

hc/let/13665

4 June 2002

Senator M. Payne
Chair
Legal and Constitutional Legislation Committee
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Payne

**ESTIMATES HEARING — AUSTRALIAN FEDERAL POLICE —
PROPOSED QUESTIONS BY SENATOR CRANE**

Following the note of 28 May 2002, advising the committee on the objection by the Commissioner of the Australian Federal Police (AFP) to answering questions by Senator Crane concerning the AFP's investigation of Senator Crane, the committee decided that the objection should be sustained, and also decided that Senator Crane should not be permitted to put such questions.

Senator Crane then proposed some questions on notice, and the committee has asked for a note on those questions.

The problem identified in the advice of 28 May 2002 was that of creating committee evidence which, because of parliamentary privilege, would be unexaminable in court proceedings, and could lead to difficulties in those proceedings, possibly the failure of the prosecution through perceived unfairness to the defence in the inability to examine that evidence. That problem arises from answers to questions, rather than the questions themselves: it would be answers by the AFP which would form the basis of a defence submission that the defence would be hampered by an inability to examine the evidence. I think that the committee was wise, however, not to permit the questions to be asked, because the problem could conceivably arise from the questions themselves, particularly if the defence sought to attach some significance to the refusal of the AFP to answer them.

The questions proposed to be placed on notice by Senator Crane all go to the police investigation of his case. The first question begins with a quotation of evidence given by the AFP at the Scrutiny of Bills Committee's inquiry into search and entry provisions, in which the AFP indicated that police investigative procedures could result in evidence being inadmissible and a trial being lost. This statement was made in relation to the taking of tape recordings concerning searches, but the same point could validly be made in relation to any police procedures. Having quoted that evidence, Senator Crane then proposes to proceed to a series of questions about the procedures followed in his case. Proposed questions 1 and 2 relate to procedures in handling his case, while proposed questions 3 and 4 relate to the quantity of material seized and the way in which a claim of privilege was considered in his case.

As the questions all relate to the investigation of his case, they fall within the area of questioning in relation to which the Commissioner raised his objection on 28 May (he objected to answering “any question at all about the investigation”). Any answers to the proposed questions could go to matters in issue in any future prosecution. Consistent with the previous advice, the AFP should not be required to answer the proposed questions. Consistent with the committee’s previous determination, Senator Crane should not be permitted to put the questions on notice.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

(Harry Evans)