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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION VESTA

Reference: Operation E10/1246

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY, 1 AUGUST 2011

AT 9.33 AM

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THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: Mr Commissioner, I think Ms Hogan-Doran has an application.

THE COMMISSIONER: Yes, Ms Hogan-Doran.

MS HOGAN-DORAN: Commissioner, I am instructed that on Friday
10 afternoon after these hearings adjourned an incident occurred which has had
the effect of causing my client serious distress and subsequently hindered
my ability and the ability of my instructing solicitor to take proper
instructions concerning the issues the subject of my client's evidence and
this inquiry. As I understand, Mr Commissioner, you and your staff are
aware due to a series of prior incidents of intimidation that occurred prior to
the commencement of these public hearings that my client and his family
have been subject to certain protective measures. I do not propose at this
time to detail all of those measures.

20 Since the commencement of this inquiry some of those measures have
resulted in circumstances where my client has not been present in the
hearing room for the purpose of giving me instructions and there have also
been special arrangements for his access to this hearing room for the
purpose of giving his evidence including have restricted access to an
anteroom to the Commissioner, to your right - left, to your right.

30 On Friday my client's support person was present with him during the
luncheon adjournment and present in the hearing room during the course of
Mr David giving his evidence. I am instructed that an incident involving
my client's support person occurred after the hearing adjourned, that it
involved Mr Charif Kazal, another person and was partly witnessed by Mr
Korn and by a protection officer assigned to my client. I am instructed that
there is video of this incident and that that video has been viewed by
members of your staff, myself and my instructing solicitor and subsequently
Mr David.

40 Following the incident on Friday a statement was taken from that support
person which has been provided to the Commission and at this moment I do
not propose to tender that statement but that is subject, of course, to your
Honour's ruling. Importantly, the substance of the alleged conduct of
Mr Kazal as deposed to in the statement was conveyed to my client after it
occurred. I am instructed that knowledge of the incident has had the effect
of causing my client severe distress and anxiety over the weekend, so much
so that I am instructed by my instructing solicitor that he did not wish to
return to continue to give his evidence until that distress had abated. I have
advised my client that I do not in the circumstances regard it to be in his
best interests to continue his evidence at this time and that it is in his best
interests that his evidence be adjourned until a later date. However, I have
further advised him that he remains under summons to attend and to

continue his evidence until excused and accordingly he was presented himself here today to continue his evidence.

10 I am instructed on Friday, prior to giving his evidence, he took two Valium tablets to settle his nerves without first informing me or my instructing solicitor and I did not learn of it until after the hearing adjourned on Friday. I have advised him that should he resume his evidence that he could not - that I could not advise him to use that medication again in the absence of a prescription and I am advised by my client that he has not done so this morning.

The application that I propose to make concerns that, that in light of the events that have occurred, and I would propose that the Commission take into evidence, but on a restricted basis, the statement that has been provided to the Commission, that the video be shown, that I have leave to elicit some short evidence from Mr David in respect of my application that the members of the Kazal family be not permitted to remain in the hearing room during the resumption of Mr David's evidence today.

20 THE COMMISSIONER: Is it proposed to call the support person?

MS HOGAN-DORAN: I am not proposing to call them other than to provide their statement. I understand he can be - I understood the Commission was going to summons him but I may be in error in that respect.

THE COMMISSIONER: All right. Yes, thank you. Mr Newlinds.

30 MR NEWLINDS: I have been give a statement of the so-called support person and I have seen the video. I don't think the support person is here to answer questions in relation to his statement so it may not be appropriate to receive that at this stage. In my submission though you can - it would be appropriate to see the video and to hear some short evidence led by Ms Hogan-Doran from Mr David on the very limited topic as to whether whatever happened in this incident has caused Mr David distress and to establish whether he has reasonable grounds to be scared which is what I think he says he is at the moment. Whilst we deal with that application I then have something to say about the scope of the continued inquiry - - -

40 THE COMMISSIONER: Yes.

MR NEWLINDS: - - - which we may need to widen ever so slightly.

THE COMMISSIONER: Yes. Do you have any objection to this course, Mr Korn?

MR KORN: I'm still in the dark so I, I can't say anything useful, your Honour.

THE COMMISSIONER: Yes.

MR KORN: Sorry, I have nothing.

THE COMMISSIONER: No, I understand.

10 MR KORN: I am taking a punt that the support person is Mr Michael Hammond and if it is, I don't want, I want to say this very bluntly, I'll say it very bluntly, the Commission knows that I was not, I did not leave immediately after everyone else left on Friday, I was probably 10 minutes later. When I walked out I saw Mr Hammond, if it be Mr Hammond, Mr Hammond actually said to me the words, "Sue and I are going to the movies tonight, John, do you want to come along?" I said, "Mike, I'm a bit tired but I might catch up with you." That's, if that's, if that's what the incident, if that's something I'm supposed to have observed, well, I'm placing on record now, I'm in advance blind, that's exactly what happened.

20 THE COMMISSIONER: All right. Mr Korn, I don't think that it's - as far as I understand it and I'm not familiar with all of it, I don't think that your participation of a witness is going to be in any dispute.

MR KORN: No, no, I heard it said that I partly witnessed an incident, so if one wants to be a little more disciplined about how you say things - - -

THE COMMISSIONER: Yes, I understand that. But I think that we should watch the video and you'll see what's involved. And you will have every opportunity to say whatever you want to say, Mr Korn.

30 MR NEWLINDS: As far as I'm concerned Mr Korn's continuing appearance before the inquiry is not at risk.

THE COMMISSIONER: Yes.

MR NEWLINDS: From what I've seen.

40 MR KORN: No, I've never thought that it was. And your Honour, can I also say, we have not been told anything this morning, but you will understand that we've all been curious, if it's not, can I just say this - - -

THE COMMISSIONER: I do understand that.

MR KORN: No, no, no, can I just say this, there's a point to what I want to say. I'm not just making a speech. I've racked my brains and one starts to hear whispers, I took a view, I've got a view about Mr David's propensity to contrive situations and that's all I wanted to say about that. So I took a view racking my brains, to go back, he was here on Friday, I took the view Mike, I knew Mr Michael Hammond was here, so I put two and two together, I

then learned from my client by direct approach had he spoken with Michael on Friday. Yes. As soon as I knew that I required Mr Kazal, Charif Kazal to go to the witness room out there with Mr Ritchie, my instructing solicitor and to take a very comprehensive statement about any conversation had. And that's already been done. It's in handwritten form. So we're doing this in advance. We don't anything about it, and again it may be - - -

THE COMMISSIONER: It's not Mr Hammond.

10 MR KORN: But that was the only thing we could put together and it will be typed up and here shortly.

THE COMMISSIONER: Yes. Mr Korn, I don't think it's appropriate for you to say anything at the moment. It will of course be appropriate for you to say something after you've seen the video and taken whatever instructions you want to take.

MR KORN: Thank you. Thank you very much, your Honour, Commissioner.

20

MR NEWLINDS: Could I ask the video which is ICAC security footage played.

ICAC VIDEO SECURITY FOOTAGE PLAYED

[11.42am]

30 THE COMMISSIONER: Mr Newlinds, I think that it's important at least to identify, is there evidence identifying the person who knocked on the door where Charif Kazal and another person went in?

MR NEWLINDS: I'm told that Mr David believes that's Jimmy Kazal and Charif Kazal was the one that went into the room with him.

THE COMMISSIONER: Right.

MR NEWLINDS: How clear Mr David is as to that evidence, I'm not sure.

40 MR KORN: Your Honour, evidence went for 44 seconds. Could I just, could we play it again and I can, I'll, sorry, and I will, I'm in a position I think to identify who they are.

THE COMMISSIONER: Yes. I think that would be a good idea.

MR KORN: I might do it on the run if you may, Commissioner.

THE COMMISSIONER: No, no. Ms Hogan-Doran, for Mr Korn to be able to deal with the application it will be, either be necessary to tender the statement or call Mr Hammond, otherwise I can't decide.

MS HOGAN-DORAN: Given that Mr Korn has identified Mr Hammond I propose to tender the statement.

MR KORN: I haven't identified him, I said if it is, I took a shot, a punt.

10 MS HOGAN-DORAN: You indicate that you had a, had a conversation with him, Mr Korn.

THE COMMISSIONER: Well, it's inevitable that Mr Hammond should be identified, no matter what happened. I think that whatever Mr Korn has done is irrelevant. But the statement will have to be tendered.

MS HOGAN-DORAN: Yes.

20 THE COMMISSIONER: And I see no basis on which it could be restricted.

MS HOGAN-DORAN: (not transcribable)

THE COMMISSIONER: No. Well, the statement should be tendered.

MS HOGAN-DORAN: I hand up the original for tender, the original statement of Mr Michael Hammond.

THE COMMISSIONER: Do you have copies, Ms Hogan-Doran?

30 MS HOGAN-DORAN: One, yes, I provide, I- - -

THE COMMISSIONER: Well, we need more than one.

MS HOGAN-DORAN: I provided some of the copies to the Commission earlier.

THE COMMISSIONER: Yes. So Exhibit 6?

40 MS HOGAN-DORAN: 7.

THE COMMISSIONER: What is Exhibit 6? Yes, Exhibit 7 is the statement of Mr Hammond.

**#EXHIBIT 7 - STATEMENT OF MR MICHAEL HAMMOND
DATED 1 AUGUST 2011**

THE COMMISSIONER: I think, Ms Hogan-Doran, it would be helpful if you could draw attention to that, those aspects of the statement which you regard that you submit are of critical importance. And does Mr Beech-Jones have a copy?

MS HOGAN-DORAN: No.

MR BEECH-JONES: I don't have a copy but- - -

10 THE COMMISSIONER: But only, I think you're more of an observer here than anything else.

MR BEECH-JONES: Clearly. I think Mr Korn might need one though.

MS HOGAN-DORAN: Mr Korn, Mr Korn does need one and my copy has been taken by my, to take it to be photocopied. There are five copies being made as we speak. Copies have disappeared between this morning and now. Perhaps if Mr Korn could have an opportunity to read it while- - -

20 THE COMMISSIONER: Yes, while we're waiting.

MS HOGAN-DORAN: Thank you, Commissioner.

MR KORN: I've read that, I've read that, Commissioner.

THE COMMISSIONER: That's okay. We're just waiting for the copies, Mr Korn.

MR KORN: Thank you.

30 THE COMMISSIONER: Because I now do not have a copy.

MS HOGAN-DORAN: Mr Commissioner (not transcribable)

THE COMMISSIONER: Yes, Ms - - -

MS HOGAN-DORAN: Would you like (not transcribable) a copy?

40 THE COMMISSIONER: I have one, yes. Yes, Ms Hogan-Doran.

MS HOGAN-DORAN: Mr Commissioner, during the period in which the copies were being made my instructing solicitor has contacted Mr Hammond and Mr Hammond can be here within half an hour if he is required.

THE COMMISSIONER: Yes, thank you.

MS HOGAN-DORAN: I propose to ask with your leave, ask Mr David, I understand from Mr Korn that the application is opposed.

THE COMMISSIONER: Well proceed to ask Mr David - - -

MS HOGAN-DORAN: Yes.

THE COMMISSIONER: - - - what, this is, this is, we're now dealing with the application as a separate matter.

10

MR KORN: Yes. My understanding Commissioner is that unless or until you make an order to the contrary, the evidence we're about to receive, including the video and the statement of Mr Hammond, are you only being received on the application that's before you.

THE COMMISSIONER: Correct.

MR KORN: And for that reason, well, that's I'll say.

20 MS HOGAN-DORAN: And if anything further were to arise, that will be dealt with separately.

THE COMMISSIONER: Yes.

MS HOGAN-DORAN: I understand. Yes.

MS HOGAN-DORAN: Mr David, how long have you known Mr Hammond?---A decade.

And would you describe him as an acquaintance or a friend?---My best friend.

10 Did you invite him to attend this Commission?---No.

How did he come to be here on Friday?---He's an avid observer.

And when did he first contact you in respect of these hearings?---When they were - - -

These public hearings?---When they were made public.

20 On Friday, can you describe to the Commissioner the periods of time in which you spent with Mr Hammond?---I had lunch with him.

And did you identify him present in court, present in the hearing room during the course of your evidence?---Yes.

Is it the case that Mr Hammond has come to your home on previous occasions?---Yes.

Did he come to your home earlier this year?---Yes.

30 Was that just a social occasion?---Yes.

After Mr Hammond departed your home did something occur?---Yes.

What occurred?---We received a telephone call.

Did the person who telephoned you identify themselves?---No, no.

Right. And what, what was said?---They asked for Mr Hammond.

40 Following - and was there anything further in that conversation?---Not to my knowledge.

All right. Was that, were you, did you answer that telephone call?---My wife.

Right. And did your wife relay this to you following the telephone call?---Yes.

Did you subsequently speak to Mr Hammond concerning that telephone call?---Yes.

All right. Can you recall what you said to him or the substance of what you said to him?---I told him we received a very strange phone call at our home when - 30 minutes after he's left someone's called up asking for him.

All right.

10 THE COMMISSIONER: Sorry, when was this? When did you receive the phone call at your home?---At my home.

Yes, when?---I don't recall the day, it would have been late May to the best of my recollection.

I see. Asking for?---Mr Hammond.

Yes, Ms Hogan-Doran.

20 MS HOGAN-DORAN: And did you express to Mr Hammond your feelings about this telephone call?---Yes.

What did you say?---To the best of my recollection I advised him that it was very worrisome.

I don't wish to take you to them in detail but is it the position that you have made - had occasion to make two statements to police in the period leading up to this inquiry, public hearings?---Yes.

30 And is the first of those statements in an about 12 May, 2011?---Yes.

And is the second of those statements 20 May, 2011?---Yes.

In respect of the - both of those incidents, were those incidents on your instructions reported to this Commission?---I believe so, yes.

And following the reporting of those incidents to the Commission were steps put in place in respect of your, yourself and your family?---Yes.

40 Right. I don't want you to go into those unless, of course, the Commissioner takes you to those, those steps and those measures, Mr David. In respect of the second incident, that is the one that is the subject of the statement of 20 May, 2011, can you describe to the Commissioner your, your, your sense or your feelings - - -

THE COMMISSIONER: I don't think that's helpful unless it's made clear what the statement was about.

MS HOGAN-DORAN: Commissioner.

THE COMMISSIONER: And I don't see the point of referring to either of the statements without some clarification of what they concern otherwise they're meaningless.

MS HOGAN-DORAN: All right. Thank you, Commissioner.

10 In respect of the incident on 20 May, is it the position that you received a phone call from your wife, Elizabeth David, telling you that you were at Waverley, she was at Waverley Police Station herself giving a statement?
---Yes.

Yes. And she told you that she had been followed by a car?---Yes.

All right. And she identified the car to you?---Yes.

And she identified the registration number to you?---Yes.

20 Yes. And she told you that she had been informed by the police that the car was registered to a company called KJR Consultancy?---Yes.

Yes. And that she had done a Google search on KJR Consultancy and that it came up as a private investigations company?---Yes.

Yes. And subsequently to that did you meet with your wife?---Yes.

30 And did you go with your wife to your children's school?---No, we went to the police station.

Right. Following going, following the police station, did you then go to your children's school?---Yes.

And what happened when you got to your children's school?---(NO AUDIBLE REPLY)

THE COMMISSIONER: I think you can lead the witness.

40 MS HOGAN-DORAN: Thank you, Commissioner. And is it that when you got to the children's school your wife said, looked over and she said to you, "There it is, that's the car that's been following me?"---Yes.

Righto. And did you see the car?---Yes.

And identify its number plate?---Yes.

Right. And did you see the driver looking directly at you?---Yes.

And was he continuing along the street beside the school at a very slow speed?---Yes.

Right. And did you observe the male driver, a male driver?---Yes.

Yes. And did you get, did you see him park the car?---No.

Did you get out of your car and walk up to where the vehicle was stopped?
---Yes.

10

And did you approach the vehicle?---Yes.

Did you attempt to get a photograph of the driver by using your Blackberry mobile phone?---Yes.

Yes. And you took a photograph of the licence plate?---Yes.

And you approached the passenger side window to get a photograph of the driver?---Yes.

20

The driver yelled a profanity at you?---Yes.

You don't remember the exact words but what, and I won't take you to those, Commissioner.

THE COMMISSIONER: And I'm aware that much of this evidence is disputed by the private investigator?

30

MS HOGAN-DORAN: Yes.

THE COMMISSIONER: That should be made clear.

MS HOGAN-DORAN: Yes.

THE COMMISSIONER: There's no finding as to, at all and no proper investigation as to- - -

MS HOGAN-DORAN: There's been no completed investigation.

40

THE COMMISSIONER: No, no completed investigation.

MS HOGAN-DORAN: Investigation done by- - -

THE COMMISSIONER: There has been an investigation but there, it was not, it was decided not to take it further by the Commission.

MS HOGAN-DORAN: Yes, Commissioner.

THE COMMISSIONER: And I- - -

MS HOGAN-DORAN: Commissioner, could I- - -

THE COMMISSIONER: That's important because you have identified the name of the private investigating company.

MS HOGAN-DORAN: I have.

10 THE COMMISSIONER: It should be made quite clear that there is no finding that the private investigating company did anything inappropriate. That's the, I know that's the evidence of Mr David and I'm not saying that his evidence is right or wrong, but in fairness to the private investigating company it should be made quite clear that there is no finding that what Mr David said is true, there's also no finding that what he said is false.

MS HOGAN-DORAN: Quite.

20 THE COMMISSIONER: It's simply evidence that he has given.

MS HOGAN-DORAN: Quite. I was proposing to mention those matters at the conclusion.

THE COMMISSIONER: But I think it's, it's clear, Mr David, your children were in the vicinity?---Yes.

Yes. And you found it all very intimidating I understand?---Yes.

30 Yes. Well, I think that's the evidence you need to, that's sufficient evidence on that score, unless you want to raise anything else, but I- - -

MS HOGAN-DORAN: I wish to, I wish, wish to add this to it, that it is alleged, that you allege, don't you, Mr David, that your mobile phone was taken?---Yes.

Yes. And that is your Blackberry phone?---Yes.

And that phone had on it your communications with your lawyer?---Yes.

40 And your communications, and those communications included copies of communications with this Commission?---Yes.

THE COMMISSIONER: And that, that evidence is disputed by the private investigator?

MS HOGAN-DORAN: That evidence is disputed. Mr David, have you had that Blackberry phone returned to you?---No.

Has it been, is it, yeah, is it, do you know if it is still in use?---I don't know.

Did you give any, any direction to your telephone provider?---Yes.

And what was that?---Turn it off.

Have you had any advice from the telephone or service provider in respect of it having been used after the time in which you allege it was taken?

---That's inconclusive.

10

In respect of Friday's events- - -

THE COMMISSIONER: Well, you don't mention 11 May statement, so are you going to leave that or are you going to take that up in the same way?

MS HOGAN-DORAN: I'll have to leave that. I have to leave that.

THE COMMISSIONER: I beg your pardon?

20

MS HOGAN-DORAN: I need to deal with it because it is an aspect of the circumstances that have brought us here today. On 12 May, 2011 it's the position Mr David that you were in the Vault Bar in Pitt Street?---Yes.

Opposite the offices of ASIC at about 3.50pm?---Yes.

You had business associates with you?---Yes.

And during that time you identified two members of the Kazal family who also entered the bar?---Yes.

30

And who did you identify those as being?---France Dion and Abe.

MR NEWLINDS: I'm sorry, I didn't catch - - -

THE COMMISSIONER: I beg your pardon?---France Dion and Abe.

Kazal?

40

MS HOGAN-DORAN: Abe Kazal. Okay.

THE COMMISSIONER: You can, I think you should lead the witness as well on that and briefly.

MS HOGAN-DORAN: (not transcribable)

THE COMMISSIONER: Briefly. I mean - - -

MS HOGAN-DORAN: Was there an altercation with them? There was an altercation with them, Mr David?---Yes.

Yes. And that involved them taking photographs of you and your companions?---Yes.

Yes. And gesticulating at you?---Yes.

10 And saying things to your group?---Yes.

Yes. And was one of the, after you left the place were you followed down Pitt Street towards Martin Place?---Yes.

And were, was a statement said to you by one of those persons, we're going to get you, you and there was a profanity?---Yes.

Yes. And you then all got into a taxi and left the area?---Yes.

20 And were you, were you followed by those persons?---We believe so.

Right. Could you, did you identify them?---Well it was the same two.

All right. And did you report that incident to police?---Yes.

And Friday - - -

30 THE COMMISSIONER: Ms Hogan-Doran I think that you should also at some convenient point ask Mr David to identify the persons in the video that was shown in this hearing room this morning.

MS HOGAN-DORAN: Yes. I was about to do that. In respect of Friday, Mr David you saw the video this morning shortly before commencement of this public hearing?---Yes.

Were you able to identify or who you know or believe to be the person who stood outside the witness room and knocked on the door?---I believe it was Jimmy.

40 Jimmy who?---Kazal.

Jimmy Kazal. And did you identify the people in the room - - -?---Yes.

- - - who went into the room?---Yes.

And were they?---Mike Hammond, Charif Kazal.

All right. At the end of the video you saw Mr Hammond come up to a room and enter into a room, is that the room that you were in?---Yes.

Were you by yourself?---Yes.

And what, you saw Mr Hammond?---Yes.

And what did he look like to you?---He was ashen, his eyes were glazed and I asked him what was wrong.

10 Right. Excuse me Mr David. And did you say something to him about how he looked?---I asked him what was wrong.

Right. And did he say something to you?---Yes.

And doing the best you can, what was the substance of what he said to you?---That he just had an altercation with Charif Kazal.

All right. And when he said that to you, what was your reaction?---Anxiety, anger, I, I went to the other door and opened it to call in yourself to hear it.

20 And did you then leave that room?---Yes.

And have you spoken about that incident with Mr Hammond since then? ---No.

Have you seen his statement?---No.

All right. Have you, you were unwell over the weekend?---Yes.

30 And yesterday you had migraines?---Yes.

And you were unable to meet with me in conference?---Yes.

And you took advice from me this morning?---Yes.

In respect of your obligation to attend?---Yes.

And did you say to my instructing solicitor yesterday on the telephone that you did not wish to attend?---Yes.

40 Yes. And that if you had the option you would leave?---Yes.

And if you had the option you would leave the country?---Yes.

Commissioner, is there any matters that you wish to address Mr David?

THE COMMISSIONER: No, as far as I am concerned, not. Mr Newlinds.

MR NEWLINDS: Can I just make a submission? In my respectful submission the way you should deal with this application is to simply decide upon the basis as to whether you accept Mr David feels intimidated by the fact that the Kazals are in the witness room not embark on this application on determining what no doubt are contested facts - - -

THE COMMISSIONER: Yes.

10 MR NEWLINDS: - - - as between Mr David and Mr Kazal, apart from anything it might put you in a position where it's difficult to continue with the inquiry if you've already made findings based on credit in part in relation to competing witnesses and in my submission it really doesn't matter. The real is, is in - - -

THE COMMISSIONER: I understand.

MR NEWLINDS: So that's all, so on that basis I don't want to ask any questions.

20 THE COMMISSIONER: Yes. Mr Korn, what's your attitude to Mr Newlinds' submissions?

MR KORN: Your Honour, I, your Honour, I've just been thinking about it in the last 10 minutes and without in any way giving verisimilitude to Mr David's position I am, I am considering and I would like some time, if I may, I am considering whether to avoid him having the opportunity of being able to say anything, to in fact give my instructing, give my instructing solicitor advice to convey to the clients that they should accept my advice and depart the room while he's, while he's here and I say, I want to say for
30 the record, Commissioner, that that doesn't mean that I in any way - - -

THE COMMISSIONER: No, no.

MR KORN: Yeah. It just means I want to avoid the opportunity for Mr David to contrive a situation.

THE COMMISSIONER: I, and I must say my provisional view is that there's considerable force in Mr Newlinds' submissions. There are aspects of that video which speak for themselves and, and I think that's enough said
40 on that issue. So what would you like me to do?

MR KORN: Commissioner - - -

THE COMMISSIONER: Do you need an adjournment?

MR KORN: Just for a few minutes but before I get to that one other matter which I've got to give some thought to is - and I hope it doesn't come to this, I would like to speak with Mr Newlinds, if I, if it's appropriate to

Mr Hammond because he's, he's missed out what I, remember I put on the record the short conversation I had? He's completely missed out the invitation, the conversation that he had with me and has a different version of the conversation. I actually - - -

THE COMMISSIONER: Is that, is that relevant, Mr Korn?

10 MR KORN: Well, only because I've got to give some thought as to whether in fact - remember what the conversation was? He said, "Sue and I are going to the movies, would you like to come with us?" I don't want to, I've got to consider whether in fact - because I, I was speaking at the time, I, I saw nothing and heard nothing that indicated that he was ashen-faced and that was apparently immediately before he went to the other end of the room. Now, I don't want to get into the arena so I'm going to - - -

THE COMMISSIONER: No.

MR KORN: Yeah.

20 THE COMMISSIONER: May I say this: that at the present moment I see nothing relevant in any dispute you may, there may be as to the precise words that were said between you and Mr Hammond.

MR KORN: And, your Honour, sorry, Commissioner, you saw how quickly - - -

THE COMMISSIONER: The video speaks for itself - - -

MR KORN: Yes.

30 THE COMMISSIONER: - - - and I really don't at the moment think that there's anything that has occurred which affects your ability to continue acting.

MR KORN: Thank you, thank you, Commissioner. Now, can I just bring myself to the last matter I wanted to raise which I've just mentioned on the run to Ms Hogan-Doran before she started asking Mr David questions. Commissioner, I, I adopt what Mr Newlinds has said, that the matter should be dealt with in a way which doesn't otherwise interrupt your capacity, the
40 Commission's capacity to continue with the substantive aspect of the matter. Consistent with that - - -

THE COMMISSIONER: That's the one part of Mr Newlinds' submissions that I'm not, I don't necessarily accept.

MR KORN: The other, the other aspect, your Honour, Commissioner, is this - - -

THE COMMISSIONER: Yes, Mr Korn.

MR KORN: - - - Mr, there's two aspects to what I'm about to say. Mr David should be, should be entitled to feel extremely fit and well and able to deal with giving evidence in this Commission. I should also be in the position on behalf of my clients that they should have the ability that he should feel fit and well. When Ms Hogan-Doran opened, when Ms Hogan-Doran opened this morning, unless I was mistaken I thought I heard her say that there was going to be an application that he not give evidence at the moment.

THE COMMISSIONER: I don't think so. I didn't hear that application.

MR KORN: I didn't, I didn't hear, I didn't hear that followed up.

THE COMMISSIONER: That application was not made.

MR KORN: I certainly hear a comment, but if it wasn't, my position would be this, and I know you're very, nothing, the Commission doesn't stop for anything, but in this circumstance I'm going to ask the Commissioner that you in fact not take Mr David's evidence now and this afternoon in terms of me cross-examining him and come back tomorrow. And if he's well enough tomorrow when things have settled down a bit, because I don't want, respectfully, I don't want Mr, I don't want the position prejudiced where he says, and there are two topics in particular where I have to deal with it, I don't want the position to be that Mr David might say, well I wasn't really performing too well and you should take that into account.

THE COMMISSIONER: Well Mr Korn, as I understand, I think that part of what Ms Hogan-Doran said was, well in a, was directed to perhaps, it was perhaps directed to the way in which he gave his evidence on Friday. At the moment I have no evidence to support that.

MR KORN: No.

THE COMMISSIONER: But it doesn't mean, I'm not in any way doubting what Ms Hogan-Doran said.

MR KORN: I hear that and I - - -

THE COMMISSIONER: But at the moment I have to say I, I don't see, I can't see how a delay of a few hours is going to make any difference to Mr David.

MR KORN: We haven't heard any evidence directly - - -

THE COMMISSIONER: And I'm not going to, at the moment my, well my, my attitude at the moment is that Mr David is here and he should carry

on with his evidence and you should cross-examine him whatever way you wish. And should something occur that requires an adjournment, I'll deal with it then.

MR KORN: May, may I respectfully suggest Commissioner, that Mr David be asked is he well enough to carry on today with, with giving evidence.

THE COMMISSIONER: Well can we deal with one thing at a time, Mr Korn.

10

MR KORN: Certainly.

THE COMMISSIONER: Firstly is the application. So let's deal with that. Do you need an adjournment to take instructions?

MR KORN: Yes I do. I'd only imagine about ten minutes for that.

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THE COMMISSIONER: All right. We'll adjourn until 12.30. As I indicated on Friday, I have to adjourn at 12.45 and start again at 2.15. So we will adjourn until 12.30.

SHORT ADJOURNMENT

[12.17pm]

MR KORN: My instructing solicitor has spoken with his client and my instructions are that I've been asked that they be permitted to stay.

30

THE COMMISSIONER: Well do you want to make any submissions Mr Korn?

MR KORN: No.

THE COMMISSIONER: No. I accept that Mr David does feel intimidated and in the light of the material that I see on the evidence I think that it's, it would be appropriate for members of the Kazal family to leave the hearing room in the course of Mr David's evidence. They're welcome to return as soon as he has concluded his evidence. So if they would now please leave.

40

MR NEWLINDS: Now Commissioner, in my application we should widen the scope of the inquiry to deal with the substance of the allegations concerning what happened on Friday, to not, expressly not to deal with what happened at the previous two incidents, albeit, there will have to be some evidence that those incidents are alleged to have occurred and form part of the background. The reason in my submission why it is relevant for you to inquire into what happened on Friday is really twofold, perhaps even threefold. Firstly, if you ultimately make a finding that some or more of the Kazals attempted to and may or may not have succeeded in intimidating Mr

David in giving his evidence, then at the very least that would affect any, that would be very relevant to any finding of credit that one would make about those Kazals. And in light of the - - -

THE COMMISSIONER: Although, sorry to interrupt, Mr Newlinds, but that would, if one ignores the prior incidents and I accept what you say about them, he would have already given his evidence before he was intimidated, to that extent.

10 MR NEWLINDS: Well that's true, although he hadn't finished giving his evidence on Friday.

THE COMMISSIONER: Quite so.

MR NEWLINDS: In any event it would retrieve into the credit of the Kazals - - -

THE COMMISSIONER: Yes.

20 MR NEWLINDS: - - - which would be a very important matter when you finally make findings of fact in this inquiry. Now under the old law of evidence that might have been said to be a collateral issue, but in my submission even if we looked at it through the prism of the evidence act, which I know you don't have to, but it's a good guide, it is sufficient, the conduct is sufficiently related to the matters about which you are inquiring to have some relevance. The second matter is this, the Commission is entitled, sorry, under the ICAC Act, section 13(a)(iii) gives you or gives the Commission power to inquire into conduct connected with corrupt conduct.

30 THE COMMISSIONER: (not transcribable) I'm not sure if I've got an up-to-date Act in front of me, but isn't it 13(iii).

MR NEWLINDS: 13 subsection (1)(iii), sorry, (a)(iii), I think.

THE COMMISSIONER: I think it's 13(iii). But anyway, I think it's the section that commences, "The principal functions of the Commission also include", and you're referring to subparagraph (b) of that subsection?

40 MR NEWLINDS: I am, I am. The Commission Act also has a section 93 which makes it an offence for any person to use, cause, inflict or preclude, procure or threaten to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to any person for or on account of his or her assisting the Commission or any evidence given by him or her before the Commission. In my respectful submission the power of the Commission to examine whether any law has been breached would extend to a power for itself to examine whether a law concerning people's conduct in relation to an inquiry of the Commission itself has been breached. Now, I don't want to suggest that we should now have a full inquiry into the

allegations, but there is, the allegations have happened, Mr Hammond has given the evidence and I think it's reasonably clear from what Mr Korn said earlier that he wishes to run a proposition to the effect that this is either not genuinely-held beliefs by Mr David or indeed that Mr David has in some way manipulated events to be able to put before the Commission these sort of allegations. In my submission it's all so closely connected to what you are inquiring into, we should receive the evidence now or at some appropriate time as evidence and allow it to be tested in the ordinary way.

10 THE COMMISSIONER: Yes. I'm just trying to, I think the fault lies with the copy of the Act with which, which I have, Mr Newlinds, but I'm trying to find the section. It's 33(a) or whatever it is. It's 3(a), not 3(b). It's 3(a), the power to make findings. And which is the section to which you referred concerning the issue whether an act has been infringed?

MR NEWLINDS: Now, that is section 13, or in my version, section 13(5) beginning at (b). (not transcribable)

20 THE COMMISSIONER: Yes. It's, there is a 13(5) and then, it's 13(5), is it not?

MR NEWLINDS: Yes.

THE COMMISSIONER: Yes, 13(5)(b).

MR NEWLINDS: Subsection (b)(i).

30 MR KORN: Mr Commissioner, may I, I'm sorry to interrupt, may I respectfully ask that whilst these matters are being attended to, proper as they are, that Mr David be excused?

THE COMMISSIONER: Well, we're going- - -

MR NEWLINDS: We're probably going to adjourn anyway.

THE COMMISSIONER: Yes. We will adjourn. Mr David, you may return to your seat.

40 **THE WITNESS WITHDREW** **[12.38pm]**

THE COMMISSIONER: So it's really under, it's, it's, it's 13(3) and 13(5).

MR NEWLINDS: Yes. And what I would draw your attention to under 13(5) is that subsection (a) and (b) clearly differentiate between corrupt conduct on the one hand and an opinion as to whether any particular law of the state has been broken on the other.

THE COMMISSIONER: Yes. Yes.

MR NEWLINDS: So that's my application. I hope it won't extend the Commission by more than the hearing time involved by very much at all, but in my submission it's appropriate that we embark.

THE COMMISSIONER: Yes. Mr Korn, do you wish to say anything about that?

10

MR KORN: No.

THE COMMISSIONER: No.

MR KORN: No, thank you.

THE COMMISSIONER: Well, I think that really is more a piece of advice that falls under the category of procedural fairness so that you are aware of and your client is aware of potential findings that could be made and potential action that could be taken.

20

MR KORN: I was only, to the extent that I was amused, I was only amused at the proposition as to how long this would extend the inquiry for, that's, that's all.

THE COMMISSIONER: Yes, very well. Your application is granted, Mr Newlinds. Now - - -

MR NEWLINDS: And that then raises this question, should Mr Korn - the next question is should Mr Korn continue to cross-examine Mr David and finish, we then lead some more evidence and then presumably Mr Korn come back to Mr David?

30

THE COMMISSIONER: Well, I do think that the evidence, one possible mechanism of reducing the time is just simply to now regard the evidence that Mr David has given as being, as evidence in the inquiry generally.

MR NEWLINDS: Yes, and, and the DVD be evidence on the inquiry and Mr Hammond's statement be evidence in the inquiry.

40

THE COMMISSIONER: (not transcribable) Mr Hammond.

MR NEWLINDS: Mr Hammond is available as I understand it this afternoon.

THE COMMISSIONER: And no doubt Mr Korn would want him called.

MR NEWLINDS: I would think so, yes.

THE COMMISSIONER: Yes.

MR NEWLINDS: And probably as a - well, I'll leave it to - my view would be we would leave it to Mr Korn as to what order he wished to deal with things and if it involves Mr David not being finished today - - -

THE COMMISSIONER: Is there, is there a great deal more evidence you wish to lead at this stage from Mr David?

10

MR NEWLINDS: Not for my part.

THE COMMISSIONER: No. So, so - - -

MR NEWLINDS: It's only really Mr Korn (not transcribable)

THE COMMISSIONER: So it's Mr Korn - - -

MR KORN: I had started on Friday - - -

20

THE COMMISSIONER: Yes.

MR KORN: - - - for about 15 or 20 minutes - - -

THE COMMISSIONER: As far as - - -

MR KORN: - - - and I had about an hour to go.

THE COMMISSIONER: Would it be convenient for you to add on to the hour simply to keep going and cross-examine on, on, if you wish, on the evidence that Mr David has given in relation to the application - Ms Hogan-Doran's application?

30

MR KORN: Your Honour, it would be convenient subject to one thing. If I'm going to wrap - I'd prefer, I'd prefer to wrap it all up as part of one exercise but in order to do that I go back to a - but on a difference basis now, I go back to my application that in fact I resumed cross-examination with Mr David tomorrow morning so I can spend this afternoon going through with my clients the, the proof that's already been, is in, is in train of being typed up. I have to find out a little bit more about these prior incidents and see to what extent that widens matters. They're, they're the only, that's the only consideration I have.

40

THE COMMISSIONER: Would it not be convenient, I understand what you're saying, but it seems to me that it would be helpful to call Mr Hammond this afternoon.

MR KORN: It may, I have no problems with that. I would like very much if I could have that statement, yeah the statement from - - -

THE COMMISSIONER: Yes.

MR KORN: - - - from Mr Ritchie's office, my solicitor's office, when that's prepared, I'd like to have that in my hand if I may and - - -

THE COMMISSIONER: And when will you get that?

10

MR KORN: Well, it was dictated immediately this morning over the phone.

THE COMMISSIONER: So you should have it by lunchtime.

MR KORN: I hope so.

THE COMMISSIONER: Shall we, shall we assume subject to anything you may say that we will start at 2.15 with Mr Hammond.

20

MR KORN: I will do everything I can, Commissioner.

THE COMMISSIONER: And then we will adjourn after that, I take it or - - -

MR NEWLINDS: I have some very short questions of Mr Kelly which if he's around we could deal with today.

MR KORN: Can I, can I just, can I have a moment?

30

MR NEWLINDS: Can I just say one thing for Mr Korn's benefit and perhaps for your benefit, Commissioner, I maintain my position about the earlier incidents in that I, I don't submit that we should be inquiring into the truth of Mr David's allegations about those earlier incidences - - -

THE COMMISSIONER: Yes.

40

MR NEWLINDS: - - - but - and that any evidence that's been received or is to be received about those incidents is only evidence that there was an incident and that allegations have been made and that Mr David says that as a result of those incidents he has some concerns because those - to get to the bottom of those incidences - incidents, we would need many witnesses and it would be difficult and I'm, I'm convinced it's closely enough connected to what we're inquiring into.

THE COMMISSIONER: Yes. What I, what I should explain is this: that the reason why the Commission decided not to proceed further with the investigation of the incidents to which Ms Hogan-Doran referred is that the Commission had no evidence that the persons who according to Mr David

were involved in the incidents knew of the Commission's investigation. So without that element the Commission decided that whatever they had done would not involve an offence under the ICAC Act and there was no evidence that they did know. The reason why the Commission did not continue had nothing to do with any view as to the veracity one way or the other of Mr David. You understand what I'm saying?

MR KORN: I understand that.

10 THE COMMISSIONER: I should make it clear though, and it would be helpful I think perhaps in limiting the, any cross-examination on, on those issues which I hope will be non-existent for the reasons that Mr Newlinds has outlined, is that the Commission in possession of video evidence relating to one of those, the, the incident at the hotel leading to an occurrence at Martin Place. And we are in possession of video evidence relating to that. So what I'm saying is that to the extent that that does tend to corroborate at least part of what Mr David says. So, and I'm telling you that not because it leads to any view as to his credibility as a whole, but
20 simply in an attempt to reduce the amount of time taken for cross-examination, because it does tend to bear out a certain state of mind on his part, leading up to the inquiry.

MR KORN: I am not about the business of trying to widen this, this inquiry. So what I'm about to say next should be understood in that context. Commissioner, do you take the view that I should, I should see that video? I understand, in the context of the limited way in which those first two incidents are going to be before the Commission, they're only before the Commission going to the state of mind of Mr David.

30 THE COMMISSIONER: That's right.

MR KORN: I've understood that.

THE COMMISSIONER: That is correct.

MR KORN: Is it the Commission's view that I should see that material or not? Or it's - - -

40 THE COMMISSIONER: Do you want to see it?

MR KORN?---Well - - -

THE COMMISSIONER: I mean it is material.

MR KORN: It's only a question of whether I should.

THE COMMISSIONER: It's material showing two men following Mr David in various parts of Sydney.

MR KORN: Yeah, I know - - -

THE COMMISSIONER: And that's only the one incident. We do not have video material of the other incident. It's the one incident.

MR KORN: I personally have no interest in seeing it, but if I'm to see it, I would like to be able to show it if it's in fact France Dion and Abe Kazal, I would like to show it to them and see what if anything they - - -

10 THE COMMISSIONER: Well no allegation has been made against them?

MR KORN: Well accept the words following. If it happens to be that they, where's the premise, is it, is it - - -

THE COMMISSIONER: The Vault.

MR KORN: The Vault. If where they're all walking is towards the front door and that's the only means of exit from the building well then that would be one view - - -

20

THE COMMISSIONER: It's more than that.

MR KORN: Well then I think I should see it.

THE COMMISSIONER: All right. Yes, you may see it.

MR KORN: And would I be permitted to show it to, to those two persons?

30

THE COMMISSIONER: Yes. I see no reason why not.

MS HOGAN-DORAN: Commissioner - - -

MR NEWLINDS: Nor do I except at the moment I wasn't proposing to tender it, but - - -

MR KORN: Oh, O.K.

40

MR NEWLINDS: And for Mr Korn's benefit it's a very confusing video at the moment because there's a whole lot of different cameras, but we'll just show him the - - -

MR KORN: Is it a compilation?

THE COMMISSIONER: Look it does seem, it does seem to be, I mean can we not leave it simply as a state of mind? But I mean it's - - -

MR KORN: I'm sorry, are you saying can we not just leave it as a state of mind?

THE COMMISSIONER: Yes. But I mean you would then have to accept that there are subjectable reasons which don't affect the clients for whom you are acting, which lead to that state of mind. I mean I don't see this as a major issue, Mr Korn - - -

MR KORN: As I said - - -

10 THE COMMISSIONER: - - - because we decided not to do anything about it. And we're still of that mind.

MR KORN: I'm genuine when I say I have not about the business of trying to widen this.

THE COMMISSIONER: So I mean your, I assume your client's approach to the widening of contesting the issues that arise through the widening of the inquiry will have to be that whatever happened yesterday are not, is not what Mr David says. What happened in May is irrelevant.

20 MR KORN: The only issue, Your Honour, Commissioner, the only issue for me, and it will be as limited as this, is whether Mr, Mr David is of such a delicate disposition that there would not arise in the minds of reasonable men the concerns that he would have. That would be the only issue that I would be seeking to look at.

30 THE COMMISSIONER: Well, the problem, Mr Korn, is that there were two incidents and if you really want to take that attitude, and I'm not saying there's anything wrong with it, it does mean that the first issue has got to go into considerable detail and names of other people have to be mentioned and it becomes an issue. And we do know that Mr David went to the police about the first, about the circumstances involving the private investigators and we do know that there is evidence showing him being followed down, from The Vault down Martin Place. Now, we know that. I mean, followed, may or may not be innocently - I'm not saying that he was followed in any particular way at the moment, because I'm trying to put this as neutrally as I can. Once you open it there may be other material that comes out.

40 MR KORN: I, I, I hear what you say and as I say, I'm not interested in widening it.

THE COMMISSIONER: Well, you have to think about it.

MR KORN: Yeah, the only thing I, yeah, I will, I will, Commissioner, and with a view to not. The only thing I'm concerned about, and I'll speak to Counsel Assisting, is to the way in which his proposition that this may affect in a, may affect credit in terms of any issues you've got to go back to and finding in respect of this matter. That's the only issue that concerns me.

THE COMMISSIONER: Well, yes.

MR KORN: That's the only issue that concerns me.

THE COMMISSIONER: Mr Newlinds, I'll leave that to you. We'll adjourn till 2.15.

LUNCHEON ADJOURNMENT

[12.51pm]

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