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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

OPERATION SEGOMO

Reference: Operation E08/1139

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 1 OCTOBER 2009

AT 9.30 AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, continuing the public inquiry into the matter the scope and purpose of which I have already announced. Yes.

MR STAEHLI: Can I have Mr Paul return to the witness box.

THE COMMISSIONER: Mr Paul.

MR STAEHLI: I'm sorry, excuse me, Mr Hart.

10 THE COMMISSIONER: Mr Hart.

MR STAEHLI: Yes, I'm sorry.

THE COMMISSIONER: Yes. Mr Hart, you're still under oath, you understand?---Yes, sir.

MR STAEHLI: Mr Hart, yesterday I asked you some questions about the possibility that you may have suggested to clients other than Jason Kelly that they should pay you money on the basis that you would be able to achieve some improper result for their prosecution. Do you remember questions to that affect?---I do.

10 And you didn't agree that you'd done such things, but you left open the possibility that you might've and forgotten about it?---I can't recall, sir.

All right. What I want to do now is to have played to you a recording of a telephone intercept on the, made on 10 December, 2008 at 16 minutes past 12.00.---Yes, sir.

It's, it seems that it's a call between you and possibly, it's between you and a person called Dean McShane.---Yes, sir.

20 Right. Would you listen to this call, please and follow the transcript.

THE COMMISSIONER: And I'll mark it Exhibit 84.

**#EXHIBIT 84 - TELEPHONE INTERCEPT G00230_00_00 ON
10/12/2008 AT 12:16:52 (HART TO DEANO)**

30 MR STAEHLI: Thank you, Commissioner.

TELEPHONE INTERCEPT PLAYED

[9.39]

MR STAEHLI: So Mr Hart, did you recognise your voice on this phone call?---Yes, I did.

40 And do you know whose voice the other person is?---I think it's Dean McShane.

Was he a client of yours that - - -?---He was.

At around that time, December last year?---He was.

And in that call to put it in a general way are you making a proposition to him that he pay you extra money so that you might, you suggested to him, pay some of it to other people?---Yes, sir.

There's a reference on the second page of the transcript that was put on the screen of that call about getting on to my bloke?---Yes, sir.

And then further down, "I'm meeting my bloke this afternoon"?---Yes, sir.

10 Who was that a reference to?---Oh, whoever the Crown was, it's not true, I didn't meet anybody.

You say it's intended by you to be a reference to the Crown or a Crown Prosecutor, do you?---Yes, sir.

As opposed to say a police prosecutor?---Yes, sir. Well, like, I don't know if it was a police prosecutor or a Crown, I can't recall, but it didn't happen, it's not true.

20 All right. And then at the bottom of that page 2, you say, "I'm meeting my bloke this afternoon", and the you say, "He's in town having dinner with him um, but we need him." Who is that a reference to?---Oh, that would be a reference to whoever the prosecutor would be, if it was, I can't recall if it was DPP or police, I can't recall that, but it didn't happen.

Yes. Perhaps what you intended is confirmed by the reference at the top of page 3 which seems to follow on, "We need him to say he doesn't oppose a non custodial sentence"?---That's correct.

30 Confirming that that's a reference to a prosecutor of whatever description. Is that right?---Yes, sir.

But then about four lines further down, you say, "Because", and the transcript records it as, "Tool", "Because Tool's going to ask him, so we might have to do the same deal as we've done before." Do you see that?---Oh, I don't know what that means, sir.

40 It's just the person who has done the transcript doing their best to determine what that word is, the second word that appears there after because. Did you hear that when it was played?---Yes, I don't know, I didn't pick that up, sir, I don't what that or who that refers to.

And then you referred at doing the same deal as we've done before. Do you see that?---I see that.

Is that a reference to you having done something similar?---It must be, sir.

With Mr McShane, in one of Mr McShane's matters before this negotiation?---It must be, sir.

And about four lines further down perhaps in confirmation of that you say, "Oh mate, if the Crown says he can't do it", that being a reference to the opposing non custodial sentence - - -?---Yes, sir.

- - - "He can't, so we're going to have to do the same deal, all right?" Do you see that?---That's correct, sir.

10

That seems to be a suggestion, Mr Hart, tell me if I'm right, that if the Crown Prosecutor or you're putting to Mr McShane that an alternative is that if the Crown Prosecutor can't not oppose a non custodial sentence or oppose a non custodial sentence, that is however that might be properly put grammatically, excuse me, you're suggesting an alternative aren't you? "We're going to have to do the same deal", you're suggesting to him that - - -?---It appears that way, sir.

That the money might go to someone other than the prosecutor aren't you? ---Oh, I don't know what I meant by that, sir, to be honest. I, it was all rubbish.

20

THE COMMISSIONER: Well, it might have been rubbish but what did you intend him to treat it as?---Um, that it will add some influence over what was going to happen in the court case.

MR STAEHLI: You say, do you though, that at all times you, this was untrue in relation to the possibility that you had such influence?---Yes, sir.

30

On page 4, you ask him to pay monies into your TAB account?---Yes, sir.

In a way which is consistent with what Mr Kelly said about what you asked him in relation to the monies that he had to pay you?---That's correct, sir.

Did Mr McShane give you money in accordance with this arrangement?---I think he, he paid me \$2,000, that's my recollection, sir.

THE COMMISSIONER: You asked for seven, didn't you?---I think I did. I, it appears that way but I don't think I got paid \$7,000. This is in December last year, is it sir?

40

Yes. I - - -?---I have a recollection it was \$2,000, I can't recall but I, I don't think it was \$7,000.

And in any event, do you agree that you were pressing him for \$7,000 of which you said in this call, it would seem the \$5,000 was to be applied to some third party?---Yes, sir.

On the basis of your proposition to Mr McShane that that would cause some helpful influence in his prosecution. Is that right?---Yes, sir.

Is that right?---Yes, sir.

So consistently with your concession yesterday that there might be other matters, you accept that in that call to Mr McShane there's an express agreement between the two of you about such matters and secondly a reference to it apparently having been done on some earlier occasion?---

10 There is, sir.

How many others do you think there might be of a similar kind, Mr Hart?--- I have no independent recollection of that conversation. I, I'd forgotten it. It must have happened. I just can't recall, sir, I know, I was drinking heavily at the time. I can't remember it sir. I don't, I don't, I'd forgotten that, I don't think I'd, I didn't do it every client, I just didn't, I just didn't sir.

20 So is it possible that there's ten, twenty?---Oh, I wouldn't know, I don't accept that.

Less than five?---Vaguely, I can't remember but no, not, not, not, well every one is significant, I'll accept that, not a significant number of people.

Do you say there's no other one that you can nominate by reference to the client's name?---No, sir.

MR STAEHLI: I want to ask you some questions about the application for costs - - -?---Yes, sir.

30

- - - for matters arising out of what you say was owed to you for appearing for Mr Kelly on that trial in February 2008. Could I ask you to look firstly at the transcript of the call which I think was played yesterday. It seems unnecessary - - -

THE COMMISSIONER: Which exhibit?

MR STAEHLI: Exhibit 7.

40 THE COMMISSIONER: Yes.

MR STAEHLI: Unnecessary to play it again in this context. Could Mr Hart be shown the hard copy of that, it's a transcript of a call on the 27th of April, 2008 at 17.34, being Tab 27. This is the call that was played yesterday in which there's a reference to Gary Corr, you'll remember?---Yes, sir.

And then on the second page of the transcript handed to you, I think, the bottom three-quarters of the second page – well, most of that page in fact relates to a question of costs?---Yes, sir.

And about a third of the way down you say, “Now, I’ve um, organised with AP, I’ll have to catch up with him. What we’re going to do is I’m billing you four a day.” Do you see that?---Yes, sir.

10 And then the next passage you say, “Or preparation fee and whatever and, mate, there’ll be a quid for everyone at the end of the day”?---Yes, sir.

Do you see that? What did you mean by that, there’ll be a quid for everyone at the end of the day?---Well, a quid meaning that he agreed that he’d owed me, he would pay me if we got costs - - -

THE COMMISSIONER: Sorry, would you keep your voice up?---Mr Kelly had agreed with me that if he, if costs were awarded he would pay me the two days that were argued for I was there for the costs.

20 Sorry, would you keep your voice up?---Mr Kelly and I had agreed that that I would do – appear in the costs application which took – there were two days listed and he would pay me if the costs application was successful.

Well, that was a quid in it for you but what about a quid in it for him?---Oh, well, he’d get his money back, I, I assumed.

But you meant he’d get more than his money back, didn’t you?---Oh, when I, when I said that I meant that – well, I thought he’d get his money back.

30 You thought – sorry?---He’d get all the money back that he’d paid in. I didn’t know how much he’d paid into the trust account or to the firm. I had no idea.

When did you become first aware, Mr Hart, that you were – it was said that you were charging \$2,500 a day?---Oh, when I came here.

Here?---I was getting cheques for 2,500 a day per day but I was - - -

40 In the course of the trial?---Yes, sir.

Yes?---But I always assumed that there was more money there at the end of the, end of the trial for me assuming it went the week.

So you were going to top up the daily fee that you’d already received. Is that what you are saying?---I didn’t think there was any hard and fast agreement as to how much I would charge. It would be worked out. I didn’t know how much was in, in, in the office and I just assumed that

there'd be more money. That was to keep me going. They put money into my account for all the family, for my business and there may well be - - -

So you're saying that when you got that money on the daily rate as had been estimated, you just thought this was sort of a part payment of what you were owed. Is that what you're saying?---I assumed that there'd be more money at the end of the, of the day for me, sir. I didn't know it was going to go seven days.

10 So I take it you made that plain, you made that known to the solicitor, did you?---I don't think we discussed it. I can't recall. That was my assumption.

Or Kelly?---I certainly spoke to Mr Kelly about it being worth another 1,000 or so a day. I certainly discussed that with him.

You mean during the first week of the trial?---Yes, sir.

20 Are you sure about that are you Mr Hart?---I have a recollection that there was a discussion in relation to more fees being owed.

So you're saying that, well, I've got \$2,500, but just remember this, you'll probably owe me another fifteen hundred or so?---I can't recall what the conversation was, sir, but there was conversation in relation to me being worth more then \$2,500 a day, I'm sure there was. I can't recall specifically.

30 MR STAEHLI: See this, the proposition that there'll be a quid for everyone at the end of the day, that is that there'll be extra money, it might suggested that means it's consistent with what happened at the end after the Attorney Generals Department paid the costs isn't it? That is Mr Kelly divided up the money between you, Mr Paul's firm and himself. Everyone got a quid.--- No, I don't know how much, I don't know, I don't think I know how much the cheque was, but all I know is I got \$5,000 out of it.

40 Yes. But you knew didn't you because you had conversations with Mr Kelly about this very topic that it was agreed between you and him and perhaps between him and Paul and you and Mr Paul as well, that the excess of the money that the Attorney Generals Department might pay over what Mr Hart had already paid for the trial would be divided between the three of you. You knew that was going to happen didn't you?---I, I still (not transcribable) to get \$5,000 that I'd agreed.

I'm sorry?---I spoke to Mr Kelly about that and I said I'd do it for that.

THE COMMISSIONER: Well, just tell me this, at the time that money, just before that money was given to you, how much more money did you say Kelly owed you that is already been paid?---In December?

In December?---\$5,000.

Mmm?---\$5,000, I'd agreed that I would - - -

Only \$5,000?---Yes, sir.

Even though you were charging him \$4,000 a day?---Well, I'd agreed to do it for five grand.

10

So you were going to settle off what all that was by a payment of an extra \$5,000?---Yes, sir. I was happy with that.

And you say that was an agreement you had with Mr Kelly?---I spoke to him about it.

Your version of the events, he owed you much, much more then \$5,000 didn't he?---I was happy to have \$5,000 from it.

20

In your version of events he owed you much more then \$5,000?---He may have, but I was happy to accept the \$5,000. If we hadn't of got a costs application, I wouldn't of charged him any more.

MR STAEHLI: You see, the bill that had gone in in support of his costs application for you specified your fees as being somewhat over \$43,000. Did you know that?---I wasn't aware of that.

30

And it included, of course, a reference to nine days worth of daily fees for you amongst other charges. Did you know that?---No, I didn't. I assume that would be seven days of the trial and two days of the cost application, I assume. I don't know whether you're allowed to charge for the two days costs, I don't know.

All right. But on any version that those costs alone if you were charging \$4,000 a day, amounted to \$36,000 on a rate of \$4,000 per day. Did you believe at any stage that Mr Kelly owed you in excess of \$36,000 taking into account what had been paid to you during the trial?---I wouldn't of thought so.

40

You wouldn't of thought so?---I wouldn't of thought so.

Well - - -?---Because I agreed, I, just give me anther \$5,000.

On top of what? What had you been paid up to that point?---Fifteen odd grand, I suppose.

THE COMMISSIONER: How much?---About fifteen odd thousand dollars I think I got from the client.

\$15,000, yes.

MR STAEHLI: All right. Is that taking into account the \$7,000 that was deposited into your TAB account or not?---That's, the \$7,000, which I was of the mind that that settled me up for the trial.

So in relation to that \$7,000 you've been unable to recall the conversations which related to that about which Mr Kelly has given evidence?---Yes, sir.

10

Is that still your position?---Yes, sir.

You know of course, that Mr Kelly says that he paid that money as a result of you suggesting that \$15,000 was necessary in order to stop the, further investigation going on?---Yes, sir.

And so far as the records independently establish, deposits into accounts associated with you there's that \$7,000 paid into your TAB account on 7 or 8 March?---Yes, sir.

20

Now, do you say that, having regard to your position that the, that you were never going to influence the investigation, that at some stage during 2008, it was your belief that the \$7,000 could just be applied by you to the debt that he owed you for the trial?---Yes, sir.

Is that what you're saying?---It's the way I thought it. It's the way I think it now.

30

So if you were paid \$15,000 odd, during the trial, \$7,000 (not transcribable) after the trial, that's \$22,000 and another \$5,000 in December - - -?---Yes, sir.

- - - that's about \$27,000.---Yes, sir.

Is that what you say you regard as being a, regarded as being a fair settlement?---Yes, sir.

40

But you never had a conversation with him in which you attributed the \$7,000 deposited into your TAB account as being part of the debt that was owed to you for the trial did you?---I can't recall having a conversation with him. That's what, that's my belief that that was what it was for.

Well, but you can't remember any conversation in relation to it?---No, I can't, sir.

In your evidence earlier this week you said something about what you have subsequently found out about the amount of money which Mr Paul had, it would seem, took from the funds held by his firm.---Yes, sir.

Which monies, I gather, you implied should've been paid to you. Is that what you meant?---Oh, no, sir. I - - -

Well, we know now, as Mr Paul has admitted that during the course of the trial there were a number of cheques which were issued by his firm which were made payable to you.---Yes, sir.

10 But which he cashed in the way that he described and it would seem kept the proceeds.---Yes, sir.

Did you know that he was doing that?---I have a recollection of one or two occasions where that happened. I knew that, use the terminology, he wasn't travelling real well. They'd had problems financially. I had no, no problems with that in relation to, he would, he could cash them in my name and fix us up later. That's the way I looked at it.

20 Fix who up later?---Well, whatever the money came from, because I wasn't getting it. I didn't see it as a loan for me in that (not transcribable). If he'd asked me, I would've given him my money.

All right. So, you just, is it the case that you believed it was just a mechanism by which he could get money which he needed using your name on the cheques?---Yes, sir.

30 And I asked you before, but I'll ask it again, do you know how much money he obtained by that method in relation to Mr Kelly's case during 2008? ---I, I don't, I don't know if it was from, necessarily from Kelly's case. I, I, I was, I'm unsure as to where the money came from, but I, and I'm not, I'm only, I think I said \$7,000, \$7,500 because Mr Walsh discussed it with me. I thought it was a couple of cheques and I can't recall how much it was. But I had no idea it was \$7,000 or \$8,000.

All right.---I can't remember.

40 Would it have made any difference to you how much it was?---Oh, probably not, no. I would've lent it to him if, if he had of said to me that, if I had the money I would've lent him money. I assumed it had just all work out in the, in the books or in the mechanism of it.

But you knew he was using your name?---Yes.

Apparently so that the firms records would show that cheques had been paid to you for your appearances during that trial. Did you know that?---It was certainly made payable to me, I can't recall if it was from monies held by Kelly or something else. I, I don't even, well, I don't even think I thought about it.

All right. In any event it didn't matter to you because it was, by your lack of opposition to this course you were content that Mr Paul could do what he liked in this regard. Is that right?---That's a fair comment, sir. He's a good friend of mine. If he needed the money, he needed the money. I assumed it would just, he'd work the books out. It had nothing, nothing to do with me. Well, it did actually, that's not, I'll withdraw that. It had something to do with me because I acquiesced to it. But - - -

You must've known that it was a false pretence on the firm?---Oh - - -

10

There can't be any other explanation can there?---Sitting here now, I accept that proposition. But at the time I don't think I did. He was a senior partner of the firm and he was a very good friend of mine. How they work their books out, I don't know. He may have put the money back in. That was a matter for him, when he got paid the following week. I don't know what he did.

Well, do you remember that the same thing happened later on that year?---
Yes, sir. That's what I said, once or twice it was, I can recall, I recall once
20 during the trial and I can remember Anthony ringing me some time later
about a cheque. And I, and I can remember saying I didn't have a problem
with it. I think there may have been a conversation about, if someone rang
me, it was sweet as far as I was concerned. I mean - - -

Well, can I just refresh your memory. I'm not sure that you were here when this was played before. But could I ask you to listen to this.---I wasn't here when Mr Paul gave evidence.

- - - to this call, then, which became Exhibit 44, please. That's Tab 45.

30

THE COMMISSIONER: 44 or 45.

MR STAEHLI: Exhibit 44, Tab 45. 15 July at 12.24.

TELEPHONE INTERCEPT PLAYED

[10.07]

MR STAEHLI: No, that's the wrong call. I'm sorry, we've got the right
40 transcript but the wrong call. 15 July, 12.24.

THE COMMISSIONER: (not transcribable) while they work it out, because they've obviously got it out of sync. But you can just put to him what the substance of it was and ask him what his view about it was.

MR STAEHLI: Yes. Could you just read through that transcript to yourself, please.---All right.

Yes. At the bottom of page 1, Mr Paul tells you what he was, what he had done, as it turns out. He says in reference to Mr Kelly, he had some money in, he had some money in trust and I'm fucken broke at the moment, so I just drew a cheque out and I need some things to be paid and it's made to Mr Hart. So I'm going to take it up to Farrer and cash it. And you said, "All right, mate. No worries. In case there's a phone call, how much is it?" And at the top of the next page he says, "A 2-2." And you say, "No worries." And then the next passage of what you say, you say, "That's no problem, just, it doesn't worry me, just if you let me know so in case, you know, something happens and I get a phone call." Do you see that?---I think I would've been thinking of if someone from the hotel rang me. I would've said, yeah, yeah, that's fine, I've got no problem with that.

Well, he's telling you about something that's, all right, I see what you're saying. But he's going to take it up to the Farrer and cash it.---Yes, sir.

All right. Mr Paul was well-known at the Farrer though, wasn't he, that being a hotel in Wagga?---Yes, sir.

20 And in fact that's where some of those cheques back at the trial period had been cashed, was it? Is that right?---That's correct.

So you were alert to the proposition in any event, weren't you, that - - -? ---Excuse me, sir, my copy says 822, I, I, (not transcribable) was \$8,000.

No, no, no. It says, well, does it say E-H-2-2?---Mine says E-I-G-H-T.

Yeah, does it? Oh, all right.

30 THE COMMISSIONER: And mine says A, there's an E-H and then 8-2-2. That's what mine says?---I was never aware it was \$8,000.

MR STAEHLI: Oh, I see. Yes, all right. It's not suggested that it is, all right. It's whatever is actually said there it's actually \$2,200.

THE COMMISSIONER: Yes. Well, one thing, Mr Hart, I'll just ask you about this. I think you have made it fairly clear in the evidence you have given here before me that you took a rather light-hearted view to what are the obligations of barristers when they're appearing for people - - -?---Yes, 40 sir.

- - - by not getting arrangements and the like but you argued the costs question, didn't you, whether he should get costs? Did you argue that? ---Yes, sir.

So when you argued that you must have had regard to the legislation that set up to give you the right or a client the right to argue for costs in appropriate circumstances?---Oh, in a way, yes, sir.

Did it occur to you that the purpose of this legislation was to ensure that people would be reimbursed for funds that had lawfully been expended?
---No, sir. I argued in relation to the reason why his Honour and the barrister for the co-accused as to why – the test as I understood it was at the end of the trial if the prosecution was aware, and it's a hypothetical test I - -

10 We're talking about the quantum of costs not the - - -?---You don't argue quantum, sir, Commissioner.

No. But you knew, didn't you, that the purpose of the legislation was to reimburse somebody who had expended moneys defending a criminal trial which in effect probably shouldn't have been brought?---That's fair.

Yes?---That's true.

20 So I'd like to get your view about this. Assume a barrister made an arrangement to pay – to charge \$4,000 a day - - -?---Yes, sir.

- - - and then later on after the costs application was in he said to the client, "Look, we can get this out of the government so why don't we agree that it's \$5,000 a day." Would you regard that as professional misconduct because I have to feel I would - - -?---It would have to be, sir.

- - -I would?---Yes, it would have to be.

Yes, yes. Yes, all right.

30 MR STAEHLI: So do you see any relevant difference between what the Commissioner's put to you and what you did?---Sitting her now, yes, I do. At the time I didn't know whether the – and I still don't know other than what I've, I accept here whether you charge, whether you put in an account for what you're entitled to or what they pay. I never knew that. I never knew, for instance, you could do a job for your – for a close family friend or a friend and charge nothing and then say, "Well, I'll do it for nothing 'cause you're my father or your son or whatever," and then when you get costs are you entitled then to say, "Well, I would have charged four grand a day or 40 2,000," or whatever and put a claim in. That's the way I looked at it then and I'm, I haven't thought – it was about other matters. I haven't thought deeply about that aspect of it. At the time I – and I know I said to Mr Paul, I'm sure I did, you know, "I'm worth four grand a day." And I'm not sure whether you – 'cause I've since found out that the government only pay fifteen hundred a day anyway. I could have put a bill for \$25,000 a day, it would haven't have made any difference but I guess that's not the point. I, I'm not sure as to whether, sir, I'm entitled to charge. At the time I wasn't, certainly wasn't sure whether I'm entitled to charge what I would have billed or what he actually paid. As I say, for instance, I could have done the

job for nothing on the hope that I, that I won and then oh, "We got costs. Isn't that good. I'll put in a bill in for 4,000 a day. I'm not sure about that, sir.

10 THE COMMISSIONER: Well, listen to my view just so that you can persuade me if I'm wrong. It is my view that if a barrister agreed to do a case for nothing and then later on after he won charged an amount that he thought that could be got out of the government, I would regard that as professional misconduct?---I'm not arguing with you, sir. I'm just telling you what I thought at the time.

MR STAEHLI: And one of the problems, or perhaps one of the reasons why you can, with respect to what you've said, tread a path between these issues is that you never rendered a bill?---No, I didn't.

Ever?---No, sir.

20 So it was the amount that you say was owing was up for grabs from beginning to end. There was never any documentation of it from your perspective?---No, there wasn't, sir.

The only documentation of it was what Mr Paul created on your letterhead in his office?---Yes.

30 Can you listen to this call, please. It hasn't been played before, Commissioner. I don't think, on the 14th of July, 2008, 14.03.06, apparently between Mr Paul and Mr Hart. It starts off there's a lengthy portion about whether or not there can be an application made for the costs of the costs application but then there's a more significant part later on. Not there?

THE COMMISSIONER: All right. Give him a look at it. Behind what tab, is it?

MR STAEHLI: 39 in the costs folder. Could I hand Mr Hart a transcript of the recording.

THE COMMISSIONER: Yes. I'll mark this 85.

40 **#EXHIBIT 85 - TELEPHONE INTERCEPT G00226_00_00 ON
14/07/2008 AT 14:03:06 (HART TO PAUL)**

THE COMMISSIONER: Well, he's got it. He can have a look at it.

MR STAEHLI: Just would you read through that to yourself in the meantime, Mr Hart, please.

TELEPHONE INTERCEPT PLAYED

[10.19am]

10 MR STAEHLI: Now, on page 4 of that, the transcript of that call, Mr Hart, firstly do you agree that that's a call between yourself and Mr Paul?---Yes, sir.

In which you're talking about the, what the costs should be?---Yes, sir.

And on page 4 you talk about the fees having been, or the proposition that the fees might have been upped a bit. Do you see that about half way down the page, a bit after that?---Yes, sir.

On agreement if we win, if we get costs, do you see that?---Yes, sir.

20 And earlier in the call there's a reference to other matters that you might have been involved in and there's a discussion about matters that might have been done on spec. By that did you mean a matter in which you'd appeared for no fee on the basis that if you won you would then get paid?

THE COMMISSIONER: Well, that wouldn't be of no fee basis, that would be a fee basis conditional upon winning.

MR STAEHLI: Yes.

30 THE COMMISSIONER: So that's the problem I have about this conversation. It started off on the base that this was a spec case, that is you're doing a case on the basis that if you won, you'd get, you would enforce payment and if you didn't, you wouldn't. But of course, this wasn't a spec case at all, was it, you'd go the money in advance?---The extra two days for the argument as to costs was - - -

So that's what you're referring to, were you?---Yes, sir. Because I understood it - - -

40 Well, you claimed, didn't limit the possibility to those two days though, was it?---I don't know, sir.

MR STAEHLI: And it is the case isn't it that consistent with that conversation on that page where you talked about upping it a bit and Mr Paul about Mr Kelly having complained that fees had been pumped up that you knew that what was to be put into Attorney General's was significantly more than what Mr Kelly had firstly paid into Mr Paul's firm at the time of the trial?---Sir, I have a recollection of, of at some stage

speaking to Anthony about photocopying and telephone calls and I, I'm sure I said to Anthony at one stage, "You know what, I've got a bill that they, they charge for every eleven minutes or something and every telephone conversation, every time someone writes a letter, you're entitled to charge x amount of dollars et cetera and that's what, that's what I think I had in mind at the time in relation to you are entitled to charge for, the way I understood it, when every time you ring me about the case and ask something about it. I never have charged clients that. I don't know if Mr Paul has but I, if people ring me about, "Well, what am I going to do about this", I, I don't
10 write it on, perhaps I should, should have, write it down and say, well I spoke for eleven minutes, that's x amount of dollars and send him a bill. That's just not the way I've done it.

You'd know, Mr Hart surely, that the appropriate way to deal with such matters is to, that's the purpose of a costs agreement in the first place?---Oh, that's true, sir.

And so if there is a costs agreement, if it's done properly in accordance with the legislation, then the basis on which the lawyers are charging whether for
20 calls or anything else, telephone calls or anything else, is specific in the agreement?---That's correct, sir.

You didn't have such agreement with Mr Paul?---No, I didn't, no, I didn't.

As it turns out, he didn't have such an agreement with Mr Hart, with Mr Kelly, I'm sorry?---As it turns out, that's correct.

And so both these, all these matters about how much might be properly charged, even if the two of you were doing the right thing were completely
30 up for grabs in the context of there not being any specification of this before the case started. Isn't that right?---Well, it could be looked at that way, sir.

But clearly I suggest to you, both you and Mr Paul between you appreciated that what was being, sought to being achieved by the bills which were to be sent by Mr Kelly to the Attorney General's Department was that there'd, there'd be a profit that'd be made, not simply a reimbursement and it'd be a profit in which Mr Kelly would share?---Well, I think it in my mind it was, and I say and I, I'm, I'm not, I don't know and I certainly didn't at the time if you could, if you allow to, to bill for what you're worth or, or what you
40 actually got and I wasn't sure and as I say, for instance I didn't know if Anthony, what he'd agreed with Mr, in writing with Mr Kelly, I didn't know, and if his normal, see I've seen bills, sir, in relation to, what's been sent to me about itemised every minute of every day how much I get billed. I didn't know if Anthony had one of those of Mr Kelly. If he, if he - - -

THE COMMISSIONER: I'd asked you that before, Mr - - -?---Sorry, sir.

- - - Hart, if you had charged someone \$3,000 a day that was the charge that you had - - -?---Yes, sir.

- - - made and made clear. You're not telling me, are you, you think you'd be entitled to put in a bill for \$4,000 a day because it was going to be paid for by the - or you hoped it would be paid for by the government on a cost order?---I had a, and I said it from day 1, a very elastic arrangement with fees with Mr Paul. I didn't know how much he had. He could have had \$200,000 in this. I didn't know.

10

You never talked about that?---No. I never knew and I still don't know how much - - -

How did you know the case was going to go for five days?---Oh, the majority of cases if it's, and I use - - -

Well, Paul says he's hardly ever done any of these so he'd be relying on you, wouldn't he, to estimate how long this trial would go?---Not many trials go more than a week, sir. The, the - what - - -

20

Well, did you discuss with him how long the trial would go?---Most trials go two to three days. If the - - -

Did you discuss with him how long this trial would go?---I didn't think it'd go - I thought it'd go at the maximum a week.

And did you discuss that with Mr Paul?---Oh, when we first - when he first asked - briefed me to do it I would have.

30

Yes. And that was for the purpose of determining how much money would be needed, isn't it?---I assume so. It's not only that, to work out your diary. The reason it went a lot longer was there was a co-accused who was very slow in my opinion.

What I'm asking you is, well, I'm suggesting, it seemed to me on the evidence that's been given to date if Mr Paul is to be accepted, the source of this trial going for a week would have come from you?---Oh, it would have, sir, and the learned Crown who at the call-over would said it'll go upwards of a week and I agreed with that.

40

And the purpose of discussion that with Paul, Mr Paul, would be, I suppose, to determine how much money should be got in from the client, amongst other things - - -?---Amongst other things, yes sir.

- - - and I talk about your diary?---Yes, sir.

But that's not really a significant matter, is it, in this sense that – well, unless the rules have changed you can't walk out of a criminal trial?---No, you can't, sir.

Yes.

10 MR STAEHLI: So you mentioned the arrangement being elastic, the benefit of that to you in these circumstances is that at the end of the day you can seek to justify whatever it was that you put in a bill for on the basis that you didn't have any firm arrangement before hand. That's what you've taken advantage of here, isn't it?---Oh, I don't know if I necessarily agree with that, sir.

After the costs were paid there was, or were about to be paid, there is this further call about the arrangements that were to be made with Mr Kelly. Would you listen to this call, Exhibit 40.

THE COMMISSIONER: 86, is it?

20 MR STAEHLI: Behind Tab 54.

THE COMMISSIONER: Well, this one will be 86, the new one you're about to play.

MR STAEHLI: Well, it's not new.

THE COMMISSIONER: Oh, it's been played, has it?

MR STAEHLI: Yes, Exhibit 40.

30

THE COMMISSIONER: That's Exhibit 40.

MR STAEHLI: 11th of November, 2008, 12.45 which we can hopefully turn up. Could Mr Hart be shown the hard copy in the meantime?

THE COMMISSIONER: Yes.

40 **TELEPHONE INTERCEPT PLAYED** **[10.33am]**

MR STAEHLI: And the call goes on to talk about other matters?---Yes, sir.

Just in relation to those other matters, Mr Hart, at the start of the call there's reference to Darren ringing you, Darren or Dasher. Who is that?---That would have been a prosecutor, police prosecutor, in relation to another matter that ended up – well, he may have withdrawn it.

What is that prosecutor's name?---I don't think I know it or I can't recall his last name.

Is he at Wagga?---Yes, sir.

And the reference to Stephen on that same page, is that a reference to Mr Turner?---It would be.

10 And to Robert Smith also on page 1, "If Robert Smith tells me, tell us, tells me to run it," et cetera, towards the bottom of page 1, is that another prosecutor?---I, I can't recall who Robert Smith is.

All right. Then later on in the call there's a reference to the costs claim and the amount that's to be paid and you and Mr Paul discuss what you were worth in that regard but I want to ask you about what's halfway down page 4?---Yes, sir.

20 You say to Mr Hart, "That's right. I mean are you going to? Well, old mate, what I was going to, just got to be careful just to quieten him up. I was going to say give him a five and you and I will go halves."

THE COMMISSIONER: What did you mean by that?---I can't recall having that conversation. I can't recall what that means, to be honest. I got paid five.

30 MR STAEHLI: It suggests, Mr Hart, that there is a reason why Mr Kelly himself should get extra money out of the costs application and that you and Mr Paul knew it. Do you agree that's the inference that can be drawn from your words?---If, just say if for instance that, instead of charging whatever Mr Paul charged, well, actually I'm entitled to charge for photocopying, for telephone calls and all that, that's all extra. That, and as I say, I didn't know if he had a cost agreement or not. I don't do that, but I would be entitled to it as, and I accept what you say, if I had given a person a costs agreement, I can charge for every phone call, that's the only thing I can think off.

40 THE COMMISSIONER: But this says that you were going to give him five to quieten him up. What was he going to say did you think if you didn't give him five?---Well, that's the expression I would've used, sir. I can't, now I just don't know what I would've meant by that.

All right.---Sorry, sir.

Mr Hart, as you must be aware from the time this matter has been going on, there'd be a number of inferences that can be drawn from these things and you are essentially being given the opportunity to explain what you mean by them. I mean that suggests to me as an inference that you thought you could be in trouble if you didn't keep Kelly quiet. Now, if that's an inference I

shouldn't draw, I'd like you to tell me why that's so.---Oh, it's just something I said, sir. I can't recall why I would've said it. I just - - -

All right.---I'd, I'd always of the understanding that I was entitled to the extra two days, but I agreed with him.

All right.

10 MR STAEHLI: But on any version of what you have said, Mr Hart, your understanding was at this time, on the basis of what evidence you've given here, that all of the excess on top of what Mr Kelly had paid at the start of the trial was money which would be due either to you or Mr Paul. Isn't that right?---Well, it would be due to Mr Paul. It'd be very nice if I got some of it.

20 Well whoever it was due to out of you and Mr Paul, it wasn't money that was due to Mr Kelly because you were entitled to charge, or Mr Paul was, for extras, for extra days, for increased rates or whatever. And out of that there would've been no \$5,000 left for Mr Kelly because between the two of you, you'd put in a bill for \$76,000 and you were \$30,000 short on the basis of what Attorney Generals paid.---Well, I must've had a conversation with Mr Kelly to know those numbers and figures. He must've rung me. So - - -

30 Well, you did, you did have one which fits that description and that is, as played to you earlier today, that there was a quid in it for all of you at the end of the day, because you'd put in a bill for, or you were going to put in a bill for \$4,000 a day. In the end it was a bit less, but the, one of the results of putting in the bill was that there was a quid to be broken up and it was broken up, consistently with what's put in this call. Isn't right?---Well, it appears that way, sir, but I was always of the understanding that I was going to get \$5,000 from the costs. But if for instance, I suppose if the Attorney General had of sent him back a cheque of \$15,000, it would've been pretty hard to get \$5,000 out of him, I would've assumed.

40 Well, that's right. But why was he entitled, why was he entitled to \$5,000? He, Mr Kelly in these circumstances?---I can't explain that, sir. I don't know what I meant by that, but as it turns out he'd paid in thirty, I didn't know whether he was, he'd promised Anthony more money. I didn't know that. I knew he, he said to me, pay me \$5,000. And it would've been very nice if I had got some money from Mr Paul.

But in this conversation you didn't say to Mr Paul, or not expressly anyway, how much does he owe you? Shouldn't you get all that extra money - - -?---Well, I didn't say - - -

- - - apart from what I was due, you put it to him as a proposition with which he agrees, although he was somewhat reluctant to agree when asked about this in evidence. You put it to him as a proposition that each of you, you,

Mr Paul and Mr Kelly would share in this, in the profit, which was the excess between what had been paid by Mr Kelly and what was paid by Attorney Generals. That's what this conversation - - -?---That's what it says, sir. I, I can't recall the conversation, but that's what it says. That's an inference (not transcribable), sir.

THE COMMISSIONER: Mr Staehli, I think you have put to him fairly and clearly what inferences can be drawn. He's had the opportunity to answer that and the rest of it is probably a matter for submissions.

10

MR STAEHLI: Yes. There's just one (not transcribable) that I need to draw to Mr Hart's attention, just two other matters (not transcribable) the questioning itself needn't go much further. Would you listen to this call which became Exhibit 21 previously, please Mr Hart. It's apparently a message left for, sorry, a message left by you for Mr Kelly on 12 November, 14.26.08, behind Tab 55. It became Exhibit 21.

THE COMMISSIONER: He doesn't need the transcript, I take it it's a short leaving a message or does he - - -

20

MR STAEHLI: Is it short.

THE COMMISSIONER: - - - (not transcribable) the transcript.

MR STAEHLI: I think it'll come up. There it is on the screen.

TELEPHONE INTERCEPT PLAYED

[10.47am]

MR STAEHLI: Is that you leaving a message for Mr Kelly?---Yes, sir.

30

And that message is, shows, I suggest to you, Mr Hart that you regarded the Attorney Generals as a pot out of which you and Mr Kelly, and perhaps Mr Paul, could, into which you could dip to try and get more money.---That's, that's an expression I would use, to (not transcribable) I've already spoken to Anthony about and to Mr Kelly about the sixteen hundred and fifty being a ludicrous figure. If there was a an avenue of appeal. Drop the letter in and we'll see if we could. And I think we spoke about that, if there was right of appeal.

40

And, but if not, as you say to him, you'll split it three ways.---Well, split it whatever, I'm owed five and whatever he owed Mr Paul and then have the rest, I suppose.

Well, it's never been said, either in the conversations with Mr Paul or with Mr Kelly that he has to pay Mr Paul what he's owed. You proceed - - -?---I assume that's a, I perceived, I assumed it. I didn't know that.

You just proceeded as if the excess of what was obtained over what he'd paid was profit which could be divided three ways.---Oh, not necessarily - -
-

And that's what happened.---Well, I got \$5,000.

And you know that Mr Paul got some, don't you?---I assumed the firm got some.

10 You knew that the expectation was that he would get some?---I assumed that because Mr Kelly mustn't of paid enough money.

And you knew that Mr Kelly was going to get some that's why it was being split three ways?---I assume.

And then there's this further call, Commissioner, which I think is the final one in this series. Which I believe has been tendered before, 13 November, 2008 at 12.40 between, apparently between Mr Hart and Mr Paul, behind Tab 56.

20

THE COMMISSIONER: Well, that then will become Exhibit 86.

**#EXHIBIT 86 - TELEPHONE INTERCEPT G00230_00_00 ON
13/11/2008 AT 12:40:21 EXTRACT (PAUL TO HART)**

30 MR STAEHLI: And I'm told that the previous exhibit was not exhibit 21 but exhibit 31.

THE COMMISSIONER: Okay.

MR STAEHLI: So that's a mistaken reference to it. So this call will be played, an extract of it will be played.

THE COMMISSIONER: Yes.

40

TELEPHONE INTERCEPT PLAYED [10.50am]

MR STAEHLI: That's the relevant excerpt of the call. In that conversation on that page of the transcript now shown on the screen towards the top of the page there, there's a discussion between you and Mr Paul about how much Jason Kelly was to get. Do you see that?---Oh yes, sir.

“Have we actually told him we’re going to give him five”, that’s consistent with the earlier conversations that you and Mr Paul have had about the split up. Do you agree with that?---Oh, it says that there, sir.

“Because”, says Mr Paul, “I might only try and give him three, but otherwise, that is if I don’t give him three, Creaghe Lisle hardly gets anything out of it at the end of the day.” Do you see that?---Yes, sir.

10 And so, didn’t that indicate to you, doesn’t it indicate to you that in fact Creaghe Lisle was, the difference between Creaghe Lisle making money or not out of this so far as Mr Paul was concerned was the difference between Mr Kelly getting five and Mr Kelly getting \$3,000?---It says that, sir.

And that I suggest to you is totally consistent with the proposition that the bill which had been put in by Mr Kelly which you knew about had been grossly inflated?---Oh, I would have taken that as to Mr Paul, thinking back now, not giving any, all the money that was going to be paid to the firm.

20 I’m sorry, not giving all the money?---All the money that was going to be paid to the firm. That’s the way I would look at it.

But even so, on whatever basis Mr Paul was saying that, I appreciate it’s him not you, what he was saying was that Mr Kelly could still get some money to him in addition to his receiving the monies back which he’d paid at the time of the trial, that’s what’s being said there, isn’t it, that’s what you understood?---I understood it then and I, I would think, I would think that, and I don’t think I thought about it at the time, but that was some money that Mr Paul would get rather than put it into the firm.

30 Yes, well, I propose to stop there on that issue.

THE COMMISSIONER: All right, now, does anybody want to ask Mr Hart any questions?

MR STAEHLI: Sorry, I’ve still got one or two other aspects but I’ve finished on the cost issue. I won’t be very long.

40 THE COMMISSIONER: All right, well, keep on sitting until you finish this.

MR STAEHLI: All right, thank you. Can I ask you about your relationship with Steve Turner? In the call which was tendered I think on Wednesday afternoon which became Exhibit 40, you spoke to him about the adjournment?---Yes, sir.

Of the Jessica Smith matter?---Yes, sir.

And you told him about, you told him things about why you and Ms Smith would not be at Wagga that day. Do you remember?---Yes, I do.

And at that time what was your relationship with Mr Turner?---He was a friend of mine, I'd known him a long time.

Were you prosecutors together?---I think we would have been.

Sorry?---We were. We were, would have both been very junior prosecutors.

10

And did you work with him as a prosecutor, in the same region for example?---I don't think so, I think he would have been up north and I was at south I think. If I did it would have been as a court constable and I can't remember that, being very junior.

And from time to time did you send him gifts?---Oh, I can recall giving Steven and Anthony a couple of hams.

20

Anthony?---I gave Mr Paul, Anthony Paul, some, and Steve, some hams at Christmas time.

Which Christmas was that?---Oh, a couple of Christmases, I think. He's, he's a friend of mine.

Did you get favours from Mr Turner seeking his cooperation in relation to adjournment applications and the like which you would make?

THE COMMISSIONER: What do you mean by that?

30

MR STAEHLI: Well, for example, in relation to this, the adjournment application of Ms Smith in particular the call suggests that it was a call typical of the kind that you would make to him about matters that you had in the list at Wagga. Was that right?---Oh yes, sir.

And there's a possible suggestion contained in the things which are said there, that when you made excuses and in this particular case when you made an excuse for not being there that Mr Turner might have understood that the excuse was not completely factual?---I don't accept that, sir, I told lies to Steve in that regard.

40

I'm sorry?---I told Steve lies about that.

That's right, you did. Why didn't you tell him the truth?---I can't explain that, sir. It wouldn't have made any difference at all. That's the thing, I just, it staggers me. I don't know why I said that and as with most or all the prosecutors, they would accept what I said and they would assume I would not mislead them and I have. I cannot explain why I said that to Sergeant Turner, I just can't, I've, that angers me.

In the time since the Kelly trial or during the Kelly trial and since that time, you've gone to Wagga on regular occasions?---Yes, sir.

When you do you obviously, I gather from what you've said, drink in Wagga hotels?---Yes, sir.

Every day that you're there?---Yes, sir, until February this year, but I still go to the hotels but I haven't drunk.

10

What – you drink something other than alcohol when you're there?---Oh, yeah, orange juice or water or have a cup of tea.

Right. And when you do that do you ever drink with Mr Turner?---I have.

All right. How often?---I was there for a week. Steve's married and I was on my own. I'd go out with Anthony most nights and Steve might well come out with some other prosecutors and other defence people once in that week.

20

I'm sorry. Once in that week, did you say?---On average, I suppose.

All right. And in the course of those social gatherings would you talk about the cases that you had?---You may do.

I'm sorry?---You may do in a general sense.

All right. And did you ever exercise any caution about things which you'd say to Mr Turner about the conduct of cases which you were going to run?

30

---Oh, if I was intoxicated I wouldn't know what I'd say, sir.

All right. So from that can we accept that there would be occasions on which you'd talk about matters which might otherwise be confidential or might be regarded by you as confidential if you were sober?---Probably.

All right. Did you seek to obtain information from him about the conduct of prosecution cases?---Well, we would speak in general terms. If I had a matter that – I'd actually often ring Steve and ask him some advice in relation to parts of the law 'cause he, he's very smart in that regard.

40

Nothing particularly comes to mind but if I had a case that couldn't win, you know, we'd, we'd discuss, I would have discussed the Kelly with Mr – with Sergeant Turner, in relation to – we had many conversations in relation to different matters of law. He's very good company.

You would have discussed it with him, did you say?---Oh, I, I would have discussed the Kelly trial with Sergeant Turner in a general sense.

During the course of the trial do you mean?---I can't recall if I went out with him during that trial but - - -

No. Did you ever discuss the other investigation into Mr Kelly with him?
---Oh, I may, I may well have.

All right. It's a possibility, is it?---It is a possibility.

10 Other than the hams that you've mentioned, have you ever provided any other benefits to Mr Turner?---I, I wouldn't call it a benefit, sir. I've given hams to lots of people. I, I, I can't think of anything else.

All right. Now, how did you get it to him or get those hams to him?---Oh, I would, would get hams from Temora.

20 Deliver them personally?---I've never been to Steven's house that I can recall. I, I would, I may well have had someone drop them over to Mr Paul's office, someone from, a friend from Temora or if I was in Temora and going to Wagga I'd, I'd generally leave them, from memory, at, in Anthony Paul's fridge.

All right. What – with the request that Mr Paul provide it to Mr Turner and the other prosecutors. Is that what you're saying?---I think so.

Yes. They're the only further questions, I have.

THE COMMISSIONER: Yes. Mr Taylor, did you want to ask - - -

30 MR TAYLOR: Commissioner, I seek authorisation to appear on behalf of Sergeant Turner.

THE COMMISSIONER: Yes. That's granted.

MR TAYLOR: And I'd seek to ask Mr Hart some brief questions in relation to his evidence.

THE COMMISSIONER: Yes, yes, you can.

40 MR TAYLOR: Thank you, Commissioner.

Mr Hart, you've known Sergeant Turner since you were both in the police together - - -?---Yes, sir.

- - - some twenty-odd years ago. Correct?---Probably more.

And you've known him as a prosecutor both at Griffith and at Wagga over a similar sort of period?---Yes, sir.

And you consider him a friend?---Yes, sir.

And I think you said that you would often speak to him about the law?
---Yes, sir.

You mean, in that sense, you'd ask him questions that you didn't know answers to in relation to legal advice as opposed to factual disputes and things of that nature?---Yes, sir.

10 And would it be correct that, to say that you used him as a sounding board, the same as you would any other colleague, say another barrister or solicitor?---On many occasions.

And is it true that in those conversations that you had with him, you'd speak in general terms about cases you had not only in Wagga, but in Sydney or other courts throughout New South Wales?---Yes, sir.

Now in relation to the telephone conversation regarding the Smith matter, you said to the Commission on a number of occasions that you lied to Mr
20 Turner. Correct?---Yes, I did.

And when Mr Staehli asked you why you didn't tell the truth to Mr Turner, you said you didn't know why?---That's correct.

But I suggest to you that one reason why you may not have told Sergeant Turner the truth is because you knew he wouldn't be party to misleading the court?---That would be true.

And it's a situation that you knew the magistrates at Wagga reasonably well
30 because you regularly appeared there.---That's correct.

Is your understanding that other than the local barristers in Wagga, you perhaps were the most frequent visitor to the Wagga Local Court from the bar?---That would be true.

And in relation to the two magistrates that have been referred to in the evidence, Mr Dare and Mr Murray - - -Yes, sir.

- - - there's a distinct difference in how they approach matters?---Most
40 certainly.

And is it correct to say that, for instance in relation to an adjournment application, Mr Murray would want chapter and verse as to why the matter would be sought to be adjourned?---Yes, sir.

And is it the situation that perhaps comparing Mr Dare's situation, he wouldn't be as inquisitive as to the detail of why the application was being made?---That's a fair comment.

And it's the situation isn't it, that in relation to this Smith matter and the conversation, I think counsel assisting said it was Exhibit 40, but I think it's Exhibit 68, Commissioner. That's the telephone - - -

THE COMMISSIONER: I'll tell you, it's 66.

MR TAYLOR: 66 is it. Thank you. I wasn't here when those - - -

10 THE COMMISSIONER: I'm looking at it now.

MR TAYLOR: In relation to the Smith matter, are you aware that Mr Murray was the magistrate at court on that day?---Yes, sir.

And to put it bluntly, you were seeking to avoid him weren't you?---Yes, sir.

20 And can I suggest to you that one reason why you would mislead Sergeant Turner is because you knew he wouldn't be a party to deliberately mislead Mr Murray?---I agree with that.

Thank you. Now in relation to these gifts that you've told us about. Is it, you said a couple of hams were given to Sergeant Turner?---That's, the best of my recollection. It could've been more.

And he's not the only prosecutor you've given gifts to. Is that correct? ---No.

30 And that's a practice that you were (not transcribable) - - -?---For many years.

- - - other, other, other people. And these times that you were in Wagga you say that you'd often go out with Mr Paul most nights.---Yes, sir.

And Sergeant Turner might, on an average join you once a week.---That's the best of my recollection.

40 And that would be for a drink or a meal or something of that nature?---We'd have a meal and a drink.

And during the course of those occasions, have you ever corruptly suggested to Sergeant Turner any dealings in relation to the cases involving you and he?---Definitely not.

And is it the situation that Sergeant Turner is married?---Yes, sir.

On these occasions he'd often leave before the evening finished, if I could use that term?---Oh, he'd always leave far before, long before me.

Yes, thank you, Commissioner.

THE COMMISSIONER: Yes, Mr McIlwaine.

MR MCILWAIN: I have some questions for Mr Hart. Before I embark on that, I don't have copies of all the transcripts, particularly in regard to 11 November. I'm just wondering if it's convenient - - -

10 THE COMMISSIONER: Well, I'll take the adjournment now. You are appearing for a number of people in this case.

MR MCILWAIN: But the questions are on behalf of Mr Kelly.

THE COMMISSIONER: Kelly. All right. Well, I might take the adjournment now. Mr Staehli, I think you're going, I was told you were going to call Mr Turner. Is that right?

MR STAEHLI: Yes.

20 THE COMMISSIONER: You might explain to me, I've read his transcript again on the telephone, what, what is potentially wrong with that conversation?

MR STAEHLI: Well, there's a - - -

THE COMMISSIONER: Or raises some concern?

MR STAEHLI: I'd prefer to put those things to the witness if I might, Commissioner.
30

THE COMMISSIONER: Yes. Well, I just - - -

MR STAEHLI: But they're along the lines of what I've - - -

THE COMMISSIONER: (not transcribable) here, but - - -

MR STAEHLI: Yes. They're along the lines of what I put to Mr Hart since Mr Turner has been involved by Mr Hart in the context of the false information which was being provided to the court, so it's sought to put
40 those matters to Mr Turner and ask him about his involvement.

THE COMMISSIONER: (not transcribable) All right. Well, I'll take an adjournment.

SHORT ADJOURNMENT

[11.10am]

THE COMMISSIONER: Yes, Mr Hart. Yes, Mr McIlwaine.

MR McILWAIN: Thank you, Commissioner.

THE COMMISSIONER: Mr Hart, Mr McIlwaine wants to ask questions?--
-Yes, sir.

He has appeared for a number of people here but this time he's asking
questions on behalf of Mr Kelly?---Yes, sir.

10

MR McILWAIN: Mr Hart, I want to ask you some questions about the
bill that was rendered to the Attorney General's?---Yes, sir.

Now, I want you to assume that that was forwarded by Mr Kelly on the,
under a letter dated 15 July 2008?---I accept that.

Now, prior to that bill being forwarded, you had the view, did you not,
whether it be legally correct or not, that you could increase the amount that
you might otherwise pay a client who didn't have a great deal of funds
because costs had been awarded to your client. Is that correct?---That's
correct.

20

And accordingly, you believed prior to 15 July 2008 that there was nothing
untoward or improper in Mr Paul forwarding an account on your, in relation
to your fees, which included an amount for your fees which might be less
than the amount you would have accepted if there'd been no costs awarded.
Is that correct?---I agree with that.

Now, it's also true is it not that in your dealing with clients not just
Mr Kelly that you basically asked clients for an amount of money,
sometimes that amount was excessive but you effectively accepted what the
client paid you. Is that correct?---That's correct.

30

For example, this morning you were played a telephone intercept of your
dealings with Mr McShane?---Yes, sir.

And remember you asked him for six or \$7,000?---Yes, sir.

On the pretext that you could assist his matter in public?---Yes, sir.

40

But at the end of the day you, I think you've told the court - - -?---My
recollection is he paid me 2,000.

Paid you \$2,000. And I think that's also perhaps the case with Mr Donohue
senior, do you remember you asked (not transcribable) a substantial amount
of money and he in fact paid you a substantial amount less?---And there
appeared to be two lots of, two cheques for 1,000 each, that's correct.

And that in fact was the practice?---Yes, sir.

To be blunt, you would seek to extract from your clients what you thought you could get out of it?---That's a fair comment, sir.

Now, because prior to 15 July 2008 you had the view that there was nothing improper about the increasing of your daily rate. You at no stage indicated to Mr Kelly that you were doing anything g improper. That's correct, isn't it?---That's correct.

10

Now, there was a telephone intercept played which is Exhibit 30 and it's not a conversation between yourself and Mr Kelly but it was a conversation between Mr Kelly and Ms Wright, his girlfriend at the time. Do you recall him in that conversation?---Yes, I do.

And perhaps the witness can be shown Exhibit 30. Can I take you to the top of the first page, the third line, Mr Kelly says, I go back sorry. Firstly, Mr Kelly says, "Oh, I spoke t John Hart, the barrister"?---Yes, sir.

20

Now, this is on the 11 November 2008 and it's at a point in time where the cheque for \$45,000 has been received. That's your understanding?---Yes, sir.

And he says that, in the third heading there, you said this to him, "And I said, look, is it worth you doing it?" He said, "Look, Jason, at the end of the day, the government's got no money, there's nothing written anywhere that says much he'd have to pay you or have to pay anything." He said, that's referring to you, "They could come back and told, told you they weren't going to pay you 5,000 bucks, there's nothing you could do about it"?---

30

Yes, sir.

Then it goes on, from Ms Wright, Kelly says, he said again referring to the conversation with you, "At the end of the day, there's no point worrying about it," he said, "How much actually, have you actually paid?" I said, "I don't know, nearly thirty." He said, referring to you, "Righto, let's just put five grand in each of our pockets and walk away and leave it at that"?---Yes, sir.

40

Now, do you recall the conversation prior to Mr, the conversation you had with Mr Kelly that caused him to have that conversation?---I can remember speaking about getting my \$5,000 that we'd agreed on.

You recall I think him ringing you and telling him a cheque for \$45,000 was coming?---I do.

That was the amount?---I, I - - -

You certainly recall having a conversation?---Yes, sir.

And he is saying in that conversation you suggested to him that he could keep \$5,000. Is that the call - - -?---I may well have, sir, but I can't deny that.

Does that accord with your memory?---I can't remember the specifics of it but I said that I, I would have said that, I can't recall actually saying that, however I was more concerned with getting my five, it didn't particularly me what happened to the, what else was there.

10

So you don't challenge the proposition that it was your idea from the outset, the question of Mr Kelly retaining some money originated from you. Do you agree with that proposition?---I would have, I certainly said there'd be a quid at the end of the day in relation to, but I never knew how much he'd paid Mr Paul initially.

20

Forgetting about general things about quid at the end of the day, but the question of the \$5,000, the proposition that Mr Kelly could retain \$5,000, I suggest to you came from you in a conversation with Mr Kelly some time on 11 November?---It may well have, sir.

And I want to take you now to Exhibit 85 which is a telephone intercept conversation on 14 July 2008?---Yes, sir.

Now that's a day prior to the actual letter being sent off by Mr Kelly and that's you having a discussion with Mr Paul about your right, if one existed, to claim higher costs because costs had been awarded. Do you agree with that?---Yes, sir.

30

Would you agree that reading that conversation both yourself and Mr Paul were strongly of the view that you should be able to do that?---I agree with that.

I want to take you to page 4 of that transcript and that starts up Mr Paul saying, "He said you'd pumped it up." If you could just read that page again?---Yes, sir.

40

See what's happening there is Mr Paul's telling you about an incident where Mr Kelly has accused Mr Paul of pumping it up?---Yes, sir.

And Mr Paul, and Mr Kelly specifically raises a question of a Sunday conference which there's been some evidence about as to whether in fact it took place or not. Correct?---Yes. Oh, I, I don't think I've been asked a question about that.

I see, but in any event I want you to assume the evidence is that Mr Kelly queried Mr Paul about the conference on the Sunday before the trial and it's Mr Kelly's evidence that Mr Paul asserted to him the conference had taken

place although he, Mr Kelly, hadn't been present, okay, I want you to assume that. Now, what Mr Paul is saying to you in that conversation is it not is that the bill is entirely proper. All the attendances are proper attendances. That was your understanding?---I accept that.

And you accept that Mr Paul told you?---Yes.

Going onto another matter, after the money was received, I withdraw that. Nothing further.

10

THE COMMISSIONER: Yes, you may step down, thank you, Mr Hart.

THE WITNESS WITHDREW

[11.57am]

THE COMMISSIONER: Thank you. Yes, Mr Staehli.

20

MR STAEHLI: Yes, it's proposed we call Mr Turner next, Commissioner.

MR TAYLOR: Commissioner, I can indicate he'll take an oath from the bible and now seek the declaration.

THE COMMISSIONER: Yes, all right, I'll do that.

MR TAYLOR: Thank you.

30 THE COMMISSIONER: Mr Turner, take a seat.

MR TURNER: Thank you, sir.

THE COMMISSIONER: You are legally represented so I'm assuming you have had explained to you if you didn't already know it your entitlements and your obligations under this legislation. All I'm going to remind you of is the importance the parliament attaches to people telling the truth who are called to this inquiry and the sanctions the parliament has authorised, namely gaol terms to people who don't tell the truth. I'll just remind you of that.

40

MR TURNER: Thank you, sir, yes.

THE COMMISSIONER: You have been I'm sure told about your right to object and the consequences of that, and anyway I'm going to give you a declaration which has the effect of deeming you to have objected to everything, but as I said before, you don't have to articulate the objection, but I must remind you that you are, whether you object or not, if what

you're charged with is an offence under the Act, and in particular an offence of not telling the truth, the questions and answers would be used in any proceedings against you. Do you understand that?

MR TURNER: Yes, sir.

THE COMMISSIONER: And you'll take an oath on the bible you told me?

MR TURNER: Yes, sir.

10

THE COMMISSIONER: Would you stand up, would you give him the bible.

THE COMMISSIONER: Yes. I declare pursuant to section 38 of the legislation that all questions asked of this witness, all answers given and all requests made shall be deemed to be subject to his objection and hence there is no need for him to object to any particular question, request or answer and but you are again reminded that if you were charged with not telling the truth the questions and answers would be used against you?---Yes, sir.

10

This declaration will endure so long as you're giving evidence which I hope will not be beyond today, but so long as you're giving evidence in the public inquiry?---Thanks, sir.

Yes, Mr Staehli.

MR STAEHLI: What's your full name please?---It's Steven Edward Turner.

20 And what's your employment?---I'm a police prosecutor, senior sergeant and area prosecutor coordinator on the police prosecuting command, stationed at Wagga Wagga.

For how long have you been stationed at Wagga?---Over thirteen years.

And for how long have you been a prosecutor?---I've been a prosecutor since 1981, confirmed as a prosecutor in 1985.

30 And for how long have you known Mr Hart?---While he was still employed as a police prosecutor.

Right. Do you remember when that was?---I'm not sure. I know it was in the eighties.

Right. I'm not sure if you had the opportunity to read or hear any of the evidence that's been given in this inquiry in relation to the matter of Jessica Smith. Have you - - -?---I've read transcripts leading up. I haven't read any transcripts yesterday, sir, 'cause I was flown up here yesterday afternoon.

40 All right.

THE COMMISSIONER: I think you'd talked about the phone calls?---Yes. I've - thank you, sir, yes.

MR STAEHLI: And I think perhaps it's appropriate in the circumstances to play a number of calls to Mr Turner, if I may.

THE COMMISSIONER: All right, yes.

MR STAEHLI: The first is Exhibit 66.

THE COMMISSIONER: Yes.

MR STAEHLI: Mr Turner, Mr Hart's agreed that this is a call between him and you on the 14th of April this year in which he talks to you about the matter of Jessica Smith which was listed on that day in the Local Court at Wagga. So if you'd listen to this and hopefully the transcript will come up on the screen in front of you there as well. 14th of April at 8.34.

TELEPHONE INTERCEPT PLAYED

[12.02pm]

MR STAEHLI: All right. Did you recognise your own voice on that call, Mr Turner?---Yes, sir.

All right. And then perhaps it's convenient to play you a further call which – a part of a further call which has also been tendered and became Exhibit 68, the same day at 9.03.33.

THE COMMISSIONER: 68.

MR STAEHLI: The first part of this call has been edited out but it can be played if necessary.

THE COMMISSIONER: Yes. Okay.

TELEPHONE INTERCEPT PLAYED

[12.06pm]

MR STAEHLI: Did you hear your voice on that call, Exhibit 68, Mr Turner?---Yes, sir.

Is it fair to say that you expressed some scepticism about some of the things that Mr Hart said in that last call, Exhibit 68?---That's the way it could be taken but that's not the way I would have meant it.

I'm sorry? That's the not the way - - -?---That I would have meant that conversation.

Right. Well, what do you mean by that?---Unfortunately I've used the term Mr Anal and I'm stuck with what I've said, but that's referring to Mr Murray.

Yes?---Mr Murray is very pedantic, he's a good magistrate, but he's very pedantic and exact in what he does. Now, if I have to indicate anything to him with this matter or other matters, he doesn't just want a global the matter needs to be adjourned, he'd want chapter and verse in relation to what was said, what was told to me and in actual fact sometimes I've had to call other witnesses, police that have actually received that information from different solicitors under oath and that's the reason why I wanted to clarify exactly what I was told because Mr Murray wanted to know exactly what I was told in a lot of cases.

10

All right. Well, in one sense you've misunderstood what I was asking because the intention of my question was in the call it appears as though you were expressing some doubt about what Mr Hart is telling you being the truth. Was that the position?---That's not the way I took it.

No. All right. Did you see the letter in this matter which was ultimately provided to the court do you remember?---I don't remember, sir. It's something that I've done in the matter of course that the letter would normally be sent to the court and I may never see the letter.

20

All right. Well, perhaps it could just be shown to Mr Turner, please, it's part of Exhibit 71, Commissioner.

THE COMMISSIONER: Yes.

MR STAEHLI: If I can find it, that's a large bundle.

THE COMMISSIONER: Yes. Show that to -- oh, you might show it to Mr Staehli first.

30

MR STAEHLI: Yes. I'll just grab the letter. The letter is the third-last document. I'll just put it at the top of the pile, Mr Turner?---Thank you, sir.

It's a letter dated the 14th of April, 2009?---Yes, I have that.

Can you look at that and see whether or not by looking at it you're able to remember whether or not you saw it on the day?---I have no recollection of seeing this, sir, but that wouldn't be usual.

40 It wouldn't be unusual?---Not to see it, no.

No. All right. At this time, that is, at around April 2009, what was your relationship with Mr Hart?---I had both a professional relationship and he was a friend of mine.

All right. And what was the nature of the contact that you had with him in April of 2009?---If he came down for court matters then, as he's correctly

indicated today, that was the situation, if he was down for a week I'd meet him for one night.

Right. And drink with him at a Wagga hotel?---Yes, sir.

With others?---Yes, sir.

Usually?---Yes.

10 All right. And did the personal relationship ever impinge upon your professional duties?---No, sir.

What was your relationship with Mr Paul at around this time?---I've known Mr Paul since I've been at Wagga, over 13 years, and I had both a professional relationship with him and also as a friend.

All right. And did you – was the extent of your personal relationship with Mr Paul the same as it was with Mr Hart?---It's the same but I may see him more than Mr Hart.

20 Right. And drink with him?---Yes, sir.

And did the personal relationship ever impinge on the professional relationship?---No, sir.

You know in this – well, perhaps you don't. But in the circumstances of that matter concerning Jessica Smith and that was the matter involved in those two phone calls just played to you - - -?---Yes, sir.

30 - - - that Mr Hart was seeking through you to have you advise the court about the reasons for an adjournment which would be supported by the letter which later apparently went to the court. Do you understand that? ---Yes, sir, I do.

Did you have any suspicion that what Mr Hart was telling you was not the truth?---No, sir.

40 Did you have any experience of Mr Hart misleading the court in relation to reasons he might provide to seek an adjournment in any matter?---No, sir.

You knew though that he wished to evade Mr Murray in this particular matter. Is that right?---Yes, sir.

And in the second call that was played to you, Exhibit 68, there was a reference to you helping him out, I'd suggest, and I mean to use that term neutrally, in terms of when it was that Mr Dare would next be sitting by himself in Wagga?---I've apparently told him that, yes.

Right. Do you see anything improper in telling Mr Hart that information?
---No, sir.

Do you see anything improper in assisting Mr Hart to identify dates on which Mr Dare was sitting alone so that he might have his matters listed before Mr Dare rather than Mr Murray?---No, sir.

Did you provide that assistance to other practitioners?---Yes, sir.

10 It would seem strange that Mr Murray ended up hearing any pleas. Does he?---He certainly does, sir. He's the co-ordinating magistrate. He tends to have a fairly regimental control and whenever he can will do all the major list days in Wagga.

You knew, however, that it was Mr Hart's practice to try and list pleas at least, perhaps all matters, in front of Mr Dare?---I don't think Mr Hart would be alone in that fact, your Honour, sir.

20 Can I play you this further call, although not between yourself and Mr Hart but between yourself and someone else. It's a call on the 16th of June, 2009, Commissioner at 8.35. It's not been referred to before.

THE COMMISSIONER: It will be Exhibit 86 – 87.

**#EXHIBIT 87 - PIC CONTROLLED TELEPHONE SYSTEM
TRANSCRIPT SESSION NUMBER 9649 ON 16/06/2009 AT 8:35:50
(TURNER TO PAUL)**

30

THE COMMISSIONER: Yes?---Excuse me, sir, could I grab a hard copy as well, please?

MR STAEHLI: No. Are you able to read it on the screen there?---Yes, I can.

40 **TELEPHONE INTERCEPT PLAYED** **[12.16pm]**

MR STAEHLI: Do you recognise your own voice on that call?---Yes, sir, I do.

And do you recognise the other voice?---Yes, sir.

As being whose voice?---Mr Paul.

Right. And in that call is it the case that Mr Paul asks you to cause a matter which was otherwise to be listed apparently on the following day, to which he refers, and list it on the day in question, apparently the day of this call, the 16th of June. Is that your understanding of it?---That's the way I understand the transcript, yes, your Honour.

With the purpose, it would seem, I'd suggest, of getting that matter to be before Mr Dare. Is that right?---That's not the reason he gave me, sir.

10

No. What was the reason he gave you?---In relation, I think, I believe, I haven't got it on the screen now, I think he mentioned about university.

Right. And what did you understand, are you able to say what you understood that to mean?---I accepted what he said, that she wasn't available on the day that it was down for.

All right. You, by your tone of voice and by the words, "Oh, that'll do," expressed some modest disbelief at what Mr Paul was telling you, didn't you?---Well, that's the way one spin could be put on it but that's not the way I would have taken it.

20

That's not the way, what, I'm sorry?---I would have taken it.

Well, I'm really asking you about whether or not you did take it that way in this call?---Well, obviously I don't remember that conversation.

30

Right?---But from what's on there that's not the way I would have taken it. I've had no, no reasons to doubt what Mr Paul's told me about various clients.

Well, you may or may not have had a reason but I'm suggesting to you that in that call you did by your tone of voice express disbelief consistent with the proposition that you believed what Mr Paul was telling you was untrue? ---No, sir. It was a sense of amusement for matters going before Mr Dare. It's no surprise to anyone but I still accept what Mr Paul told me.

40

Right. So are you saying that the call itself does not show you were expressing disbelief at what Mr Paul was telling you?---Well, not from my point of view, sir, I realise it can be taken different ways but not from my point of view.

You see, one conclusion that might be drawn, it might not be as well, but one possible inference is that you were aware that Mr Paul might offer a false excuse for the purpose of getting a matter to be brought back into Mr Dare's court?---That's a point of view, sir, but not, not the one that I accepted.

Did that sort of thing happen from time to time other than in this particular case?

THE COMMISSIONER: What sort of thing?

MR STAEHLI: That is people seeking to re-list matters so that to your knowledge they would be brought into Mr Dare's court when they've listed on another day. Did that happen from time to time?---That's possible, sir. What they told me could be different reasons to what they wanted to do. I can only operate on what I'm told.

Yes. Have you ever questioned anyone about reasons which you suspected to be untrue for re-listing such matters?---I've raised matters in court.

I mean with the practitioners who might make such requests, such as Mr Paul apparently made on this occasion?---I've asked the question, I've got an answer and accepted it.

All right. Do you think there's anything wrong in people making up excuses so as to get matters re-listed in front of a preferred magistrate?---If they're not correct, yes, I agree with you.

So far as Mr Hart is concerned, has he from time to time provided you with gifts like hams?---I think by memory, the last two Christmases I think I and other civilians, not connected with the systems have received two hams, yes.

All right. When you say other civilians, what do you mean?---Other friends of Mr Hart's.

I see. So, what are you saying that last year before Christmas you got two hams from him?---I think I got one last year.

Right.---And I think I got one the year before.

Right. And is that, is the ham that you received, was it intended as you understood it for you alone, that is you apart from any other prosecutor? ---The one I got, yes.

How did you get it?---I think one of them I picked from Mr Paul's office, in his fridge.

Right.---The other one I may have got off Mr Hart out of his vehicle, I think.

Out of this vehicle?---Yes.

What at the police station or the courthouse or something you mean?---No. If it wasn't there, I'm not sure where it was.

All right. Has Mr Hart, in the last two years ever given you any other benefits or presents?---No other presents. We've had drinks together. He may have bought extra beers then I did, sometimes. Just what mates do.

Right. There's a call, in the call that was played before between you and him concerning obtaining tickets for a rugby league game at WIN Stadium. Did you hear that conversation?---Yes, sir.

10 Has Mr Hart ever bought tickets for you to football games?---No. Mr Hart's correct what he said today. It never eventuated.

All right. And the incident in question may not have eventuated, but has he ever done such things on any other occasion?---No, sir.

Has he ever bought anything for you other than the ham and say, beers in a hotel situation?---We've been in shouts. Sometimes he's bought probably extra, which some mates do, some mates don't.

20 Yes. Other than that has he given you any benefits?---He may have shouted the odd meal there and I've shouted some of it back. But he still may be ahead.

All right. Do you mean meals when he happens to be in Wagga doing cases and the like. Is that what you mean?---That's right. That's right.

So independent of the drinking with other people in the hotels, would you occasionally have a meal with him on the nights that he was in Wagga?
---At the place where we were having a drink, sometimes I would,
30 sometimes I wouldn't. Depending on whether I get out too much and have to get home earlier.

All right. And are there any guidelines to which your subject in relation to the way in which prosecutors such as yourself should, to which they should adhere in so far as it concerns their relationship with the legal profession?
---There are.

Right. Does it include the necessity to declare gifts, no matter how trivial they are?---You've used the term gifts, but when I've been having a meal or
40 beers, I haven't really thought of it as gifts at the time.

All right.

THE COMMISSIONER: You were asked whether to your knowledge people in your position have a code that refers to what you should do if people offer you gifts?---Oh, sorry, sir. Yes.

MR STAEHLI: Right. And however small in value it might be, do you, does such a code cover things like the hams?---In my view it wouldn't.

It wouldn't?---Because I wasn't given the ham for any purpose.

Well, why were you given the ham?---He's a mate.

Right.---I buy mates things, he buys mates things.

10 All right. Have you ever bought him a ham?

THE COMMISSIONER: I reckon we're about the bottom of the barrel, I think.

MR STAEHLI: I think so. I don't have any further questions, thank you, Commissioner.

THE COMMISSIONER: All right. Do you want to ask any more?

20 MR TAYLOR: Just briefly, Commissioner. Sergeant, in your twenty odd years as a prosecutor you've had occasion to receive telephone calls from many legal practitioners on (not transcribable) in the morning before court starts?---Unfortunately, sir, yes.

It's often a busy time?---Extremely busy and stressful, sir, even for someone of my vintage.

30 And you can correct me if I'm wrong, calls from practitioners saying, I can't be at court or I need, I'm part heard in another matter or for whatever reason, they want their matters adjourned?---Yes, sir.

They notify you as a matter of courtesy?---Yes.

What's your usual practice when that happens?---It depends on the, how many times the matter's been adjourned. I mean if the matter's, if it's first time up, there's going to be no issue, even with someone like Mr Murray for adjournment. If it's been a matter that's been adjourned a number of times for case management, I need to know as much detail as possible.

40 And do you adopt the course to tell the practitioners that they should also notify the court?---That's a practice that, particularly when it gets to the difficult stage, where it's been adjourned a number of times, that's the practice I've tried to adopt.

And in those telephone calls that (not transcribable) in particular, Exhibit 68, you talk about I'm writing it down on my list. What did you mean by that?---I've been with prosecutors a long time so - - -

THE COMMISSIONER: Mr Taylor, look it was quite proper that Sergeant Turner was called here because the evidence that was before the Commission, particularly the evidence involving what Mr Hart said he was doing made it important to eliminate certain aspects of what might be following from that. So far as I'm concerned, the evidence that's before this Commission, and I can only talk about that, concerning Mr Turner, does not demonstrate any case of corrupt conduct.

MR TAYLOR: I will not take it further. Thank you, Commissioner.

10

THE COMMISSIONER: But as I say, the importance, he had to be called because there was, the behaviour of Mr Hart probably demanded that. There may be some comment in the report about what the code of conduct is, what relationship Crown Prosecutors have with members of the legal profession and the like, but whatever that is, it's not to be read as having at the present time, have any adverse consequences or imputations against Sergeant Turner. I mean, it's a very tricky business, is you get what is meant to be an honourable profession and what, it has the extent of having codes of conduct about how people deal with an honourable, I mean, anyway, if you start with the idea that the honourable professions are all dishonourable, you might as well give up the professions, I think.

20

MR TAYLOR: Thank you for that indication, Commissioner. I appreciate it.

THE COMMISSIONER: Anyway, you may step down, thank you very much.---Thank you, sir.

30 **THE WITNESS EXCUSED**

[12.29pm]

Yes. All right. Now, yes, Mr Staehli.

MR STAEHLI: Commissioner, it was intended to recall Mr Paul, but there are, before that happens, there are just, it's just one small subject area that I want to ask Mr Hart about. I'd like him to return just to answer a few more questions on a different topic.

40 THE COMMISSIONER: All right. He's been here a long time.

MR STAEHLI: Yes.

THE COMMISSIONER: Your case is fairly clear.

MR STAEHLI: It's just on a separate matter.

THE COMMISSIONER: Yes. All right. You're still under oath.

MR STAEHLI: Mr Hart, I want to ask you about some things which were entered on the memoranda of fees which were prepared in Mr Paul's office and were ultimately submitted by Mr Kelly to the Attorney Generals Department. Do you understand?---Yes, sir.

10 Did you ever see those documents?---No. I think when I came here at the private inquiry I was shown something. I don't know whether that was it.

What I meant was, had you ever seen them, did you ever seen them in 2008? ---No, sir.

At or around the time that they were prepared?---No, sir.

20 Do you remember that there's a discussion I think which you've heard in which you and Mr Paul talked about a conference said to have been had with Mr Kelly on 17 February 2008 being the Sunday before the trial?--- Yes.

Do you know that it's the case that you weren't in Wagga on the 17th of February?---I can't recall.

There are available to the Commission your mobile telephone records for that day, the 17th of February?---If you, if you, I accept that from yesterday, but I can't, I can't recall and I haven't got my diary, I can't recall.

30 And do you remember that you attended that - - -?---Was that the first day of the trial, sorry, sir?

No. It's the day before the first day of the trial.

THE COMMISSIONER: It was before.

MR STAEHLI: Yes. Sunday's the day before the 17th of February?---I'm sorry.

40 The records tend to suggest, let me put it to you in this way, Mr Hart, and I'll show you the records, if you like, that you were in Sydney on the 17th of February and that you drove to Wagga on the morning of the 18th of February?---I, I accept that.

THE COMMISSIONER: Well, what's being put to you is that the telephone calls reveal that you were in Sydney not in Wagga on that day when that conference was allegedly held?--- I accept that, sir.

MR STAEHLI: I'll tender these, Commissioner, but can I just it to Mr Hart in this brief way - - -?---I've seen that, I've seen that on the screen, sir, I accept that. It came up on the last screen.

What have you seen?---It came up on the last screen, Milsons Point and then Connolly's Gap on the next morning.

THE COMMISSIONER: (not transcribable) and Engadine (not transcribable).

10

MR STAEHLI: All right?---I accept that, sir

Yes, all right. So the records appear to show that you were in Sydney for the whole of the 17th of February and that you made your way to Wagga on the morning of the 18th of February?---I accept that.

All right. I tender these call charge records of Mr Hart.

THE COMMISSIONER: 88.

20

#EXHIBIT 88 - JOHN HART CALL CHARGE RECORDS FOR 17 FEBRUARY

MR STAEHLI: Thank you. I'll just tender them in this hard copy form, thank you.

30

THE COMMISSIONER: Yes.

MR STAEHLI: Notwithstanding that, Mr Hart, did you – you knew as a result of the conversations with Mr Paul that Mr Kelly had contested the existence or the fact of such a conference. Is that right?---Oh, that was shown to me this morning, sir.

Yes?---Yes.

40 THE COMMISSIONER: But did you know that at the time?---No, sir.

In February of last year that Paul – or even in April, in March or April, that Kelly was saying that there was no conference on the Sunday or maybe it was later, was it July was it?

MR STAEHLI: June/July.

THE COMMISSIONER: June/July. Did you know that in June/July Kelly was saying there was no conference on Sunday?---Well, that's what it appears, I - - -

Did you know that, that he was saying that?---There was something about he was bleating about a conference that was read this morning, sir, but I didn't know that.

10 I'm sorry, what's the answer? Did you know that Kelly was disputing that a conference was being held on Sunday?---Only from what was on that, on the telephone intercept, sir. But I – to be honest, I can't relate it back to the 17th whether I was there or not. Now that I – if you'd have asked me I would have said I'd assumed I was there but now I accept I wasn't.

All right.

20 MR STAEHLI: And you know, don't you, that a bill was sent in your name and consistently with Mr Paul's bill in his name, or in his firm's name, to the Attorney General seeking payment for the lengthy conference which was said to have occurred on the 17th of February but didn't?---I've never seen it but I accept that there was.

All right. And to the extent that the Attorney General's office would have allowed money to you and to Mr Paul's firm in relation to that conference, do you accept that that money shouldn't have been allowed if the conference didn't happen?---I accept that.

30 The other – amongst the other matters in the bills which were submitted to the Attorney General's Department were amounts of money said to be payable to you on the basis of you having prepared submissions in relation to the application that was made to the judge to let there be cross-examination about the sexual history of the complainant in the trial. Did you know that that was charged by Mr Paul on a bill in your name? ---I'm unaware of that.

40 It's the case, isn't it, that before the 18th of February, being the time when you attended Wagga for the trial, that you didn't involve yourself in any preparation in relation to that particular matter, did you?---I can't recall if I did or didn't sir. I think actually the week before I think I did look at it because it - - -

Well, when I asked you about this earlier on in the proceedings - - -?---I certainly didn't do any written submissions, sir, but I would have made inquiries, I think. At some stage I did. I don't know when it was.

Well, I'm not seeking to test your knowledge of the law, Mr Hart, but – not in this regard anyway, but when I asked you questions about this earlier in your evidence in this inquiry you didn't, you didn't know the relevant

section?---I, I accept that but I, I would have spoken to somebody and read something I assume about it. I can recall at some stage, and I don't know when it was, I can recall today that I read or got faxed to me and I can't recall when it was, a paper from the now District Court, Judge Leonie Flannery, in relation to those matters. I don't know when that was.

All right. Are you saying that you read that document in relation to Mr Kelly's matter?---I would have. That's the only time I've ever read it - in relation to prior sexual history.

10

Yes. They're the only further matters I have, thank you.

THE COMMISSIONER: Thank you. You can step down again, Mr - - -?
---Thank you.

THE WITNESS WITHDREW

[12.37pm]

20 THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: Then might we turn to Mr Paul, please.

THE COMMISSIONER: Yes. Mr Paul, would you come forward, please.

MR TAYLOR: Commissioner, just in relation to Sergeant Turner. I don't think you actually excused him formally.

THE COMMISSIONER: Oh, well, he is excused.

30

MR TAYLOR: Thank you.

THE COMMISSIONER: He needn't remain.

Yes, take a seat, Mr Paul.

THE COMMISSIONER: You are still under oath. You understand that?
---Yes, Commissioner.

MR STAEHLI: Mr Paul, were you present in the hearing room when that call was played a few moments ago to Mr Turner?---Yes.

10 Apparently involving the matter of Miss Oehm, O-E-H-M?---Yes.

In that call, which became - - -

THE COMMISSIONER: 88, I think, didn't it?

MR STAEHLI: 87 I'm told.

THE COMMISSIONER: 87. Yes, I'm sorry, 87.

20 MR STAEHLI: You sought to have Miss Oehm's matter moved to the day of the call, the 16th of the June, 2009 in that conversation with Mr Turner. Is that right?---Yes. Yes, I did.

And was the reason which you gave to Mr Turner about seeking to do that on that call, that is, something to do with the university tomorrow. Was that truthful?---I, I can't recall what her situation was with university but I was probably trying to put the matter before Mr Dare.

30 All right. And by saying that, is there any doubt in your mind that what you were attempting to do was to move the matter in front of Mr Dare on the day of that call?---Well, I was trying to recall that this morning. I just - I don't know whether Mr Dare was on the next day or if he was on, on that day but I was probably trying to put the matter before Mr Dare.

And by answering in that way are you suggesting that it's not enough for you to be able to determine whether or not you were telling the truth just to see the words which are contained in that call?---Sorry, can you repeat that, sir.

40 I'll put it another way. Perhaps the transcript might be brought up. Is that possible? Exhibit 87. Just a hardcopy, it'll have to just be shown to Mr Paul. When I've asked you questions about that hardcopy transcript in front of you just now, Mr Paul, you've said you can't recall the circumstances of Miss Oehm. Is that right?---Well, not entirely.

Well, at all?---Well, I can recall she was a suspended driver and she was, I know of her circumstances, she's a person I know that she's separated and is doing a university degree.

You see, if you're being truthful, I'd suggest you'd be able to look at that and say, I wouldn't of told Mr Turner anything other then the truth. Do you accept that?---Well, as I say, I can't remember the exact, her exact circumstances. I mean, if, if she was in court the next day, I would've thought Mr Dare was in court the next day as well. But I, I probably bought her forward to put her before Mr Dare.

10 And, well I'm suggesting to you that it could be inferred from the circumstances of the telephone call that you were prepared to tell Mr Turner some things which were untrue so as to provide some legitimacy to moving Miss Oehm's matter in front of Mr Dare.---Well, I didn't give him much of an excuse there, I just said definitely with the, with the university tomorrow.

That's right, you did say that. And perhaps it isn't much of an excuse, but are you unable to say whether or not it was true?---Look, I can't recall the circumstances of, of her. As I say, I'm, I believe I would've brought the matter forward to put it before Mr Dare.

20 Well, we know that's the case, Mr Paul. What I'm asking you is are you unable to say simply because they're words spoken by you, whether or not those words are true?---I, look I just can't recall the circumstances, other than I know the matter and, but I can't recall the exact circumstances.

All right. Then I'd like you to listen to a call which took place a couple of months earlier in relation to a different matter involving apparently a man called Kirkwood. Commissioner, this is a call which hasn't been played before either. It's 19 April, 2009 at 14.10 hours.

30 THE COMMISSIONER: That'll be Exhibit 88.

**#EXHIBIT 89 - PIC CONTROLLED TELEPHONE SYSTEM
TRANSCRIPT SESSION NUMBER 2461 ON 19/04/2009 AT 14:10:25
(PAUL/MURPHY/KIRKY)**

40 THE COMMISSIONER: Yes.

MR STAEHLI: Could you look at this hardcopy of the transcript, please.

TELEPHONE INTERCEPT PLAYED

[12.44pm]

MR STAEHLI: (not transcribable) of the court, although it's available.

THE COMMISSIONER: Yeah, I think it's, if necessary, yes.

MR STAEHLI: Mr Paul, did you recognise your voice on that call?---Yes, I did, yes, I did.

And that of two men who are apparently known to you?---Yes.

Being who?---Dan Murphy and David Kirkwood, his first name is.

10

David Kirkwood?---Yes.

And in that call you suggest to him don't you that he should (not transcribable) provide information to suggest that he'd moved to Wagga?---Yes, I did.

So that the matter in which he was apparently involved might be transferred to Wagga from Sydney. Is that right?---Yes.

20 Why did you do that?---Ah, he was a, he was a mate of mine that I knew from overseas and I thought he'd get a better result in Wagga.

And is that a sufficient justification for you being involved in - - -?---No, it's not.

In providing false information to a court?---No, it's not.

The matter did end up in Wagga, did it?---Yes, it did.

30 And did it end up in Wagga because, as you understood it, false information had been provided to a court about - - -?---Yes.

- - - where Mr Kirk would live?---Yes, it did. Yes, it did.

Did you, do you know who if anyone appeared for Mr Kirkwood on the occasion of the matter being transferred from Sydney to Wagga?---I probably wrote a letter to the court.

40 Sorry?---I probably wrote a letter to the court.

In the course of the call, you also refer to having the rosters in apparently your draw. Is that right?---Yes.

By that did you mean the rosters of the magistrates who sat in Wagga from time to time?---Yes.

And you, in a somewhat cryptic way, said to Mr Kirkwood, "I didn't say that, I didn't say that", as if to tell him that you should not have had the

rosters. Is that right?---No, no, that's, I think it's a document that's, the court's got, I've got, I've got, it tells me where, where the magistrates are sitting and if I've got two courts here or one court, to know whether or not I'm going to have a hearing week on this week or non hearing week.

Well, I appreciate it's not top secret material but where did you get your copy of that roster that you're talking about?---I got it from the prosecutor's office.

10 From the prosecutor's office?---Yeah.

From a particular prosecutor?---Probably, probably Steve Turner gave it to me.

All right. And why did you say to Mr Kirkwood or why did you imply that your possession of the roster was to be kept a secret?

---Well, it wasn't, it wasn't, I was just being smart about it. But it's not a secret, and courts have got it.

20 All right. But you what intended, are you saying you intended him to think that you were able to get information by pulling some strings?---No, not at all. No, I was just being smart about that.

Well, usually when you attempt to show someone you're smart, you've got a particular motivation. What was yours?---Well, none really at all. I mean, I was suggesting to him that the matter should be before a lenient magistrate in Wagga.

30 Did you do this, that sort of thing, that is encourage clients, by they friends or otherwise to give false information to courts?---It wasn't my practice.

All right. Have you done it on occasions other then this one?---Not that I recall, but I, I mean I just, I, I do a mile of matters every week before this court.

40 Well, it might be hoped, perhaps, that you'd know how often it was that you were involved in getting people to mislead a court. Are you saying you can't tell the Commission one way or the other whether you've done this before?---It's just not my normal practice. I mean that, as I say, I appear every day of the week and do a lot of matters and it's just not, it's not my normal practice.

Is your explanation that Mr Kirkwood was a friend for whom you wanted to achieve a good result?---Well, he certainly was a good friend.

Have you got any explanation other then that?---No. That I, yeah, he was a good friend and he's, the Murphy's were good friends and yeah, I was trying to achieve a good result for him.

Did you actually appear for him when he came before the court at Wagga?
---Yes.

Did he appear in front of Magistrate Dare do you know?---Look, I can't recall, but I assume so.

All right. Did he get a good result?---I think he received a Section 10.

10 All right.---He did, no, he did.

I think it's actually the case. Just for completeness, Commissioner that Mr Hart appeared for Mr Kirkwood on the plea finally.---Oh, did he.

But the circumstances of that are relatively unimportant so I won't go into the detail of that. Other than on that topic, there are a number of questions I wish to ask Mr Paul to complete the costs application segment. I might do that after the adjournment.

20 THE COMMISSIONER: At 2 o'clock. Yes, I'll do that. I'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

12.57pm]