

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

---

NORTHERN TERRITORY OF AUSTRALIA

COURT OF SUMMARY JURISDICTIONS

Nos 20215305, 20215303, 20215301,  
20302013 and 20215299

POLICE

and

GARY WILLIAM MEYERHOFF,  
NICOLETTE ESTELLE BURROWS,  
STUART HIGHWAY,  
ROBERT PAUL INDER-SMITH and  
MICHAEL JOHN BARRY

MR D. LOADMAN, SM

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON MONDAY 15 SEPTEMBER 2003

Certified true transcript of a  
Record produced out of the  
Custody of the Clerk of Courts

Transcribed by:  
Court Recording Services (NT) Pty Ltd

HIS WORSHIP: Who appears in each of those matters for the prosecution then.

MS NOBBS: Your Worship, Nobbs and Kendrick.

HIS WORSHIP: Appearing as it were, together.

MS NOBBS: Yes.

HIS WORSHIP: And each one of the defendants is represented in person, I suppose, as usual. Is that right?

MR MEYERHOFF: Yes.

MR HIGHWAY: Yes.

DISCUSSION RE PROCEDURAL MATTERS

SUBMISSION BY MS NOBBS

SUBMISSION BY MS BURROWS

DISCUSSION RE QUALIFICATION OF DAMAGES

SUBMISSION BY MS NOBBS

DISCUSSIONS RE AMENDMENTS TO BE MADE

SUBMISSION BY MS NOBBS

DISCUSSION RE CLARITY OF CHARGES

SUBMISSION BY MS BURROWS

DISCUSSION RE AMENDMENTS TO CHARGES

SUBMISSION BY MS NOBBS

HIS WORSHIP: Well, just because I have Mr Highway, this is 20215301.

Will you stand up please. Mr Highway, will you stand please. In relation to this matter, the prosecution, as you heard, seeks to amend charge 2 as indicated and to withdraw 4. But I suppose you don't oppose the withdrawal of charge 4, it would be hard to work out why you would do that. Do you oppose the charge being withdrawn?

APPLICATION TO AMEND CHARGE 4

CHARGE 4 AMENDED - NO OBJECTION

APPLICATION TO AMEND CHARGE 2

CHARGE 2 AMENDED - OBJECTION

DISCUSSION RE OBJECTION

SUBMISSION BY MR HIGHWAY

SUBMISSION BY MS NOBBS

DISCUSSION AS TO EXPLANATION OF AMENDMENT AND CONSEQUENCES

SUBMISSION BY MR HIGHWAY

HIS WORSHIP: Well, sergeant, I will have to call you to give evidence as to what was said. How, when and where the defendant was informed that the amendment was to be made.

So we will have to swear Sergeant Kendrick, please Ken.

SUZANNE LOUISE KENDRICK, sworn:

HIS WORSHIP: Well, sergeant, obviously you know what you have got to do in terms of formerly introducing yourself and then tell me what the position is.---My name is Suzanne Kendrick, I am a Sergeant of Police currently stationed in the prosecutions unit in Darwin. On 12 May 2003, I appeared on behalf of prosecutions in relation to file number 20215301. Mr Stuart Highway as the defendant. On that date I made application to the magistrate, Mr Gillies, to amend a number of charges. One of those charges was, this is charge 2 which I sought to amend the number plate and the value of damage caused.

Yes, and in relation to charge 2, I can tell you this, Gilles SM has recorded that the defendant - he also has recorded that the actual registration of the motor vehicle is as per your application or Ms Nobbs' application this morning, whereas I understand this defendant is, in relation to the amount, what he has recorded or what Gillies has recorded is in relation to 2374137 and that Mr Highway was to consider his position. Does that accord with your recollection or notes?---I beg your pardon, is that the joint file?

No, that is on the file 5301 Mr Highway's where the magistrate's recorded: 'The plaintiff also applies to amend charges 2 and 4. So that the number plate reading is 815.787'. So that's a matter which as I understand Mr Highway as it ought not be is a matter of little consequence. Then he says: 'Application yet to be considered'. Then he has got 'plus' which I presume is his own shorthand '374137' and then in brackets in circle number 2 which I infer is in relation to charge 2. But in the event

the question I raise is whether that accords with your recollection of what happened on the day or have you got a note of it or what?---I have on my note that I made application to change it. That's according to - - -

Did you have a note of 374137 or 393157?---No. 393157, sir because I had - - -

Well, Mr Highway, you may now ask the sergeant questions in relation to what's emerged from what my exchange with her. Your contending as you do, that you are taken by surprise, doesn't seem to accord with what the magistrate's recorded. But in the event you have heard the evidence, do you want to ask questions and persist in saying you were taken by surprise?

MR HIGHWAY: When did you make these amendments?---I sought to make those amendments on 12 May.

At what stage in the proceedings?---After the - the adjournment had been requested and prior to the matter being adjourned.

Wasn't it the case that we were on our way out of the door and suddenly it was a last minute and after thought thing?---No.

That's (inaudible) it didn't come out freely, just - - -

HIS WORSHIP: Well, Mr Highway, when you ask a witness a question in cross-examination and the answer is given, you are bound by that answer. You, of course, if you wish, will have the opportunity to give evidence yourself to say that what she has told the court never occurred and I then have to make a finding as to whether indeed, excuse me, Mr Gillies' note as an application was made on 12 May and the sergeant's evidence, that an application on 12 May was made in your hearing and in a situation where you were provided with the information that is now the subject of the amendment of the charge today. But you are bound by her answer.

You can't go on arguing, she says it wasn't as you were going out the door. Do you want to ask any other questions?

MR HIGHWAY: No, sir, I would like to call My Meyerhoff as a witness.

HIS WORSHIP: Yes, I will deal with that in a moment.

Thank you, sergeant.

WITNESS WITHDREW

HIS WORSHIP: Yes, you can give evidence yourself, you can call a witness, as you please, the issue being simply whether, on 12 May, you were advised as the sergeant says you were and as the court file says you were. Are you going to give evidence yourself or are you only going to call Mr Meyerhoff?

MR HIGHWAY: So, do I - - -

HIS WORSHIP: Yes, the orderly will take you through the formalities.

STUART HIGHWAY, affirmed:

HIS WORSHIP: Yes, well, by now I suppose you know the format. Your full name, your occupation, place of residence, as a formality first.---Full name Stuart Highway, occupation dishwasher, place of residence 66/47 Progress Drive, Nightcliff.

Yes, well, you heard the evidence and only what we are concerned with is whether you were advised or notified by the prosecution on 12 May that charge 2 relevantly was going to be amended so as to increase the amount of damage alleged to the amount that's now sought. What do you say happened on 12 May in that regard then?---We weren't given specific details, it was just an after thought thing and we weren't supplied with all the proper details. It was sort of left up in the air.

Yes. Is there anything else you wanted to say?---It was just a chance that we happen to learn those details from the prosecution. It was almost - we were almost out the door when we found out something and then it sort of - there was a bit of confusion and they didn't make it - it wasn't made clear to us.

Yes, is there anything you wanted to say?---And that it's only been - the details have only been supplied just now and we have - we didn't - we asked what was going on at - it wasn't freely offered this information by the prosecution.

All right, is there anything else you wanted to say?---No, I'd like to interview - to cross-examine myself my co-defendants please.

You can't do that but if you don't have anything more to say then Sergeant Kendrick's is going to ask you questions about what you have just said and I will deal - you can call your co-defendants or one of them to give evidence after you have been cross-examined if you wish in relation to the issue that is before the court. The issue before the court is simply whether or not on 12 May you were advised of this application that is not again made this morning and that is all I am dealing with at the moment.

Yes, sergeant, or Ms Nobbs, I am not sure whoever is going to ask him questions.

MS NOBBS: Mr Highway, is it not the case that you have been provided with quotes from the prosecution on that day?

HIS WORSHIP: Sorry, what is the question. I didn't get - - -

MS NOBBS: Quotes of the damage to the vehicle. Maybe if I could show you these?---I have never seen this before. This is new to me. No, we weren't given this at all.

MS NOBBS: So what you are saying under oath is that you never received quotes for the damage to your vehicle?---This is all new.

HIS WORSHIP: Just answer the question. The question is, are you saying that you have never, prior to this moment in time when they are apparently in your hands, received quotes for the damage to the vehicle?---Yes, we didn't receive these.

I know its perhaps a little difficult but I don't care about we what we are dealing with here is Stuart Highway and the prosecution so just talk about me and I. Anyway you - I construe what you are saying is that you personally assert that you've never seen a quote such as you now have in your hands before?---Yes, sir.

MS NOBBS: Now you were in court on the 12 May of this year?---Yes.

And Mr Gillies, His Worship, was on the bench?---Yes.

And the prosecutor made a application to amend the charges?---There was - at the end of the court case some indication that they wanted to amend it, yeah.

So you were advised that the amount of damage was wrong?---Yeah, there was something - there was some sort of dispute or something but it wasn't actually clear what or why it was and it was sort of sprung on us at the last moment.

Your Worship, I have got no further questions.

HIS WORSHIP: Is there anything else you wanted to say, that is volunteer from your mouth as it were arising out of the questions the prosecution has asked you? ---No, sir.

All right, we will go back then please to where you were.

#### WITNESS WITHDREW

HIS WORSHIP: Are you now going to call your fellow accused or one or more of them to deal with this issue? What is the answer Mr - - -

MR HIGHWAY: I will just leave it at that.

HIS WORSHIP: Is there anything, this is quite apart from the issue of evidence, is there anything else you want to say in opposition to the application to amend the charge in the manner that's been applied for?

MR HIGHWAY: No, Your Worship.

HIS WORSHIP: Well, in relation to this particular matter one of the charges apparently before His Worship Mr Gillies on 12 May 2003 was charge 4 which is now withdrawn. His Worship on the court file which therefore raises the presumption of

regularity, has recorded, amongst other things that the plaintiff has applied to amend charge 2 in respect of the number plate and in respect of the damage.

There is, as I pointed out to Sergeant Kendrick when she was giving evidence, a record in His Worship's own hand that the actual amount of damage was \$3741.37 which is an amount \$200 discrepant from that which is the subject of the application this morning. Mr Highway does not raise any issue in relation to the change of the registration and, in any event, if he did then clearly there is no dispute and cannot be any dispute that that was a matter advised. Obviously from the file note made by Gillies SM, the application which was then made was not commented upon by Mr Highway or on his behalf because Mr Gillies has endorsed that the application was yet to be considered.

The evidence of Sergeant Kendrick is consistent with His Worship's note apart from the \$200 discrepancy to which I have referred. The application is to increase the amount of the damage alleged to have been suffered by an amount of \$931.57. I can't conceive of what prejudice could be sustained if I allowed the amendment but in the event before that bridge is crossed there is another, that is, was there on 12 May 2003, notice given to the defendant of intention to amend in the manner that I have indicated the file records.

I accept the evidence of Sergeant Kendrick, it conforms to what is stated on the court file, with the exception of the \$200. That then left the defendant on or after 12 May, in a position that if he wished to contest the quantum of the damage alleged to have been suffered in relation to charge 2, in the normal course of events he would have taken steps to have a panel beater inspect the vehicle in order for the amount of quantum to be assessed and for the issue to be enlivened and such evidence has not been given. There is, of course, in any event, time yet available to deal with the issue of quantum.

The matter is not whether the issue of quantum can be or cannot be dealt with. The issue is whether the amendments should be allowed. As a matter of procedure in all courts and that obviously also in this court, the issue of an amendment of a charge can only be refused if there is prejudice which is demonstrably to be suffered by the defendant before whom - who appears before the court, rather. No evidence of any prejudice has been adduced, nor can I conceive there could be. I find that notice was given as indicated by Sergeant Kendrick and as recorded on the court file but for the discrepancy of \$200. The discrepancy of \$200 is a matter which is de minimis or to avoid the Latin, of no consequence whatsoever.

In the circumstances the prosecution application to amend charge 2 is granted and I will accordingly amend the charge to reflect that the registration number of the vehicle is 815.787 and the amount of the alleged damage is the sum of \$3931.57.

Now just before this matter goes on. I have got - this particular file, I have now got 1 and 4 in front of me on complaint and I've got charge 6 on information. I have got charge 3 alleging an assault on Sanders. Are those the full charges that this defendant faces?

MS NOBBS: Yes, Your Worship, 1, 3, 4 and 6.

HIS WORSHIP: All right well, then I suppose proceeding in an orderly manner you will put then, charges 1, 2, 3 and 6 to the defendant so that I can record his plea.

Stand up Mr Highway, please.

CHARGES READ BY MS NOBBS TO MR HIGHWAY

MS NOBBS How do you plead to the charge: guilty or not guilty?

THE DEFENDANT: Not guilty.

CHARGES READ BY MS NOBBS TO MR HIGHWAY

MS NOBBS How do you plead to the charge: guilty or not guilty?

THE DEFENDANT: (Inaudible) guilty.

CHARGES READ BY MS NOBBS TO MR HIGHWAY

MS NOBBS: How do you plead to the charge: guilty or not guilty?

THE DEFENDANT: Not guilty.

CHARGES READ BY MS NOBBS

HIS WORSHIP: So you will need to amend that too obviously.

DISCUSSION RE CHARGE MS NOBBS

DISCUSSION ON QUESTIONING

HIS WORSHIP: Mr Highway, in relation to the charge which has just been put to you and bear in mind before you answer this, that in relation to that charge Mr Gillies SM has recorded, as with the other matter, that notice was given to you on 12 May that in relation to this charge there was going to be an amendment to reduce the amount of the damages alleged to the amount that is now \$4049.48. I can't, on any basis, exercising my mind, however, conceive that you could suffer any prejudice by my making that amendment but I am bound, I suppose to ask you whether you oppose the application to amend by reducing the amount alleged to have been suffered?

MR HIGHWAY: We need to confer on that, I think, sir. (Inaudible).

HIS WORSHIP: No Mr Highway, you don't. You were given notice on the 12 May, according to the file. We can go through the same process all over again but there is

a distinction now. Previously there was at least some conceptual prejudice to you because there was an increase in the amount of damages claimed. What the prosecution are now doing is reducing, by roughly \$1500, a reduction that is of the amount that alleged to have been sustained by way of damage to that vehicle.

There cannot be any conceptual prejudice suffered by you. I can't see how you could suffer any prejudice and I don't believe that you need time in the circumstances to confer with anyone. Will you answer the question. Do you say that this in some way prejudices you, and if you do, then tell me why.

MR HIGHWAY: Yes.

HIS WORSHIP: How?

MR HIGHWAY: Because that changes the charge from an indictable offence to a summary offence.

HIS WORSHIP: No, it doesn't. It doesn't do so at all.

MR HIGHWAY: By \$1000.

HIS WORSHIP: That doesn't have any legs that argument at all. Is there anything else you wanted to say?

MR HIGHWAY: That is what Mr Gillies said.

HIS WORSHIP: What do you say about this Ms Nobbs?

#### SUBMISSION BY RE CHARGE MS NOBBS

HIS WORSHIP: Is there anything else you wanted to say, Mr Highway?

MR HIGHWAY: No, Your Worship.

HIS WORSHIP: Well, I cannot conceive any prejudice for obvious reasons that must flow from what I have said. In the circumstances that charge will be amended, I suppose, as a matter of pedantic procedure you had better put charge 6 again. He hasn't pleaded to it yet.

#### CHARGES READ BY MS NOBBS TO MR HIGHWAY

MS NOBBS: How you plead to the charge: guilty or not guilty?

THE DEFENDANT: Not guilty.

HIS WORSHIP: Well, you can sit down.

The next matter that I call on then is Michael John Barry. In relation to this defendant, is it correct that he is charged with number 1 and number 6.

MS NOBBS: Yes, Your Worship.

HIS WORSHIP: And of course in relation to Mr Barry you made your application to amend. Are you Mr Barry are you?

MR BARRY: Yes, sir.

HIS WORSHIP: You heard what I had to say about the amendment of the charge by reducing it from \$5000 to \$4000 in round figures. But application to amend is made by the prosecution. Do you contest the application to amend?

SUBMISSION RE APPLICATION TO AMEND BY MR BARRY

DISCUSSION RE LEVEL OF CHARGES FACING MR BARRY

DISCUSSION RE PROCEDURE

HIS WORSHIP: Don't understand that. That is another issue anyway but I will deal with that if you want to enliven that issue at a later time. There are two charges against you and there have always been two charges against you.

On the 21 November last year you elected those two charges go to hearing. On 12 May I have told you what is recorded on the court file and then on 1 September you confirmed your readiness for this matter to proceed today. In the event is there anything more you wish to say in respect discretely of the application to amend the charge?

MR BARRY: Well, I think I've made my point, sir, about what it is about this amendment that worries me. As far as any objections in lessening the amount of damage, no, I have none to that.

HIS WORSHIP: Well, then I grant the application to amend charge 6 and would ask you then, Ms Nobbs, to put charges 1 and 6 to the defendant so I can record his plea in relation to those matters.

CHARGES READ BY MS NOBBS TO MR BARRY

MS NOBBS: How do you plead to that charge: guilty or not guilty?

THE DEFENDANT: Not guilty.

HIS WORSHIP: Yes, thank you.

The next matter then is the matter of Garry William Meyerhoff. Firstly, in relation to charge number 4, there is an application to withdraw the charge. You have been

mindful, I hope, of what I said to Mr Highway. Do you want to say anything as to why that charge shouldn't be withdrawn?

MR MEYERHOFF: No, sir.

HIS WORSHIP: Thank you.

#### CHARGE 4 WITHDRAWN

HIS WORSHIP: The next matter, as with Mr Highway, concerns then the change in what is charge 5 to registration number 815.787 and the amount said to have been suffered by way of damage in the charge to increase it from \$3000 to \$3931.57. Do you want to say anything as to why that shouldn't be an application which was granted?

MR MEYERHOFF: No, sir.

#### CHARGE 5 AMENDED

HIS WORSHIP: Thank you. Well, then Ms Nobbs can you put - - -

MR MEYERHOFF: I thought there was another joint charge that I was charged with.

#### DISCUSSION RE CHARGES MR MEYERHOFF

HIS WORSHIP: While I am trying to find it, Mr Meyerhoff. mindful of what has happened in relation to your co-defendants that is a matter where the amendment that's sought is to reduce from \$5000 to \$4000 in round figures. Do you oppose that amendment?

MR MERYERHOFF: Yes, I do.

HIS WORSHIP: Well, tell me why.

#### SUBMISSION BY MR MEYERHOFF RE AMENDMENT

#### DISCUSSION RE CALLING OF WITNESSES

#### SUBMISSION BY MS NOBBS RE COMMITMENTAL PROCEEDING

#### DISCUSSION RE CHARGE 6 AMENDMENT

#### CHARGE 6 AMENDED

HIS WORSHIP: Now I will have to go back to deal with those defendants' files that I had dealt with because the same issue obviously arises. I might as well ask you

now, is there an indictable offence against Mr Highway as well? Yes. And against Mr Barry.

Do each of you, Mr Highway and Mr Barry also decline to proceed with the summary trial and elect to have the matter proceed by way of an oral committal hearing?

MR BARRY: Yes, I'd like proceed as a committal.

HIS WORSHIP: You too, Mr Highway?

MR HIGHWAY: Yes, Your Worship.

HIS WORSHIP: All right, well, what I will do in order to put the matter as it were correctly, is in relation to you, Mr Barry, it then being the case that presumably I have got the other files to reach yet but your matter will proceed with others as an oral committal.

Obviously, I don't want to get too deeply into this, Ms Nobbs.

You don't have to plead not guilty. The charge of course is read and you do not have to plead as erroneously done. May I simply delete your not guilty plea?

MR BARRY: Yes, withdraw the please, whatever.

HIS WORSHIP: Will simply record then that charge 1 and 6 have been put to you which is of course what's required.

And, Mr Highway, the same question arises in your matter, do you want the matter to proceed as a summary hearing or as an oral committal?

MR MEYERHOFF: An oral committal.

HIS WORSHIP: I will then record that charges 1, 2, 3 and 6 have been put to you and I will delete your plea of not guilty. Do you follow that?

MR MEYERHOFF: Thank you, sir, yes.

HIS WORSHIP: Well, that leaves Mr Inder-Smith. I will deal with your matter next.

Now I am just being cautious, Ms Nobbs, because of what happened with the last one where there is a sixth charge which got away as it were. In relation to this defendant, he is only charged on complaint with hinder and disorderly. Is that correct?

MS NOBBS: That is correct, Your Worship.

HIS WORSHIP: Mr Inder-Smith, where are you? In relation to your matter, you are, so to speak, a horse of a different colour. Your matter is capable of proceeding, indeed it is incapable of being the subject of an oral committal. It must proceed by way of a summary hearing. I can't read what McGregor has written here. There's an objection to a video and then this is 1 September you were seeking legal advice and - but Mr McGregor has confirmed the matter is to proceed today by way of a hearing.

Now you or your complaint is not the subject of any application to amend. What will happen in relation to all this matters is yet to become clear, as indeed it is yet to become clear whether I continue in sit in them. I understand, there is an application for me to disqualify myself lurking somewhere. But anyway leaving that aside your matter is capable of proceeding and cannot proceed otherwise than by way of a summary trial. Do you want to say anything at all before the charges are put to you?

MR INDER-SMITH: No.

HIS WORSHIP: Can you put the charges then to Mr Inder-Smith?

#### CHARGES READ BY MS NOBBS

MS NOBBS: How do you plead to that charge: guilty or not guilty?

MR INDER-SMITH: Not guilty.

HIS WORSHIP: The last matter, I think, is the matter concerning Nicolette Estelle Burrows. Again with an abundance of caution, is the position is charged with 1, 2 and 6?

MS NOBBS: That is correct, Your Worship.

HIS WORSHIP: In fact, Ms Burrows, where are you? The position is, ironically in relation to this matter in respect of charge 6, I have to tell you that Mr Gillies has already amended that charge. Does that accord with - - -

MS BURROWS: Yes, that's good.

HIS WORSHIP: Well, then in relation to this defendant, there is no question of an application to amend.

I take it the prosecution seeks to proceed by way of oral committal here, Ms Nobbs.

#### DISCUSSION RE SUMMARY HEARING

#### DISCUSSION RE ORAL COMMITTAL

HIS WORSHIP: Do you want to say anything in relation to the matter then proceeding as it must by way of oral committal Ms Borrowes?

MS BURROWS: No.

HIS WORSHIP: I would have thought since you seem to have got what you wanted at least procedurally the answer is no.

MS BURROWS: I have wanted is for them to drop the charges, sir.

HIS WORSHIP: Sorry?

MS BURROWS: What I really want is for them to drop the charges.

HIS WORSHIP: I am sure you do but I don't have any power to do that. So the oral committal matter will proceed by way of oral committal. The charges in relation to this defendant or the relevant charge's been amended.

Procedurally then, Ms Nobbs, you better put the charges to the defendant and that is all you need do.

#### CHARGES READ BY MS NOBBS

HIS WORSHIP: You do not need to respond. You don't respond at all. Please sit down.

#### DISCUSSION RE ORAL COMMITTAL AND SUMMARY HEARING

#### ADJOURNMENT REQUESTED BY MS NOBBS

HIS WORSHIP: Well, I suppose I ought deal with this other thing anyway. Whatever happens that is, how these matters proceed today. As I understand it, there are a variety of applications. The first of which is an application for me to disqualify myself and I suppose I ought to deal with that first because if you lose me then obviously my continued involvement becomes academic. Is the position that every single defendant here seeks to have me disqualify myself and for the same reasons?

MR MEYERHOFF: Yes, Your Worship. I can only speak for myself.

HIS WORSHIP: Well, perhaps I will do this. I don't know whether the grounds, Mr Meyerhoff on which you seek I ought to disqualify myself are the same as the grounds which are said to constitute the basis of such an application for each one of your co-defendants. If it was the case that there was a common position that is that for the same reasons for each of you, you wished to make an application and that perhaps that you, on their behalf made an application for all of them. Clearly that would be more sensible than hearing five separate applications for me to disqualify myself, all of which are said to have the genesis of being obliged to disqualify myself on the same basis.

MR BARRY: I think that Ms Burrows might actually address the court on our behalf.

## DISCUSSION RE PROCEDURE TO DISQUALIFY

MS BURROWS: I think that I will make an application if I think our people will want to add to that or if they have their issues perhaps it is better if they bring them up themselves.

HIS WORSHIP: That is why I asked.

## FURTHER DISCUSSION RE DISQUALIFICATION

HIS WORSHIP: What I am dealing with now is an application that you are going to make for me to disqualify myself. So you better tell me why you want me to disqualify myself.

## SUBMISSION RE DISQUALIFICATION BY MS BURROWS

HIS WORSHIP: Well, for no good reason, simply the way the files are located here then, you, I take it from Mr Barry will make an application of the same nature, is that right?

MR BARRY: Yes sir, I have got a couple of other comments I wish to make.

HIS WORSHIP: Don't repeat anything that's the same and if you wish, whatever you want to say by way of difference is.

## SUBMISSION BY MR BARRY RE DISQUALIFICATION

HIS WORSHIP: Anything else?

MR BARRY: That is all, sir.

HIS WORSHIP: Mr Highway, what do you want to say?

MR BARRY: I have nothing to add to that.

HIS WORSHIP: Mr Meyerhoff?

MR MEYERHOFF: I've got nothing.

HIS WORSHIP: Mr Inder-Smith?

MR INDER-SMITH: Your messianic tones worry me a great deal and you said earlier we're to not talk when you talk - - -

HIS WORSHIP: That is in fact a standard requirement in every court in the land.

MR INDER-SMITH: Is that right, okay, does that include interrupting for instance, I just - - -

HIS WORSHIP: Yes, it does if there is something happening which is interfering with the normal procedure in the court, then of course it has to be stopped, otherwise what we will have is Rafferty's rules and I won't have Rafferty's rules. Anyway, I am not here to debate the matter with you. Do you want to add anything?

MR INDER-SMITH: No, there isn't. I think you should strike yourself.

HIS WORSHIP: Yes, well, the position is that I decline to disqualify myself from hearing any of these matters. I don't have any particular judicial view about what ought to happen in any case that comes before me. Any matter that is ventilated before me is ventilated and decided upon the facts that are indeed adduced by way of evidence before the court. In relation specifically to, firstly the comments made by Ms Burrows there was some perceived bias, she said, towards the Network Against Prohibition.

I don't really know what the extent of the Network Against Prohibition is, nor do I know the extent of its philosophies other than those that I have gathered from the press, or in the paper. Certainly, I will not, not now or ever, allow people to utilise the function of this court to propound philosophical, religious or political views and I do not recall using the word 'grandstand' but I certainly recall often referring to not being prepared to allow somebody to stand on their soap box and to do nothing more than to accord the procedure which is supposed to take place in this court and to not allow the ventilation in court of philosophical, etcetera, views.

The court is concerned with an orderly procedure laid down by the various statutes dealing with criminal procedure and in accordance with the Justices Act. I refute utterly any suggestion that I have some form of personal bias towards Nicolette Burrows. I think I am right in recalling, and it isn't altogether clear, that she was before me in a matter which concerned some posters in Ross Smith Avenue. I don't have any recollection, particularly of the details of those matters but indeed my recollection is that I found each of the defendants, not guilty.

In those circumstances, it is impossible for me to conceive how that could demonstrate any appearance, suspicion or other phrases that are used of bias. I said, said Mr Barry that I was not here to advise that indeed is precisely the position. If a defendant chooses to come to court to self-represent, that is their constitutional right. The role that I have to play in matters that are before me is, and I probably use this allegory to act as an umpire. I am unable, I would have thought obviously, to discharge the function of being the umpire if it is somehow to be combined with the function of being the coach.

It is no recollection of mine, that any preferential treatment was given to the prosecution and I don't believe that I ever would give preferential treatment to the prosecution. I refute the suggestion that I was dismissive and hostile to Ms Burrows. There is no other specific matter which I need canvass.

There is a distinction, however, between those matters which relate to the defendants, Burrows, Barry, Highway and Meyerhoff. The distinction to be made is

this, that that will now concern me prospectively in what is called an administrative act. It is a procedure which will not require me to make a judicial decision. I will not be required to decide upon the credibility of any witness nor will I be required to decide upon the credibility of any defendant.

The sole function which I am charged to fulfill under the Justices Act is that at the end of the prosecution case to come to a conclusion as to whether or not there is sufficient evidence which, if put before a superior court where a jury was sitting, whether such evidence is such as to constitute evidence upon which a jury properly instructed might convict.

It is a decision of an administrative nature and in the circumstances, even if there was some basis of an apprehension of bias, which I have refuted for the reason stated, it could have no application whatsoever in relation to committal proceedings. The matter which I was at some pains to explain to Mr White on some matter of his - of a like nature that was before me.

In relation to, in any event, that aspect of the matter which has more force and greater validity. That is the matter involving Mr Robert Inder-Smith. The position is that I must of course consider quite differently from oral committal proceedings what my position ought be in relation to the disposition of Mr Inder-Smith's matter. If in any event not being in any way clear that I would preside over the hearing of Mr Inder-Smith's matter in any event.

However, I refer to a decision of *Livesey v NSW Bar Association* (1983) 151 CLR 288. Ultimately, in fact in this case an appeal court decided that the judge President and another Supreme Court judge ought not to have sat on the appeal which they sat on in fact. However, the Court of Criminal Appeal said this of relevance:

If a judge at first instance -

With whom of course there must be some analogy in my case.

- considers that there is any real possibility that his participation in the case might lead to a reasonable apprehension of pre-judgment or bias he should, of course, refrain from.....entrusted by the ordinary procedures and practice of the particular court.

That is a principle which is of some guidance and utility to me and embracing it as I do, for the same reasons as I said I would not accede to an application on the grounds of perceived bias in respect of those matters the subject of an oral committal. So also do I refuse to disqualify myself in relation to Mr Inder-smith's matter which of course is a summary hearing.

That then brings me, I believe, to the prosecution's application for the matter to be briefly adjourned - - -

MS NOBBS: Your Worship, I was going to make a further application. It appears that we will be proceeding by oral committal. As you can imagine we have come here today for a summary hearing. There is a lot of material that won't be relevant to the charges and I would ask Your Worship if you could stand the matter down until 10 am tomorrow morning so we can commence with the oral committal and not lead evidence unnecessarily.

HIS WORSHIP: What about Mr Inder-Smith's matter?

MS NOBBS: Mr Inder-Smith's matter, Your Worship, I would be seeking a hearing date.

HIS WORSHIP: Are you in a position to proceed with that hearing today?

MS NOBBS: Yes, Your Worship, we are.

HIS WORSHIP: What then precisely is your application in relation to Mr Inder-Smith's matter. Do you say you want some time before you commence it?

MS NOBBS: Yes, Your Worship.

HIS WORSHIP: And in relation to the other matters, you seek to have them adjourned for oral committal to commence tomorrow morning?

MS NOBBS: I am sorry, Your Worship. In relation to Mr Inder-Smith, we're not in a - position he is charged with hindering Sergeant Christopher Lyndon. Sergeant Lyndon is to give evidence via video link at 10:30 tomorrow morning.

HIS WORSHIP: I see.

MS NOBBS: So we will not be in a position to proceed with that hearing.

HIS WORSHIP: That doesn't appear from the file. Oh I beg your pardon. Video, well, it is not clear, I can't read his writing. There is something about a video conference for an ACT witness. Does that refer to Lyndon, does it?

MS NOBBS: Yes, it does, Your Worship.

HIS WORSHIP: Really both Mr McGregor and Gillies SM have seemingly not recorded that which ought to have been recorded for purposes of clarity, not only to me, but to the defendants I guess. Which is unfortunate and certainly if there was a video conference arranged for tomorrow, that's not apparent from anything that McGregor did on 1 September. When was that arranged?

MS KENDRICK: Your Worship, my name is Kendrick - - -

MS NOBBS: That has been arranged from the date - the time (inaudible) was advised.

HIS WORSHIP: So on 1 September again he has not recorded it, you say that was the position?

MS NOBBS: Yes.

HIS WORSHIP: Well Mr Inder-Smith is that right?

MR INDER-SMITH: Not to my knowledge.

HIS WORSHIP: Sorry?

MR INDER-SMITH: No, I didn't know that.

HIS WORSHIP: Well, what he has recorded is there is to be a video conference in respect of an ACT witness. If you say that it wasn't fixed to be dealt with tomorrow at 10:30. Tomorrow, or course, being 16 September. Do you - you surely don't say that the fact that there was to be evidence by video conference wasn't addressed by Mr McGregor. He has recorded that to be the case?

MR INDER-SMITH: No, Your Worship, we don't have a record of that. All I know that Monday, Tuesday and Wednesday of this week we have to set aside, that is all I know. I don't recall anything involving my case and Mr Lyndon coming on and giving video evidence.

HIS WORSHIP: Well, Mr Inder-Smith I suppose we can go through the same procedure again with Sergeant Kendrick. It is clearly recorded by Mr McGregor, is there some basis upon which you concede perhaps that you are in error?

MR INDER-SMITH: I am prepared to make that concession, Your Worship.

HIS WORSHIP: Do you have anything to say then about your matter being adjourned to 10:30 tomorrow morning?

MR INDER-SMITH: No, other than they are completely trumped up charges.

HIS WORSHIP: Yes, well, I am not going to deal with that. So all right, the application - if you are going to proceed with Mr Inder-Smith's matter tomorrow at 10:30, Ms Nobbs.

#### DISCUSSION RE PROCEDURAL MATTERS MS NOBBS

HIS WORSHIP: Well, having regard to your concession then, Mr Inder-Smith, the matter involving you is adjourned until tomorrow at 10 and obviously you ought to be here. How all these things are going proceed, I don't know, but apparently Lyndon's

evidence is common to your matter and to the other matters. Whether or after Lyndon's given his evidence your matter will proceed or whether it will stand down until after the oral committal, I can't say. I guess that has to become apparent tomorrow.

#### DISCUSSION RE PROCEDURE MS NOBBS

HIS WORSHIP: Well, in relation to the oral committal matters. I will deal with them one by one if I have to. Is the position that any one of them Burrows, Barry, Highway or Meyerhoff objects to these matters being stood over until tomorrow?

MR MEYERHOFF: Well, I mean, I do object, sir, I was prepared for today and this matter it's nearly a year old and we have had two CMI's and this should have been addressed - I tried to sort it out with Mr McGregor and Mr Gillies and it's just difficult for myself with so many different matters in court when the prosecution seem to be so inept, sir, from my point of view. They should be ready to proceed. We have had a lot of notice for this matter. This is about the fourth case where all these issues rise up but only when we bring them to the attention of the court. They are never brought to - the prosecution didn't mention anything about a committal hearing this morning, sir. It is just another example.

HIS WORSHIP: Well, of course, I don't know quite how that happened, Mr Meyerhoff, but as you have heard on 12 May in relation, I think to Ms Burrows, Mr Gillies actually amended that charge being the only one that he amended but in relation to similar amendments involving you and others, didn't make the amendment. I don't know why he did what he did.

He did not record on the file that the matter was to proceed by way of oral committal. As I said, I assumed, and you heard what the prosecution said, that they assumed that when you said you were ready for the matter to proceed, they understood ready to proceed as a summary hearing. Certainly reading Mr McGregor's notes, I would have to say that that would be my conclusion. He has marked, very clearly on the file, that the matter is to proceed to a hearing. That could only occur with your consent.

Because it couldn't proceed to a hearing without your consent. It has only become apparent this morning that apparently you did not consent. I don't repeat myself, I haven't listened to the tapes, I don't know but from the file, both I and the prosecution and indeed you, I accept what you are saying from the Bar table, but according to the note that McGregor has made was to proceed by way of a hearing. So, if the wheels have fallen off but they are not entirely - or that the loss of the wheels is not entirely that of the prosecution.

True it is that you may find yourself in a comedy or errors. However, it is not going to go away and there seems little point, at least in my mind, little point, in suggesting that it be adjourned off because that is all that can happen. If is not adjourned off until tomorrow then at least in concept, I suppose, I could adjourn it off until another date. But what is the utility of that?

MR MEYERHOFF: I don't know, I just asked if it could proceed today.

HIS WORSHIP: Well, it can't proceed today because of the muck up that I have identified and it is not - - -

MR MEYERHOFF: Our fault.

HIS WORSHIP: It's not your fault, it's not the prosecution's fault, it appears. It appears that it may be the fault of one or more of my brother magistrates in the event. I am only repeating myself, you are welcome to look at the file.

#### DISCUSSION RE PROCEDURAL MATTERS

HIS WORSHIP: Is there anything you wanted to say?

MR MEYERHOFF: No, sir.

HIS WORSHIP: Is there anything anyone else wants to say?

MR INDER-SMITH: Only to agree with Mr Meyerhoff about the (inaudible).

HIS WORSHIP: Well, if you were represented by legal counsel any one of you, I would only grant an adjournment such as being asked for by awarding you costs. You aren't represented by legal counsel, so I can't award you costs. I would have to hear the prosecution in relation to costs.

If that position was before me what I may do, I suppose, is if anyone of you has incurred expenses, so for example if Mr Meyerhoff if you had flown from Brisbane and put yourself into a hotel, then those expenses may be capable of being considered. I am only telling you this because what I propose to do about that particular aspect of the matter, is to reserve the issue as to what costs, if any, you incur for deliberation on another day.

If there are discrete expenses that any one of you has incurred to come here today then I will listen to an application for an order to be made in relation to the amount, subject to something the prosecution has got to say. I will order that any costs thrown away as occasioned by the adjournment be paid by the prosecution but I reserve the amount. Now that may mean there is nothing payable. Maybe you caught a bus from somewhere at two bob in which case you would probably be able to recover the two bob.

Ms Nobbs, do you want to say anything as to why - if there are any costs thrown away you shouldn't pay them?

MS NOBBS: Your Worship, I have a right to say that I reserve that decision.

HIS WORSHIP: Well, you understand what I propose to do is that I will order that any costs thrown away by reason of the adjournment be paid by the prosecution but reserve the quantum to a future time.

MS NOBBS: Your Worship, the reason the adjournment is sought is such that the defendants are not put to unnecessary time for being here. The adjournment is sought because we came here prepared with material that does not relate to certain charges.

HIS WORSHIP: I understand that.

MS NOBBS: So, if Your Worship is going to make such an order then, Your Worship, then I will be prepared to start this matter at 2 pm.

HIS WORSHIP: Well, it is a matter for you.

MS NOBBS: Well, Your Worship, it just means there is a possibility that material go before the court that does not relate to these charges. That is something I will endeavour to avoid but we have prepared booklets and photos. These have to be - so I am happy to start - - -

HIS WORSHIP: I can't obviously be some sort of omnipotent person. If you want the adjournment you will have to pay any costs if there are any. If you don't want the adjournment, well, the issue becomes academic and I will start it as soon after, I can't start at 2 because I've got some other mention which ought not to take long, but I'm prepared to start the matter at half past 2.

MS NOBBS: Your Worship, we will be ready to start at half past 2.

#### DISCUSSION RE COSTS

#### DISCUSSION RE VIDEO LINK EVIDENCE

#### DISCUSSION RE MATTER OF INDER-SMITH

HIS WORSHIP: I'll tell you what I'll do, I'll stand the matters down until half past 2, by then you'll have to have made up your mind what you want to do.

#### DISCUSSION RE ADJOURNING INDER-SMITH MATTER

#### APPLICATION BY MS NOBBS TO ADJOURN FILE 20302016

HIS WORSHIP: Well, I will stand these matters down until half past 2. By half past 2, at half past 2 I hope that you will have ascertained a date - it doesn't have to be before me, this matter can be heard before any - he's pleaded not guilty, I'm not really seized of the matter at all.

You can get another day from the co-ordinator, one that you obviously at least attempt to achieve some consensus with the defendant about and I'll deal with the application to adjourn the matter and hear the defendant if he wishes to be heard, in relation to whether the adjournment should be granted at half past 2 or soon thereafter, as I become seized of the matter.

That being the fate of that, and I have to vacate some of the orders I made earlier, then I propose to simply stand the oral committal files down until half past 2. You say you'll start them then?

MS NOBBS: Yes, Your Worship.

HIS WORSHIP: Well, in relation to the matters involving oral committal, Messrs Meyerhoff, Burrows, Barry and Mr Highway, is there anything you want to say - I can't imagine that you could say anything useful, as to why I shouldn't stand the commencement of those matters down to half past 2. All right, well, you're free to go and I'll commence those matters then this afternoon at half past 2.

Mr Inder-Smith, I vacate the adjournment until tomorrow morning, which is what I had previously done. What that means is that there will be - you can foreshadow, two things that now will happen. You'll have to endeavour to, if you so agree, choose a day that - I don't have any idea what that day might be, some other magistrate at some future time will be - or the matter will be allocated a prospective future hearing date at some day, I can't tell you what it is, currently I think they're allocating dates in November or December and obviously you should, in collaboration with the prosecution try and secure or achieve a date that suits you as much as it suits them and much as it suits the co-ordinator.

You, however, still of course have the right to object to the application being adjourned at all and I'll hear from the prosecutor and from you this afternoon about whatever you want to do. Are you clear on what the position is?

MR INDER-SMITH: Yes, Your Worship.

HIS WORSHIP: All right, well, this matter now stands down until half past 2, and Ms Nobbs, I'm not sure how you organise this, whether you meet Mr Inder-Smith at 2 o'clock and tell him what his options are, having got dates from the co-ordinator or what you do, but anyway I leave it to you.

Adjourn then.

ADJOURNED

HIS WORSHIP: To all those people who are involved in the oral committal and Mr Inder-Smith, the other matter is becoming obvious, probably equally obvious to you, the matter that I expected would take a half an hour is going on. I called you in as I understand you have been told, for the purposes of minimising further inconvenience to you, and adjourning your matters until 10 in the morning. If that is what each of the defendants and the prosecution wish, you may regard as having been done.

MS NOBBS: Your Worship, in relation to Mr Inder-Smith, we do have a date of 28 November.

HIS WORSHIP: All right I can deal with that discretely.

That suits you, Mr Inder-Smith, wherever you are?

MR INDER-SMITH: Yes.

HIS WORSHIP: What was it 27<sup>th</sup>?

MS NOBBS: 28 November.

HIS WORSHIP: Do you want a CMI?

MS NOBBS: I don't think that is necessary, Your Worship.

HIS WORSHIP: Do you know what a CMI is, Mr Inder-Smith?

MR INDER-SMITH: I know the - - -

HIS WORSHIP: Case management inquiry but it really in the real world, it's simply an opportunity for you to complain if you haven't got the material. The prosecution to say that they have lost the witness, or died or whatever. I am told it is not necessary, it has been around long enough. I suspect it's not?

MR INDER-SMITH: Okay.

HIS WORSHIP: Very well, your matter is adjourned to 27 November at 10 am.

MS NOBBS: 28<sup>th</sup>.

HIS WORSHIP: 28 November for hearing it's a summons matter. You obviously don't need consequently to come back in the morning. The other four to be adjourned to the morning. The other four matters will be adjourned when I have a chance to reach the files for which you don't need to wait until the morning. You are free to go and come back in the morning.

ADJOURNED