



**Crime and Corruption
Commission**

QUEENSLAND

CRIME AND CORRUPTION COMMISSION

MAKING ALLEGATIONS OF CORRUPT CONDUCT PUBLIC: IS IT IN THE PUBLIC INTEREST?

TRANSCRIPT OF PUBLIC FORUM

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Panel members:

Mr Alan MacSporran QC
Mr Marshall Irwin
Mr Richard Bingham
Dr Rebecca Denning

CCC Chairperson and Panel Chair
CCC Ordinary Commissioner
Queensland Integrity Commissioner
CCC Director, Policy and Research

Speaker:

Mr Nigel Powell

Mr MacSporran QC Mr POWELL. Just for the record can you give us your full name?

Mr Powell Nigel Donald POWELL.

Mr MacSporran QC Thank you.

Mr Powell Guys, thanks. Thanks for this. I was late to the thing. I didn't realise this was on and a few dot points I managed to scramble together and you've put them up on your website and I thank you for that. And it's great to have the opportunity to talk about stuff. I guess I wouldn't mind just doing something I like – I've spoken in public before about some of these issues that you've been touching on and I always try and explain the context, because I think it's important. I think everything – you know, context is, especially to an investigator, context is important.

I've worked as a police officer in two jurisdictions, the UK and here, in uniform, plain clothes and as a prosecutor here. I've been part of helping media disclose corruption and criminal activity for both the ABC's Four Corners program and Phil Dickie with the Courier-Mail. I assisted, literally assisted with the establishment of the Fitzgerald Inquiry by being a conduit for witnesses to come forward; in the early days briefing commissioned staff and giving advice where I could. There were attempts to discredit before the momentum of the inquiry had gone on, there were a number of attempts to discredit me as a person, as an individual.

I assisted the ABC legal team, which have the right of appearance, as you're probably aware. And I ended up by actually covering the Fitzgerald Inquiry as a freelance journalist for a while. I've been arrested twice in protest situations - that got media - and both matters were overturned on appeal. That got no media. I stood as an independent candidate in the Merthyr by-election for Don Lane's old seat, really, on behalf of a community group called Citizens Against Corruption to basically keep the corruption stuff alive as a debate in that particular by-election.

I gave evidence at the trials of the criminals Terry Lewis, the former Police Commissioner, and Gerry Bellino and Vic Conte. I've worked for three separate criminal defence lawyer companies. I've worked as a senior

education officer at the ICAC in New South Wales for two years, in both the city and in rural locations and I've spoken with literally hundreds of public servants, including many and especially police and the public servants from both CEOs down to just ordinary people like myself who are just doing a job in the public sector. I've spoken to hundreds and hundreds of ordinary citizens, many, many whistleblowers. I went to schools, universities, community groups, conferences. We ran awareness campaigns. We did all sorts of things there. For a short time I was even the media officer when we had an inquiry into the allegations from criminals Neddy Smith and Abo Henry into police corruption.

Years ago I came back to Queensland after dozens and dozens of times of not even getting an interview. I gave up on applying for a job in the Queensland public sector as an investigator or anything related to that. I did for a short time work as a private investigator for a friend but the private world is not for me. I have acted for numerous clients in non-Government organisations in the area of mental health and disability where clients have intersected with both law enforcement and judicial systems, so I've appeared on behalf of people before the old Guardianship and Administration Tribunal, the more recent QCAT, and in the Mental Health Review Tribunal and Magistrates Courts. I've twice been an informant to your Commission, once successfully, once unsuccessfully.

Of necessity I've had many, many jobs outside of the justice area. In fact, most of my jobs have been outside of the justice area. My last being a part-time retail worker selling cake supplies out of a warehouse in Darra. In an unpaid capacity for the last four or five years I've had the privilege of working with a guy called Matt Condon who is a writer and a journalist who's been writing about – or has written three and soon to be four books about the development and the demise of the system of corruption and the Fitzgerald Inquiry. It's sort of a culmination.

And during this time I've had the great privilege of meeting many former police who had their lives ruined, wives, daughters and sons of police who had their lives ruined, ordinary informants who had their lives ruined. And criminals who put their necks on the line to tell the truth. It's interesting to me that to this day there's never been any official or unofficial approach from the

Queensland Police Service to myself. And I'm told that Lewis's portrait is back up on the wall outside of Ian Stewart's office, together with Frank Bischof's, with no notation.

So one of the questions I posed to myself when thinking how to frame my response to what you asked was, if I were a police officer today faced with the same dilemmas and circumstances I faced in '86, what would I feel about the secrecy or otherwise of reporting to an oversight body? Underpinning the beliefs and the experiences that I've learnt, well, underpinning my beliefs that have come from the experiences I've had, I'm of the very firm opinion that laws only assist in changing our society. We've been passing laws for hundreds of years. It isn't that we haven't got the punctuation right or the wording right. Human behaviour is a difficult thing to change and control. The incidence of some of what you might call illegal events has, in some circumstances been reduced, in others not.

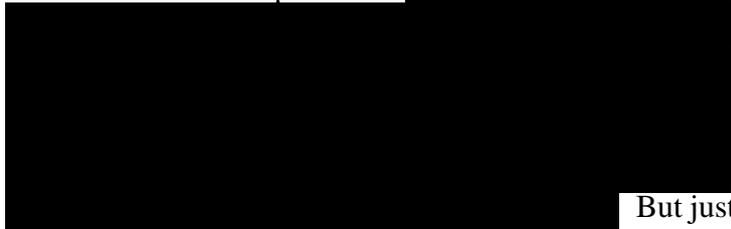
I'm pretty much a traditionalist in terms of how things are investigated. As far as I'm concerned until you've got evidence to put people before a court, it's secret. I cannot see a way around that. I understand that people have said when you make it public, you can attract more evidence. Charges of corruption are offences. They are no different to any other offence in the Criminal Code. They are offences. Often they come because the corruption comes because of breaching some other thing. It might be a fraud or whatever it is. But they're offences. They need to be investigated and they need to be investigated so that no evidence is lost because, in particular with police, there is a very great ability to cover up.

People don't commit offences thinking they're going to get caught. People take lots of insurance when they're going to do big offences, if you like, they take great pride in using whatever power they have to stay out of the public limelight and to stay clear of any independent investigation. You cannot combat that by advertising that you're going to look at somebody. If there is a situation where there is a suspicion that somebody comes along and makes a complaint and there is a suspicion that that somehow is a systemic thing, that it's happening in an organisation and your body in particular is thinking, well, we may be able to get more information about this if we make it public. I would suggest that without any

falsity, you could easily say “we are going to look to the tendering system in the Health Department, having already had a complaint within the Health Department that so and so is rorting the tendering system.” That way the person who has made the complaint and your focus, your actual focus, can be broadened to look at it generally and you can establish the truth or otherwise of the complaint that you’ve made and protecting the identity and the person who is being targeted, legitimately or otherwise in the complaint, they’re protected as well.

From my point of view, police trash this line often. I’m sick of hearing about persons of interest before charges have been laid. I’m heartily sick of detectives getting in front of the cameras and talking about the stress of an investigation and the difficulty of it when nobody’s even got to court. I am not of the opinion that the public have an understanding of how the justice system works in any great detail. I’ve sat in many forums where it’s been completely obvious that even the most basic – and I don’t have anything other than the most basic understanding of how the system works. I’ve been in a few areas, I’m not a lawyer - people do not understand. It is quite possible, their cognitive distance is alive and well. It is quite possible for people to turn around and say, I don’t trust the police, you know, they’ve too much corruption, la-di-da-di-da. And then somebody gets arrested and they say, see, they’ve got the guy for that. Not “he’s been arrested, who knows if he did it or not, or she did it or not”. That jump is made pretty quickly.

So I don’t believe that there’s any great knowledge about how the system works that will say, well people will dismiss these things. People’s reputations do get trashed. We have a major problem with the new technology. I personally think that when somebody comes and makes a complaint, the motivation doesn’t really matter. You can have serial complainers.



But just because somebody is a serial complainer doesn’t mean to say sometimes they’re not going to have some substance to their complaint. It’s about the quality of investigators. And more than anything it is about the trust that’s established between authorities like yourself,

Queensland Police Service and anybody who's given power in a governmental system. It's about the trust that is established by what you do with the public. You know these things.

In terms of political events and my interaction with politics and even at the ICAC up here, those sorts of things, it's my belief that when you join the public sector, you sign up for scrutiny. That's it. If you don't want scrutiny about what you do, don't join the public sector. If you go for elected office you sign up for public scrutiny plus media all the time. If you don't like that, don't do it. I am with Clem O'Regan, it's part of the job for a police officer. It's part of a job to not be thin-skinned about what people say. Act properly. Understand and have faith in what you do and ultimately, I believe, you will be okay. However, having said that, I'm not a great fan of the way, and I don't know if they've changed their system, but I'm not a great fan of the way Ethical Standards do their job within the police force. I'm going to shut up now because I don't know if I'm addressing all the things you want me to address.

Mr MacSporran QC

No, no, I must say, from my point of view, Mr Powell, that your submission is, both in writing and orally, very valuable to us. I mean you're someone, from your very eloquent traversing of your background and experience who is more than well-qualified to speak on all of these issues and you've done so very well if I might say so. I don't have any further questions of you because I think you've articulated all of the relevant features very well. But perhaps my panel members do.

Mr Irwin

I'd just like to clarify with you, Mr POWELL, you say on one hand that if people join the public sector, just using that term in a broad sense, that they sign up for scrutiny.

Mr Powell

Yes.

Mr Irwin

But you also say that until evidence is put before a court then the investigation should be secretive, as you put it before.

Mr Powell

Yes.

Mr Irwin

So do you agree with the concept of making it an offence to disclose the fact that an allegation has been made against someone in the public sector until such time as,

for example, a charge is laid or disciplinary proceedings are commenced? I'm just trying to tease out what's the logical consequence of your submission.

Mr Powell

Yes. Absolutely. Thanks. Because I haven't made that plain. No. I don't think it should be an offence. I think that's trying to put a lid on things that have got way beyond us now. I listened with interest – there's nothing more outrageous than an outraged media. I listened to – and I'm not having a go at any one person on that panel yesterday – but that's the mainstream media. I imagine all the people there were quite fine and upstanding. To pretend that the whole occupation is fine and upstanding is absolutely wrong. There are some journalists who will do anything to get their names out there, further up the bulletin, further to the front of the paper, whatever it is. And I've met them, I've spoken to them, they're shameless about it. So those people, fantastic. I only knew one.

I think that with the current media and the way that the technology has gone, trying to pursue somebody who's got a blog up that's been run out of a server in Kazakhstan is going to be a bit tricky. Everybody has access to much more information now than before. And that's why I said in the dot points, and I didn't mention it in my summary, that we change these things by education. Education changes human behaviour. Laws help. Can we really say that the anti-discrimination laws in our society have changed? We are no longer racist, or elements of our society are no longer racist. Well, absolutely not. But they help. But it's education that will change us and how we approach each other and our lives. I'll be honest, one of the reasons I actually left the ICAC was that they were trying to make education a deterministic program. So I was actually accused of not wanting to be accountable. I couldn't understand it.

I don't know how you can predict how a person is going to respond to being challenged in what they say, being given alternate points of view. I don't know how you can measure that. When you go into public forums and somebody wants to challenge you or wants to challenge some basic precept of life or whatever it is, you have to respond and you have to respond in a way which will reach that person. For example, this is a really basic one. Schools would phone up and say "could you come along and talk about dobbing in, because we don't do that". They won't do it. Nobody comes to us and talks about

things. And I would say to them, I can come along and talk about stuff but I'm not going to come along and tell your students that they have to do in to a teacher.

So my approach was to go along and take a slightly alternative one and to say, folks, your teachers are concerned about your behaviour and stuff like that. I mean we've spoken about other things before this, but I'd get to this bit. And I'd say, well, you know, they're concerned. They're concerned about you. They're concerned about the school. They're concerned about all sorts of things. And when it comes to this so-called dobbing in thing, I'd like you to have a think about this. I don't have any friends who won't take responsibility for their own actions. I definitely don't have any friends who want me to lie on their behalf so that they can avoid any sort of retribution for something wrong that they've done. They're not my friend. So next time somebody asks you to cover up for them, have a think about whether you really want this person as a friend and why you might want them as a friend, and whether you should be part of covering stuff up so that they can avoid any consequences for the actions that they've done.

Mr Irwin

Now can I just butt in there for a moment and-

Mr Powell

-It's a different way of just doing things, that's all.

Mr Irwin

So as I understand it, what you're saying is that people who join the public sector sign up to accept scrutiny.

Mr Powell

Yes.

Mr Irwin

But, like any other investigation, or at least the normal run of investigations, when an allegation is made nothing should be made public about that until the investigation is complete and perhaps someone has been charged and it enters the public arena. But you don't think that there should be an offence of disclosing information, you think that there should be an educative approach?

Mr Powell

I think there should be a very broad educative approach and I really wish you guys had some money to do this, or at least somebody did have to do this. From the actual concrete of what you're talking about here, I don't see the point. I think it's going to be a pointless exercise. People can disclose these things and you may not be able to prove it, whatever. I don't think it's a deterrent and a bad law, a bad rule, or an unenforceable law becomes bad

law, because it has no consequence. And it just – everything falls into – well, things fall into disrepute.

Mr Irwin

All right.

Mr Powell

Why don't I think – I mean, I would be in a very difficult situation. If I was faced with the same situation, I wouldn't be coming along. See, from somebody within the police force there are far too many seconded police officers in the CCC. I couldn't come to the CCC. I wouldn't trust that the information wouldn't spread. I couldn't do that. Some people are brave enough to do that. In those days I wouldn't do it then, I wouldn't do it now. In terms of why not? Why not penalise people for doing this? As an investigator, the first thing I would say is do not go and tell anybody else about this because you are going to tie my hands behind my back. I need time to assess this, to get whatever information I can without people knowing. And this is totally contrary, unless they've changed this, to the way Ethical Standards do it within the Queensland Police Service. I've seen documents that say you should talk to the person complained about before you go and see the complainant. Why?

Mr Irwin

Well I think somebody suggested that to us yesterday. Not in the Ethical Standards situation, but I think you would have heard because I think you were sitting here yesterday, that someone suggested to us, I can't remember whom, but there should be a change in strategy and that you would go and confront the person against whom the allegations are made before you continue the investigation. But that's not your perspective, you have a more strategic approach to it.

Mr Powell

Police don't do that with ordinary complainants.

Mr Irwin

No.

Mr Powell

Somebody's knocked off a plant off your veranda and you think it's the young kids down the road, you don't go around there and say to them-

Mr Irwin

-No.

Mr Powell

-“Have you knocked off the plant off Marshall's veranda?” And they go, “Nope.” And you go, “Okay, I'll come back in a minute and just have another chat with

you later on once I've gone and had a word with the complainant." You're kidding me.

Mr Irwin So the logical extension of that is that one of the reasons for maintaining secrecy, if we can call it that, or confidentiality-

Mr Powell -Yes.

Mr Irwin -is to protect the investigation so the investigation is not prejudiced and it will come to some result?

Mr Powell Some results. Yes.

Mr Irwin Yes.

Mr Powell - whether there's evidence or there's no evidence.

Mr Irwin And also are you concerned about potential reputational damage? Would that be another reason why you'd want to keep it confidential, or is it more the prejudice to the investigation that concerns you? Or both?

Mr Powell There's a hierarchy there. For me it's always been about finding out what's happened.

Mr Irwin Yes.

Mr Powell The reputation is really important, though. And the other thing I might add while I think about it is that the reputation of a business person intersecting with the public sector or an elected individual or somebody high up or even somebody low down in a public sector organisation is no more or less valuable than the person who's got a string of offences who lives in a difficult situation who is trying to put their life back together, who has their name put out in the press because they've been arrested for something else and there's no charge before the court yet.

Mr Irwin No. I understand your point.

Mr Powell Equity is difficult in this world without money.

Mr Irwin All right.

Mr Powell And most of us don't have a lot of money.

- Mr Irwin All right. Well, look, I might leave it there and might leave it to any other panel member. I've occupied enough time, I think, or enough of your time.
- Mr Bingham Mr POWELL, it's been very helpful to hear from you. Thank you. But I don't have any other questions. Thanks.
- Mr Powell Sure.
- Mr MacSporran QC You wore us down, Mr POWELL, well done.
- Mr Powell I can do that.
- Mr MacSporran QC Thank you very much.
- Mr Powell Thank you.
- Mr Irwin Thanks for the opportunity of clarifying your submission.

END OF SPEAKER