

Mr SMALL: The fact of the matter is—I do not think that I am overstating it—there has been a very dramatic change in attitude of the police generally at Cabramatta. It is a very positive, constructive and "we can do it" type of attitude there, because they want to get on with the job.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

The Hon. G. S. PEARCE: I just want to go back to the contempt issue. If I could just ask you, Detective Wallace, you were at the meeting on 3 April?

Ms WALLACE: Yes.

The Hon. G. S. PEARCE: Did you have a copy of the draft submission?

Ms WALLACE: Yes, I did by then.

The Hon. G. S. PEARCE: So, you had a copy of the draft submission?

Ms WALLACE: Yes. It was circulated around the meeting.

The Hon. G. S. PEARCE: What happened at the meeting? Was the submission discussed in detail, was it read out?

Ms WALLACE: D was not there. C was there and chaired the meeting. The main purpose of the meeting was the day after the Alan Jones program, so they mainly call it to respond. They were heated about the conversation between Mr Jones and Mr Treyvaud. So, they were very passionate and called this meeting and wanted to condemn the leaks and all that. It was a very passionate meeting. C got back on track, because a lot of things were going on about leaks, and the submission was discussed because C had said to them, "You have to make a decision today about the submission, it must go in today." They said, "This is a fairly lengthy document, we have to look at it and read it if it is on behalf of us." They started to go through it and they said it was meaningless to them. One sergeant in particular spoke on behalf of the others and said, "We need to move forward. We have won in a way. We have achieved what we set out to achieve. We have been upgraded. We have extra resources. We have a management we can go to, so why is that we need the submission? I for one do not want to put it in."

The general floor then said they did not want to but C said, "We need to go through it." As he was reading it, the original stuff was just about the past, the royal commission, and they were not interested in that. When he got to the nitty-gritty they started the fairly heated discussion. One would say, "I am not signing that, I am not having anything to do with that" and another would say, "I do not agree with that, no way." At the end of the day the motion was passed that it be rejected in content. The majority just did not want to present anything. To say, as was said here, that it was rejected because of the move forward, that certainly took place in the discussion, but it was the outraged statements of the content that were the subject of the heated discussion.

The Hon. G. S. PEARCE: Just in the context of the contempt issue, can I turn to Mr Hansen. In response to that question it is quite plain that Inspector Wallace knew about—

Ms WALLACE: Can I clarify one point that I think you are going to get to about the recruiting?

The Hon. G. S. PEARCE: Yes.

Ms WALLACE: Someone did say to the meeting, "What about the recruiting issue? Where is the evidence for that?" We were there because of my alleged altering of the COPS entry to Mr Jones' version to tone it down. C said, "Rachel, you have evidence, don't you?" to the YLO. The YLO, put on a terrible spot, has gone, "Well, actually I have. I have an informant at the school and he has told me something about gangs." That has been the subject of evidence given in the transcript about numerous intelligence reports by a registered informant. The truth is there is only one intelligence report and it is by a community source not a registered informant. As you rightly say, why did we not do something then, because everyone said we do not know anything about it. No evidence was forthcoming.

The Hon. G. S. PEARCE: Mr Hansen, can you see from that, the fact that you, the day after these officers gave evidence, issued this directive, did not investigate it when it was discussed quite openly there. These fellows gave evidence and the next day you hit them over the very same thing. When we come to the contempt situation, it is not necessarily your motivation in doing it that might be the deciding factor, it is how it is received.

The Hon. J. HATZISTERGOS: Point of order—

The Hon. G. S. PEARCE: I am asking Mr Hansen to address himself to the contempt issue.

The Hon. J. HATZISTERGOS: No, point of order: That is an issue for the privileges committee if it gets that far. It is not for him to address the issue of contempt. The first part of the question is fine. We are not dealing with issues of contempt. If there was—

The Hon. G. S. PEARCE: My question was about the perception and whether Mr Hansen understood the perception that may have arisen as a result of issuing the directive.

CHAIR: That question is fine.

Mr HANSEN: The status of the submission at the point of the meeting was that it was a discussion paper and views were expressed in it. Subsequently it was rejected in context, as Ms Wallace has recounted to you. But the moment, as the Sydney Morning Herald reported, it was tabled here it was tabled as a matter of fact, not as the subject of discussion or proposition. According to the Sydney Morning Herald it was tabled here, and as such it then became a matter of fact. Once it became a matter of fact that those four officers believed this to be the case or asserted it to be the case, it is at that point they must have, if they are going to put it in a submission to this Committee, some grounds for it. It was those grounds that I needed to know about. Unfortunately, and I took that into consideration, there may well have been a perception arise as a consequence of those directive memorandums.

Clearly though, what I endeavoured to do, admittedly unsuccessfully, is to keep this as confidential and within house as possible. They were served in a brown envelope by a member of my staff. They could have kept that absolutely to themselves and not have made any more noise about it other than to respond or do whatever they wanted to do about it. Instead of that, and that is nothing to do with my doing at all, it appeared in the public forum.

The Hon. G. S. PEARCE: Because they felt intimidated about it.

Mr HANSEN: They could still have dealt with it without it reaching the public forum. It was their choice to put it in the public forum, not mine. I then went to the length of going out on a Saturday and reassuring the staff that this was not a process of kicking the messenger, it was a matter of investigating a serious matter that has been mentioned in a submission before this Committee, and encouraging them to give evidence if they so wished. It was in no way seen to discourage them from doing so. I certainly did not want it to enter the public forum, I wanted them to receive a directive memorandum, to respond to it and then it would have been between the four of them and me.

The Hon. G. S. PEARCE: The final thing, do you agree with Assistant Commissioner Small's statement—he made it twice—that one of the objectives of the directive was to establish that these officers evidence was false?

Mr SMALL: With respect, I never said that in that context. I said it was not about establishing whether their evidence was false. What I said was that the problem for them in answering this was to admit to the falsity of their evidence. That was what I said. I did not say the objective of the memorandums was to establish the truth or the falsity of their evidence.

The Hon. J. HATZISTERGOS: It could not have been, because the directive actually asked whether the statements were accurate, as opposed to the newspaper report.

Mr SMALL: That is correct.

The Hon. J. HATZISTERGOS: You would not have had the evidence—

Mr SMALL: And I did not know what they had said.

The Hon. G. S. PEARCE: My question was whether Mr Hansen took the view that one of the objectives of the directive was to establish whether their evidence to this Committee was correct

Mr HANSEN: I suppose my personal view at the time of issuing the directive was that I had no evidence of that so I had some question in my mind as to whether what they were saying was truthful. I did have that at the back of my mind. Notwithstanding that, though, I felt the directive memorandum would clarify that point to me personally and to the service generally. But I certainly had a personal reservation about the accuracy of the statement.

The Hon. J. HATZISTERGOS: I notice the initial correspondence from the solicitors protested more about the fact that the information was leaked to the media and as a consequence the directive was issued rather than the fact that you issued the memorandum. If you have a look at the initial correspondence from the solicitors, they actually went on about why the information was leaked and the committee's breakdown in ensuring confidentiality. It did not actually raise the issue of contempt in relation to issuing the directive. The date is 24 April.

The Hon. G. S. PEARCE: I am concerned about one issue regarding the proposition that the evidence was false. In their evidence and in the report, the officers said that they were expressing an opinion; they did not produce any evidence. I think their belief in what Mr Priest had said is accurate: That is what they believed.

Mr HANSEN: They certainly alleged or implied that the evidence existed. The use of the word "belief" implies that they had some knowledge, otherwise how would they arrive at that belief?

The Hon. G. S. PEARCE: Perhaps they were just supporting Mr Priest by saying that they believed him.

The Hon. R. H. COLLESS: Returning to what we discussed previously, I do not think there is any doubt that they recruit from local schools. They are seeking young people who are ultimately schoolchildren.

Mr SMALL: There is a critical issue that I do not think we can brush over.

The Hon. R. H. COLLESS: The issue is whether they are recruited in the schools during school time.

Mr SMALL: That has very significant implications not only for police and the way they do things but for a range of other government departments. It also has significant implications for the various institutions, such as the high schools. That is where I think we need—

The Hon. J. HATZISTERGOS: I made that distinction with Mr Priest when he gave evidence. I asked him specifically whether he was alleging that recruitment activities were taking place in the school or whether there were simply schoolchildren involved in drug distribution. That is when he provided evidence about this incident having occurred at Cabramatta High School involving a car and gang members. I have found the letter of 24 April written to us by the solicitors representing the four officers. It sought advice from us that, in answering your directive, they would not be in contempt of Parliament. That is the advice they sought; they never raised in that letter any concern that your directive might have been a contempt in itself. I will show you the letter.

Mr SMALL: I have seen the letter.

CHAIR: I must announce at this point that earlier this week I wrote to the police commissioner about the directive. I received a reply yesterday referring to the relevant parts of the Police Service Act and the police service regulation relevant to lawful direction. The legality of the directive memorandums is not in question. However, I draw your attention to the following quote from a recent report by the Senate Committee on Privileges. Page 7 of the 85th report states:

As the President of the Senate pointed out in her statement, when giving this matter of privilege precedence, the Committee on Privileges has advised in its reports over a long period that the fact that an action might otherwise be lawful does not in itself present a defence against findings of contempt of the Senate.

The matter that we have been discussing for the past hour or so is about not the service's legal authority to give directions but the appropriateness of the directive memorandums. There are two issues involved.

Mr SMALL: On that point—I will take the issues in some sort of order—first, we all acted with proper intent and we did so in as discreet a way as practicable. We did it with a genuine concern that some information might identify young people who were being put at risk and who would continue to be put at risk until we did something about it. We acted within the spirit of the law and within our obligations under the Police Service Act. That is all I can say. Subsequently we have received legal advice that our act was not in contempt. That is the spirit in which we acted: If we were wrong, we were wrong. At the end of the day, surely to goodness this Parliament, this Committee, the New South Wales police and the community of New South Wales must have at primacy concern for the welfare of young children and the risk of their being tempted into drugs and the violence that attends that. With respect, that matter must take primacy. If this Committee desires us not to act on it

or to delay action on a matter of this type, that is fine—providing that that is the stated position of the Committee. We cannot—

CHAIR: I do not think the Committee directed Mr Hansen or you at any time not to investigate the matter. It is lawful. It is a matter of whether the action was appropriate. It is a matter of perception at the moment. We are running around in circles in our questioning. In my mind, two separate issues are intertwining, and that is why there is confusion.

Mr SMALL: On the issue of perception, I have spoken about the way it was done and Mr Hansen has given evidence about four open meetings that he had with police at Cabramatta to explain the situation and to reassure them. I had numerous personal conversations with Mr Ian Ball, the president of the association, and I gave him absolute guarantees that this was in no way an internal affairs investigation nor an attempt to intimidate. I said that I was prepared to put anything he wanted in writing in order to reassure him and his members that this was simply about identifying whether there was any evidence, information or intelligence about our children being at risk in schools and whether an investigation was warranted. I gave him those guarantees; I could do no more than that. If the police choose not to believe me, Mr Hansen, the wording of our memorandum or their own president, I am sorry but I can do no more about it.

Ms LEE RHIANNON: Returning to the directive memorandums, how often are they issued—once a year, once in a lifetime or once a week?

Mr SMALL: It depends—again, we must be careful. The directive memorandum is an informal term; it is not a term prescribed by legislation or by anything else. Effectively, every paper that I write is, in one sense or another, a directive memorandum—implicitly or explicitly. This one was a bit more explicit than others. Every time I ask Mr Hansen, "Please provide information about such and such", that is effectively a direction to him. On this occasion we sought to have our questions answered immediately rather than in seven or 14 days. That is why it was done in this way. I do not know how many directive memorandums people receive—it depends how many internal affairs investigations they are involved in and the questions that are asked. There is some blurring as to when a memorandum is not a directive memorandum.1

Ms LEE RHIANNON: Mr Hansen, how many of these types of memorandums have you issued during your time in the job?

Mr HANSEN: In the sense of what Mr Small has said about seeking information on a routine and regular basis and in the form containing the words "direct" and "forthwith", to be fair, not very frequently. However, I felt it was necessary to include those two terms on this occasion so that what I wanted was unequivocal. I suppose that if I had said, "I now request you to provide the following", and left everything else as it was, we might not be debating the issue now.

The Hon. G. S. PEARCE: Have you issued more than these two formal memorandums since you have been at Cabramatta?

Mr HANSEN: I issued one as a matter of course to the youth liaison officer about the same sort of issue. It is a concise mechanism: It articulates exactly what you want. The words "direct" and "forthwith" might be viewed as a fairly positive way of putting a request, but it was the way that I thought was necessary on that occasion.

Ms LEE RHIANNON: In the present climate—you acknowledged in your evidence today that there are tensions—do you agree that some police officers could have viewed it as upping the ante?

Mr HANSEN: By the officers I served it on or by others?

Ms LEE RHIANNON: Yes.

Mr HANSEN: I certainly wanted them to be left in no doubt as to what I wanted: "I direct you to provide the following forthwith". I articulated what I wanted from them so that there would be no ambiguity as to what I wanted. Things have been frequently misconstrued—either deliberately or

otherwise—in or around our conversations, particularly with a couple of those officers. I make no apology: It was directed and in those relatively strong terms because I wanted to make sure they were left in no doubt.

Ms LEE RHIANNON: Have you considered approaching the matter in a different way? Considering the perception that there has been intimidation of police officers for speaking out and in light of Mr Small's earlier comments about one of the biggest challenges being maintaining morale and commitment and the importance of listening to front-line staff and providing feedback to them even when you think they are wrong—which is commendable when trying to build a team—did you consider initially simply talking to the officers and asking them what had gone down?

Mr HANSEN: It was an option.

Ms LEE RHIANNON: Did you consider it?

Mr HANSEN: Of course. Perhaps I could have done that under different circumstances, but we are talking about information that was presented to a parliamentary Committee not something discussed in another forum. I suppose that option was not pursued for the reasons that I have enunciated: I wanted to make it absolutely clear.

As to my relationship with people in the police station, my relationship with each of those officers—possibly with the exception of **D**, who is a little reluctant—has not altered dramatically as a consequence of this matter. We still talk and interact. **C**, to give him is due, came to see me and said, "Boss, I think your directive memorandum was a bit over the top". That is all he wanted to say as part of a conversation. I said, "Look, I take on board what you are saying but I thought it was important"—for all those reasons that I have just given.

When I arrived there was a particular atmosphere in that police station—divisiveness amongst staff, factionalism and a whole range of things permeated the station. Working with the police, there was a need to bring some trust back into management: to ensure that we were approachable and that we could interact with the troops and bring some sort of stability and relationship back into management within the police station. Moreover, I think we have been very successful. I think the staff have confidence in us and in the fact that they can get out and do their jobs without feeling that management will take arbitrary action against them for honest mistakes. I think a really good atmosphere has been engendered within the police station. I do not think the action we are talking about has fundamentally altered that. What has altered it is the reporting of it in the media and the media attention that the police station continually receives as a result of leaks and so on. I am certainly confident in saying that our relationship is very good.

CHAIR: Mr Hansen, if the media had not reported what it reported would you have sent out the directive memorandum [DM]?

Mr HANSEN: No, I would not have known about what was tabled except when it was released by you the following week, and we may well have needed to explore that then.

CHAIR: So you are now telling the Committee that you were acting on a media report specifically on these four officers.

Mr HANSEN: Yes, a media report which linked that submission back to be tabled at this Committee.

Ms LEE RHIANNON: Mr Small, I should like to go onto some of the issues relating to the Police Association's comments about this issue. Are you aware that in a letter from the Police Association of 4 May Mr Ball said that "the Police Association views most seriously the way in which the service has reacted towards its members who gave evidence at the parliamentary committee"?

Mr SMALL: I am aware that that is what the Police Association said.

Ms LEE RHIANNON: I ask that question because twice today you have made comments about how the Police Association directed the four police to respond to the DM. I put it to you that

while it is correct that it directed the police to do that, that is in the light of legal advice; it is not within the context which I think was implied in your answer, that is, because the Police Association was concerned about how they were behaving. It was a legal step; they were doing it in the context of the legal advice.

Mr SMALL: I had never intended it to imply otherwise. If there has been that implication in my answer, I apologise.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

Ms LEE RHIANNON: Ms Wallace, you spoke about finding 18 young people in a unit. Were those young people charged?

Ms WALLACE: No. There was no evidence. Sorry, there was one charge out of that—breach of bail.

Ms LEE RHIANNON: You said that they were all photographed?

Ms WALLACE: Yes.

Ms LEE RHIANNON: Are police allowed to photograph people who they do not charge?

Ms WALLACE: For intelligence purposes, yes.

Ms LEE RHIANNON: What measures were taken to explain to the young people what was happening?

Ms WALLACE: I was not at the scene. In fact, I answered a while back—I think about 1996—about that. To take intelligence-based photographs it must be done with a minimum of embarrassment to the person, which was done in this case. It was a closed premises inside and to my knowledge they spoke English and it was explained to them why photographs of them were being taken. At one stage there was concern that some of them were missing children. That was explored because there was one missing child who was extorting his family, for want of a better word.

Ms LEE RHIANNON: So what happened is that they all had their photograph taken and their names and addresses were taken.

Ms WALLACE: And their details, yes.

Mr SMALL: If I could elaborate on this point, because I think it is very relevant, under the Government's proposed legislation for drug houses, police would actually have a lawful right to take all of those people into custody and to take action. I am not talking about locking them up and charging them; I am saying that we would have a greater capacity to have them assessed, to have them diverted into programs through DoCS and other groups that are there. We would have this capacity to do it because in fact we would have a legal right to take them into custody, because they are in a drug house and then we would divert them.

Ms LEE RHIANNON: At the moment you have the legal right to take their photograph and their details.

Mr SMALL: With their consent.

Ms WALLACE: Yes, with their consent.

Ms LEE RHIANNON: And you had their consent?

Ms WALLACE: I was not present but I could explore that. I would not assume any of the police would without their consent.

Ms LEE RHIANNON: Was their consent sought?

Ms WALLACE: Again, I cannot speak for the police who were present but they were senior detectives at the time and I would suggest that that would definitely be the case.

CHAIR: I want to take you back to the earlier discussion when the Hon. J. Hatzistergos and Mr Small were talking about what has happened to the four officers. I ask you to clarify this question for the Committee so that I know clearly what will happen. Have you offered to withdraw the directive memorandum issued to Officers A, B and C? Do you believe that the only way forward is to transfer the four officers, either voluntarily or involuntarily? Where would this leave the directive memorandum issued to Officer D?

The Hon. G. S. PEARCE: Are these questions for them on notice?

CHAIR: No. I simply want Mr Small to think about them now and clarify for the Committee so that we can see how to resolve the situation. Does Mr Small think that this proposed course of action will resolve the matter before us? Will the transfer of the four officers further inflame the situation or merely draw the further involvement of the Police Association? Finally, will you consider entering into a process of mediation with the officers without legal representatives? We are talking about management practice.

Mr SMALL: If I can answer some of the questions and seek some time to answer perhaps some of the others, the fact is that I am quite prepared to agree to withdraw the directive memorandum against the three of the four officers. The one memorandum that stands is the officer who made the claim to have seen the reports. I think that is absolutely vital; otherwise we are then left in a position down the track that an officer has made claims and you have not done anything to check them. That person may have information. That person may know of an informant or may know of data intelligence that we do not know. We need to get it clarified. So that would have to stand in that one case.

I am quite happy to enter into terms of resolution of the matter with any parties, but that resolution must involve not only the resolution of what has happened here. It has to understand the relationship between management and front-line police. I am talking in a participative way; I am not talking in a directive way. It has to understand clearly that the current arrangements, the current obstructionism, cannot continue, and I would hope that it would also include a lesson for police that in appearing before parliamentary committees they should get their facts straight. With all respect, it would save this Committee and this Parliament an awful lot of time if that were done, and I probably would not be sitting here now explaining it had been done. One thing I find quite interesting in a sense—and it is an observation that has been made worldwide—is that while police are trained to gather evidence, when they are dealing with personal matters and other issues the one thing they fail to do is to look for the evidence, and I suggest that that has happened.

The Hon. J. HATZISTERGOS: With respect, if people do not give accurate evidence to the Committee, that is a matter for the Committee to resolve, not for the police.

Mr SMALL: Yes. I am simply making the point that I would like to think that the seriousness of what possibly has occurred is understood by all.

The Hon. R. H. COLLESS: Assistant Commissioner, another matter is that we would not like to think that any public servant was being discouraged from appearing before a parliamentary committee because of threats on their future or whatever. I am pleased to hear you say today that you do encourage your staff to come before these committees, because one thing that concerned me is that if the police have a general opinion or view amongst the staff that they will suffer if they do appear, then that needs to be stamped out.

Mr SMALL: You can rest assured that that will be emphasised. It is not a matter simply of mouthing the words; it is a genuine sentiment. If someone has a problem or thinks that they have been discouraged, I am happy for that person to ring the St James Ethics Centre or Dr Simon Longstaff privately and we will pay the cost or fee. But that certainly is not an intent here. At the end of the day

this matter must be resolved. The conflict and the disputes cannot continue. It is just draining every bit of energy out of it and the people who are suffering are the people of Cabramatta.

CHAIR: I understand that. As you said in your oral submission, we need to learn from the past and experience. I think this is a lesson well learnt. Finally, there seems to be a misunderstanding still very clear in my mind that there are two issues involved here. I totally agree that you must investigate serious matters raised. However, it is another matter the manner that has been done to this perception of intimidation of witnesses who appear before the Committee. I want to clarify that there are still two matters.

Mr SMALL: If I could just say one thing—perhaps I have not explained this well—am trying to put this into context. If other people were involved, the approach may well have been very different, but, based on our experiences with these people, it was our assessment that there was no other practicable alternative. It is as simple as that.

CHAIR: I understand perfectly, but still the fact remains that these four officers that appeared before the Committee are perceived to have been intimidated.

Mr SMALL: With all respect, the only people who are making that claim are the four officers themselves.

The Hon. G. S. PEARCE: They are the ones who matter.

Mr SMALL: What I am trying to say is that the people of Cabramatta—

CHAIR: I think we have been going around in circles for a long time. What you and members of the Committee have said in the concluding statements is relevant to our in-camera session, but I think they probably need to be further clarified on Monday when Mr Jarratt appears before the Committee at 10.00 a. m.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

The Hon. R. H. COLLESS: On that point, is it so that those notes are not to be divulged to other members of the Police Service, other than those present here today?

CHAIR: No, they cannot. It is a confidential Committee hearing. Anything that has happened during the last two hours is confidential.

The Hon. G. S. PEARCE: Except that we have not resolved whether to publish any of it.

CHAIR: Wait until the Committee has made a decision.

... [section deleted from transcript to be made public, according to resolution of the Committee, 15/6/01]...

CHAIR: I am confident that Committee members will decide that half of it will be made public and the remainder will be in confidence.

The Hon. G. S. PEARCE: Save that the circumstances of the issuing of the directive memoranda are likely to be published.

Mr SMALL: Yes.

CHAIR: It will be for the Committee to decide at the end of the day.

Mr SMALL: There is one thing I seek clarification on. I take it that I am, with my counsel here today, entitled to discuss some matters with Mr Temby QC, who is my counsel?

The Hon. G. S. PEARCE: No, not until we publish.

Mr SMALL: Perhaps I might need to speak to Mr Temby to simply say that he needs to communicate with the—

CHAIR: I was just about to deal with that issue. Looking back on our confidential session with Mr Jarrett, when Mr Temby was here—I will read this to you—I said, "I gather that the clerk has given you the conditions of the in-camera session. Do you have any problem with that?" Mr Temby said, "We have them. We will look at them closely and will of course observe them. I am sure we will not have difficulties. After all, we went into camera at our request." I said, "The other issues that two officers, Mr Redfern and Mr Daly, have taken notes as well. How do you want to deal with the material during the in-camera evidence? Those notes are treated in the same way. The officers cannot use those notes or make them public." Mr Jarrett said, "I would want that to be the case." I said, "I want them to be aware of that." Let us deal with the two officers who are taking notes, which is a similar situation. I direct those two officers not to use those notes. Is that quite clear now?

Mr SMALL: I am just wondering. Can I not talk to Mr Temby to get instructions or advice?

CHAIR: On what matter?

Mr SMALL: There was one matter asked which I had not responded to, which was what may or may not happen if, for example, I withdraw the three directive memorandums.

The Hon. J. HATZISTERGOS: You do not need to refer to your evidence to seek advice about that.

Mr SMALL: All right.

(Conclusion of evidence in camera)

(The witnesses withdrew)

(The Committee adjourned at 4.06 p.m.)
