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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

OPERATION SEGOMO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

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AT 10.10 AM

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THE COMMISSIONER: - - -the payment being made to public officials employed in the administration of the justice system. Those public officials would act favourably in the interests of that client. The general scope and purpose of this inquiry is to gather evidence relevant to the above allegations to determine whether any person who has engaged in corrupt conduct and the investigation is being conducted for the purpose of determining matters referred to in section 13(2) of the legislation and I have decided that the investigation at this stage should be in the nature of a public inquiry. Yes. Thank you. Yes, Mr Staehli.

10

MR STAEHLI: Yes, my pleasure, Commissioner. I appear as counsel assisting.

THE COMMISSIONER: Yes. Should I open now or go through these.

MR STAEHLI: Yes. Commissioner, as you know, this public inquiry concerns allegations relating to the conduct of a Sydney barrister, John Hart, a Wagga Wagga solicitor, Anthony Paul, and a number of clients of Mr Hart.

20

As you've mentioned, there are three categories of allegations. I'll put them in a slightly different way. The first is that Mr Hart, on a number of occasions in 2008 and 2009, represented to some of his clients that money given to him might in turn be paid to public officials employed in the criminal justice system and that such public officials would then act favourably in the interests of that client.

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Secondly, that Mr Hart, on a number of occasions in 2008 and 2009, gave false information to judicial officers in the Local Court in an attempt to secure adjournments of criminal proceedings or to secure a particular venue or a particular magistrate for criminal proceedings.

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Thirdly, that Mr Hart and his instructing solicitor in Wagga, Anthony Paul, with the knowledge of a client, Jason Kelly, agreed to deliberately inflate a claim for costs made to the Attorney General's Department under the Costs in Criminal Cases Act 1967 following Kelly's acquittal on criminal charges in the District Court at Wagga in February 2008. I'll give some further details now of some but not all of the matters that will be explored in this public inquiry.

The first is an example of the first allegation that I mentioned. In a trial commencing on 18 February 2008 Mr Hart appeared as counsel for Jason Kelly in the District Court at Wagga. Anthony Paul instructed him as his solicitor. Both Kelly and his co-accused were found not guilty on the 26 February 2008. Before and after the trial New South Wales Police detectives in Wagga were investigating allegations of other separate serious criminal offences alleged by a complainant to have been committed by Kelly and two other men, Christopher Trinder and Jeffrey Nankivell.

The Commission's inquiries to date suggest that shortly after the trial finished in February 2008 Mr Hart sought to obtain a substantial sum of money from Kelly which was, Hart said, in effect to be passed on to one or more public officials to ensure that any proposed prosecution of Kelly Trinder and Nankivell would not eventuate. It's anticipated the evidence may reveal that such a payment or payments were made soon after to Mr Hart by Kelly on behalf of himself and the other two men.

10 After the payment, however, the police investigation continued and detectives interviewed the three men. Not surprisingly, perhaps, it appears that Kelly sought confirmation from Hart on a number of occasions that the arrangements referred to would still protect him. Trinder was also concerned that the investigation was persisting and complained to Kelly. It's also anticipated there will be evidence that around this time in April 2008, Mr Hart provided Kelly with assurances that the matter would not go on but if it did, Kelly would get his money back. In addition, it also appears that in such discussions Mr Hart named two different public officers as having told him that the matter would not proceed.

20 It's necessary for the Commission to examine whether there is evidence that those named officers did give such assurances or whether there was any payment for a public officer by Hart or anyone else of the kind to which I've referred.

30 Eventually, in this case the investigation by police of Kelly and the two other men was completed and no charges eventuated. It's not expected, however, that the evidence will establish that was because of any intervention by Mr Hart, whether by payment of money or otherwise, but rather because of a legitimate perception the charges were not appropriate. If there were such arrangements between Hart and Kelly and the other men with a view to affecting a possibility of a prosecution, then depending on the intention of the individuals at first (not transcribable) the circumstances indicate a desire to pervert or attempt to pervert the course of justice.

40 If such payments in the circumstances describe (not transcribable) to Hart that he never intended that they would be passed on to a public officer then there may be the elements of fraud or false pretences present in the obtaining by him of that money from Kelly.

In addition, as is perhaps obvious such arrangements would also amount to professional misconduct. Importantly, from a perspective of this Commission, the investigation as a possibility of the connection between such activity and named public officials fall squarely within the Commission's principal functions.

Can I briefly summarise the second set of allegations referred to. As already mentioned this inquiry will investigate whether Mr Hart told clients

he represented in a number of summary matters that is prosecutions before the various local courts in New South Wales, that he was able to effect a more favourable outcome from those clients if a payment was made to him in addition to fees. Such statements carry on one view, the implication that such an outcome could be achieved by Mr Hart providing money to a public official, whether in the police or in the courts administration.

10 I've already mentioned the significance of such arrangements to the Commission's function in the context of the alleged arrangements between Hart and Kelly, with a view to affecting the possibility of a prosecution, the same comments apply here.

20 In addition, the Commission is investigating whether in the same category of matters, that is summary matters in the local court, Mr Hart has deliberately misled local courts with a view to achieving the transfer of sentence matters from a court in one of New South Wales to such a court in another part of New South Wales. Sometimes with the object of securing a hearing before a magistrate represented by Mr Hart as being likely to impose a more lenient sentence.

In addition, the Commission is investigating whether Mr Hart deliberately misled local court magistrates when finally appearing on such sentence matters by making submissions about mitigating factors which he knew to be untrue, with the object of achieving a lighter penalty than might otherwise have been imposed.

30 These matters, if established may also amount to corrupt conduct in the sense referred to in the ICAC Act, namely conduct that could adversely affect the impartial exercise of official functions by a public official. The matters to be examined in this regard include these former clients of Mr Hart, Evan O'Rourke, Bradley Wheaton, Todd Donohue, Jessica Smith and Benjamin Bleckman. Some of their cases include both alleged misleading of the local court and the suggestion that overall treatment by public officials could be secured by payment of money.

40 In Evan O'Rourke's case, he was charged by New South Wales police in June, 2008 for failing to quit premises and common assault. The Commission has information that Mr Hart told O'Rourke's father that if O'Rourke supplied \$1,000 in what was called, show money, Mr Hart knew someone who could help his son. On another occasion, Hart made comments which suggested that contacts with court personnel would ensure that he was able to obtain the best magistrate. Ultimately, Evan O'Rourke appeared before a magistrate in February, 2009 where the matter was finalised with him receiving a bond to be of good behaviour and having no conviction recorded.

Brad Wheaton, in June, 2008, he was charged with a mid range PCA offence and failing to stop at a red light in the Sydney CBD. He contacted

Hart, seeking representation and told Hart that he lived in Bondi, but that he had kept his previous at Tamworth for legal reasons. Hart told Wheaton that it may be better to get the matter heard at Tamworth. But on another occasion he told Wheaton that the magistrate in Tamworth was severe and that Wheaton's prospects would be improved by the matter being moved from the Downing Centre Local Court to Camden Local Court.

10 On a later date, Hart told Wheaton that he, Wheaton, had a new address at Oakdale, which is a place near Camden. In October, 2008, Hart told the magistrate at the Downing Centre Local Court that Wheaton lived at 5 Stevens Lane, Oakdale and asked for the matter to be transferred to the Camden Local Court, which it was.

On the day of the hearing at Camden, Hart told the court amongst other things that Wheaton lived at 7 Steven Street, Oakdale. Wheaton never lived at Oakdale to Hart's knowledge.

Todd Donohue.

20 In October 2008, and Chris Donohue, Todd Donohue's father, rang Hart to ask him to represent his son in a police matter arising from a fight which was to be heard at the Milton Local Court on the south coast. In November 2008, Hart told Chris Donohue that he had a friend who was a prosecutor who could help do something. Hart told Donohue that he needed to get five thousand to \$6000, saying that he, Hart, wanted one, apparently meaning \$1000 for doing it and five apparently meaning \$5000 for show money.

30 The matter did proceed. It was however transferred from Milton to Wagga Local Court and then back to Sutherland Local Court at Milton. At Milton in December 2008 Hart told the presiding magistrate that Todd Wheaton was working as a bricklayer for a company in Canberra until 5 December 2008 and that the company had transferred him to Wagga. He told the magistrate that the address for Todd Wheaton was, Todd Donohue I'm sorry, was flat 6, 20 Travers Street, Wagga. These matters were untrue. In January 2009, Anthony Paul appeared for Todd Donohue at the Wagga Local Court before a particular magistrate. Paul told the court that Donohue had been working in Wagga for Fugen Holdings, a construction company, and that he had moved back to Sydney. This was untrue.

40 On 12 February 2009, Mr Hart appeared for Todd Donohue at the Sutherland Local Court. The court was told by Hart that Todd Donohue had a job as a labourer with Fugen Industries, that he had worked at Wagga, that he was now at Caringbah on a big site and that he was enrolled at TAFE at Gymea to become a brickie. These things were all untrue. The magistrate imposed a bond on Mr Donohue to be of good behaviour for twelve months.

Jessica Smith

Jessica Smith had been charged with a mid-range PCA offence which was returnable at Sutherland Local Court. Mr Hart appeared there on her behalf in March 2009 and successfully sought the transfer of the matter to Wagga for sentence on 14 April telling the court that Ms Smith had been transferred to Wagga in her employment. This was untrue. On the morning of 14 April 2009 Hart discovered that the Smith matter was listed before a particular magistrate at Wagga. Smith at the time was seeking to fly to Wagga from Sydney. Later that day Hart discovered that another magistrate was sitting at Wagga Local Court in the week commencing 4 May 2009. He then caused a letter to be written to the court which stated that Smith was unable to attend court because she'd been on the Sunshine Coast and was unable to be driven to court due to inclement weather. This was untrue. Smith did not go to Wagga and the matter was adjourned.

On 4 May 2009 Smith appeared at the Wagga Wagga Local Court before Magistrate Dear SC. Hart told the court that Smith was a special needs teacher who worked in Wagga for four days a week. This was untrue. Smith received a section 10 bond, section 10 of the Crimes Sentencing Procedure Act, to be of good behaviour for twelve months.

Benjamin Bleckman

In March 2009 Bleckman's mother asked Hart to represent her son Benjamin for an alcohol related driving offence. Bleckman lived at Milperra. On 18 March Hart applied successfully to have the matter transferred to Sutherland Local Court from Bankstown. Bleckman appeared represented by Hart at Sutherland Local Court on 23 April 2009 and pleaded guilty to the offence of mid-range PCA. He was convicted and fined \$800 and disqualified for a period from driving. Hart told the court that Bleckman had been unable to pay his rent at Milperra, had moved back to live with his parents at Engadine and that the travel to his work took up to five or six hours per day. These submissions were untrue.

Can I turn to the third allegation I mentioned. In January 2007 Jason Kelly who I've already referred to, Michael McCauley and Christopher Trinder first appeared at Wagga Local Court on charges laid by local police relating to an alleged sexual assault. Anthony Paul initially appeared for all three men. Eventually Kelly and McCauley but not Trinder were committed for trail to the District Court at Wagga.

Paul sent a letter to Kelly in January 2008 which said, "We confirm we estimate costs as follows", in which the length of the trial which was pending was estimated to be five days. Paul noted his total fee for attending a five day trial as \$7,800 being \$1,560 per day. The barrister's fee was noted as five days hearing at \$2,500 including travel and accommodation, that making a total \$12,500. And the total therefore of the estimate for a five day trial was \$26,371. And it was noted in that letter that the estimated

costs would have to be paid prior to any trial commencing. All arranged for John Hart to appear for Kelly at the trial which was to commence on 18 February 2008.

10 Kelly paid the \$26,371 I've mentioned in part before the trial and the balance during the trial. The Commission's inquiries to date have not made it completely clear how much of the money which was paid by Kelly was used to pay Hart during or after the trial. The evidence in the trial was completed on 22 February 2008 and the trial completed to finality by a
10 verdict of not guilty in respect of both defendants on 26 February 2008 the following Tuesday.

20 After the trial Hart made an application to the court on Kelly's behalf under the Costs and Criminal Cases Act which would permit an application if successful to be made to the Attorney General's department to pay Kelly's legal costs incurred in the proceedings. The District Court judge, Judge Norrish had heard the trial, granted the certificates in April 2008. In May Paul obtained a copy of the bill that McCauley's solicitors had prepared for McCauley. He told Kelly that he wanted to make sure that the two
20 applications which were to be made for the payment of costs were not at cross purposes.

30 Paul then drafted a tax invoice in the name of his firm in the amount of \$68,080, this being in draft, being about \$42,000 more than the original estimate in the January letter I've referred to. One reason for that increase was that where here he, Mr Paul, had nominated his rate as \$16.50 per day for the trial originally, this new invoice claimed over \$2,900 inclusive of GST per day. A draft tax invoice for Hart dated 24 June 2008 in the amount of \$37,290 was also prepared amongst other issues whereas the January
30 letter had identified the barrister's fee as \$2,500 per day including travel and accommodation and presumably GST. A draft invoice itemised his fee as \$3,905 per day.

40 Paul drafted a letter to Kelly dated 14 July 2008 which referred to an enclosed bill which in its final form amounted to \$76,008.80 including Hart's fees for nine days and which bill was almost \$50,000 more than the original estimate. This was a bill submitted to the Attorney General's department by Kelly. An amended tax invoice on letterhead purporting to be that of Mr Hart which now totalled \$43,890 being his fees for the trial
40 was also included.

In July 2008 Mr Kelly submitted the costs application to the Attorney General's department. Some time later he told a friend that he'd been told by one of his lawyers that whatever he had already paid he would get back and the remained would be split three ways suggesting that he knew he would not be held liable for any additional amount beyond what was paid in the split up.

On 22 September 2008 Kelly's claim was allowed by the Attorney General's department not in the sum of \$76,008 as claimed but in the sum of \$45,552. This assessment allowed lesser sums than were claimed for Mr Paul's firm and for Hart.

10 The Commission has evidence which indicates that some time later Hart and Kelly discussed splitting the excess Kelly had received in this payment from Attorney General's over and over above what he had actually paid during the trial, strongly suggesting the falsity of the bill submitted with Kelly's application.

20 The Attorney General's paid the amount I mentioned in November 2008 and shortly after Kelly paid \$8,000 to Paul's firm. A tax invoice to Kelly dated 28 November from Paul's firm in the amount of \$8,521 was created. Paul used the \$8,000 paid by Kelly and a 521 balance in the firm's trust account in Kelly's favour as a final payment owed to the firm by Kelly. His account with the firm was closed despite the fact that according to the tax invoice submitted to the Attorney General's Department, Kelly still owed Paul's firm approximately \$42,000. In a series of transactions in late November and December 2008, Kelly deposited a total of \$5,000 into Mr Hart's TAB account. Mr Hart told Paul that with that deposit he and Kelly were square.

30 This behaviour, which if established may encompass fraudulent activity, false pretences and/or professional misconduct, fits in to the category of corrupt conduct in the sense referred to in the ICAC Act, namely conduct that could adversely affect the impartial exercise of official functions by a public official, in this case the relevant official or officials are those whose obligation it was to assess and pay that costs claim and that's an outline of the allegations, Commissioner.

The inquiry this week will examine the allegations I've mentioned in order to assist the Commission's investigations as to whether there has been corrupt conduct as referred to in the Act. It's expected the evidence will fill this week and possibly some of next week. It appears that in particular both Messrs Hart and Paul are persons who are affected persons within the meaning of Section 74A of the ICAC Act. Depending on the evidence to be heard, the clients and associates of clients whose names I have mentioned may also fit that description.

40 THE COMMISSIONER: Yes.

MR STAEHLI: Thank you.

THE COMMISSIONER: I also noticed just before, Mr Staehli, that section 8(2) of the legislation defines corrupt conduct as meaning conduct that's entered into between people whether or not they're (not transcribable) that could adversely affect, it doesn't have to require a lack of partiality or lack

of honesty. So that may be relevant to the last matter that you just mentioned.

MR STAEHLI: Yes.

10 THE COMMISSIONER: Well, now, what I'll do – ordinarily I take applications for appearance here after this part of the sound equipment is reorganised but I think I'll do it in this matter now for people who are here. There are a number of people I know who have received summonses to appear here today and all of you have been told in effect what the nature of the allegation is and anyway you've heard Mr Staehli. So who is seeking leave to appear here - just give me your - - -

MR WALSH: Commissioner, my name is Walsh and I seek leave to appear on behalf of Mr Hart.

THE COMMISSIONER: Yes. That's granted, Mr Walsh.

20 MR WALSH: May it please the Commissioner.

MR McILWAINE: Commissioner, my name is McIlwaine. I'm a solicitor.

THE COMMISSIONER: Yes.

MR McILWAINE: I seek your continued authority to appear for Mr Kelly.

THE COMMISSIONER: Mr McIlwaine, that's granted. Yes.

30 MR COOK: Commissioner, my name is Cook and I seek leave to appear for Mr Trinder.

THE COMMISSIONER: Yes. That's granted. Yes.

MR BOWEN: My name is Bowen, I'm a solicitor. Mr Commissioner. I appear for Mr Paul, Anthony Paul.

THE COMMISSIONER: Anthony Paul, Bowen. Yes, that's granted.

40 MR OATS: Oats, Commissioner. I seek your authority to appear for Mr Nankivell.

THE COMMISSIONER: Yes, Mr Oats, thank you. Granted.

MR MADDEN: Commissioner, Madden, solicitor. I seek your authority to appear for Neil O'Rourke and Deborah Graham.

THE COMMISSIONER: I'll just get these names. Neil O'Rourke and Deborah Graham. Look, there's no conflict. I don't know whether there's any conflict here but you would know.

MR MADDEN: No, there's not.

THE COMMISSIONER: No conflict. All right.

MR MADDEN: Can I be excused until they're called, Commissioner?

10

THE COMMISSIONER: Yes. Anyone can be excused. I mean, it's a public inquiry. It's here. People can stay or go as they see fit. Yes.

MR NAYLOR: If the Commission pleases, my name is Naylor. I seek - - -

THE COMMISSIONER: Naylor.

MR NAYLOR: Naylor, N-A-Y-L-O-R. I seek leave to appear on behalf of Mr Lazzar, Glen Lazzar.

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THE COMMISSIONER: Yes, Mr Naylor, I'll grant that.

MR SIVA: Commissioner, my name is Siva, S-I-V-A of counsel. I seek leave to appear for Mr Michael McCauley.

THE COMMISSIONER: Yes, Mr Siva. That's granted.

MR LEWIS: Lewis my name is, Commissioner.

30 THE COMMISSIONER: Yes.

MR LEWIS: I seek leave to appear for Bradley Wheaton and Evan O'Rourke.

THE COMMISSIONER: Kevin O'Rourke.

MR LEWIS: Evan.

40 THE COMMISSIONER: Yes. Mr – you'd know anyway, Mr Lewis, there's no conflict?

MR LEWIS: Not that I can perceive at this stage, Commissioner.

THE COMMISSIONER: Yes, all right. Yes, that's granted anyway.

MR LEWIS: Thank you.

THE COMMISSIONER: Yes. Very well. I'll take a short adjournment now while they refigure the or structure the sound equipment and then the public inquiry will start when I come back.

SHORT ADJOURNMENT

[11.36am]

THE COMMISSIONER: Yes.

10

MR STAEHLI: Commissioner, Mr Kelly is here and we propose to proceed with his evidence.

THE COMMISSIONER: Mr Kelly, you were present I think in the hearing room and anyway, you are legally represented, so it is known to you what the nature of the allegations are that are being investigated in this public inquiry.

MR KELLY: Yes, Commissioner.

20

THE COMMISSIONER: You are legally represented, so I'm assuming you've had good legal advice concerning your entitlements and obligations. But I will just go through them very quickly, but if I say anything you don't understand, please let me know and I'll try and make my meaning clearer.

The most important thing that you have to remember is that the legislation requires you to answer truthfully all questions asked of you. And your failure to do that, if it happens, could render you liable to a serious criminal penalty of up to five years gaol. Do you understand that?

30

MR KELLY: Yes.

THE COMMISSIONER: You may object to answering questions, but whether you object or not, you still have to answer the question. Parliament has given you the right to object so that if you have objected, those questions and answers cannot be used in any criminal, civil or disciplinary proceedings. Do you understand that?

MR KELLY: Yes, Commissioner.

40

THE COMMISSIONER: But there's an exception to that, and the exception is if you were charged with an offence under this act as for example, not telling the truth, the questions and answers would be used in evidence against you because that would be the whole, what the charge was all about, whether you objected or not.

All right. And you have to take an oath to tell the truth. Do you want to take the oath on a bible or do you wish to affirm or how do you wish to do it?

MR KELLY: On the bible, thank you, Commissioner.

THE COMMISSIONER: Thank you. Are you asking for that declaration?

MR MCILWAINE: I'd ask for the declaration, yes, Commissioner.

10 THE COMMISSIONER: An application has been made on your behalf,
which I accede to and accordingly I declare that all questions asked of you,
all answers given by you and all requests made of you shall be deemed to be
subject to your objection and hence there is no need for you to object to any
question, answer or request. Do you understand that?---Yes.

But just remember again though won't you, that although you don't now
have to apply your mind to whether you should object, because you are
deemed to object to everything.---I understand.

20 Nonetheless, it still will follow that if you are charged with the offence of,
for example, not telling the truth, the questions and answers would be used
against you.

Yes. Yes, thank you, yes Mr Staehli.

MR STAEHLI: Excuse me, Commissioner.

THE COMMISSIONER: Yes.

30 MR STAEHLI: Thank you. Mr Kelly, would you tell the Commission your
full name, please?---Jason Michael Kelly.

Thank you. In this portion of evidence, your evidence which is going to
follow, if I might just outline to Mr Kelly what's proposed?

THE COMMISSIONER: Yes.

40 MR STAEHLI: I don't want to ask you everything that you know about Mr
Hart and Mr Paul in the sense of the Commission's inquiries, as they've
been summarised by me today. Initially, I just want to ask you about one
aspect of it, which is an allegation about something which happened after
you'd been acquitted at your trial. Do you understand?---Yes.

Thank you. Now, in February, 2008, you faced a trial on criminal offences
at Wagga District Court. Is that right?---Yes, Mr Staehli.

And the trial was resolved by a not guilty verdict in favour of both you and
Mr McCauley on the 26 February, 2008. Do you remember that?---I
thought it was the 29th.

Well, in any event - - -?---Yep. Yep.

- - - the dates perhaps aren't important. But in any event you were found not guilty in that respect?---That's right.

So was Mr McCauley?---Yes, Mr Staehli.

10 And although I appreciate the politeness, you don't have to refer to me by name in your answers, thank you.---It's a habit.

Mr John Hart, barrister, appeared for you at that trial. Is that right?---That's correct.

20 And as I've mentioned, I'll have other questions in respect of the ramifications of that appearance later on but I want to ask you about something which may have occurred after the trial. Do you remember where you went after the, after the guilty verdict was returned - - -?---Not guilty, not guilty.

- - - The not guilty verdict, I'm sorry, excuse me?---Yes, we went across the road to Romanos Hotel, it's directly across the road from the Wagga courthouse.

30 All right. When you say we went across the road, who was it who went?---It was actually Mr Hart's suggestion, he said, "Come on, you deserve a beer. Let's go over and have a beer." So I had my family and some friends with me and we all went across the road.

At the time, that is at the time of that acquittal, were you aware that there was another police investigation into alleged conduct by you and others which was, which investigation was taking place?---I wasn't aware of that complaint. I also made my counter complaint to the police about that false allegation but yes, I was aware.

And had you made your counter complaint before the trial- - -?---No.

40 - - - that we've talked about. Afterwards?---Yes.

And had you been approached by any detectives in relation to that other allegation?---Yes.

And had you been approached in particular by a certain detective?---Detective Tina Hall.

She had also been the officer in charge of the investigation which had led to the trial at which you were acquitted. Is that right?---That's correct.

So in that context you went across the road to the hotel in the matter you've described. Is that right?---Yes.

And at that hotel did you have any conversations with Mr Hart in particular about that other investigation?---Yes, I did, within a matter of minutes of arriving at the hotel Mr Hart pulled me aside and told me about a conversation he just had with Detective Hall at the courthouse.

10 And what, doing your best, could you tell the Commission what it was that Mr Hart said to you about that?---Mr Hart said to me that Detective Paul had told him that I might have got off this one but she's going to get me on something and she's not going to stop until she did.

And did he say anything else about that proposition apparently made by Detective Hall?---Mr, Mr Hart knew that I was, that I'd been diagnosed with severe depression and that I was seeing counselling on a regular basis and taking medication and he said to me that, he goes, "You might have got, you might have survived this case but there's no way you can go through this again." He knew that my co-accused, Michael McCauley, had attempted to commit suicide before the trial and he said to me, he said, basically straight out, "You can't afford to try to run this again. You, you won't survive. I can make this go away."

What, they were his words, "I can make this go away"?---Yeah, that's correct.

Now, as you sit here today, it's eighteen months or so later, did he, can you say whether or not he actually used those words?---They were the exact words he used.

And did he say, what was your response, if any?---I said, "Make what go away? I've done nothing wrong." And he said, "Well, we both needed nothing wrong this time and look what's happened?" He said, "You went through one trial," he said, "If you have it up against another one", he said, "That's it", he goes, "You're finished."

And was there any discussion then about how the matter might be made to go away?---Yeah. I asked him, I said, "What do you mean you can make it go away", and he said, "Well, I can make a payment to some people", he goes, "I can make a payment and make it go away."

Did he mention at that stage which people he had in mind?---Not at that time, no.

Was anything said about the size of such a payment?---Yeah, he told me it would cost me \$15,000. He said, "\$10,000 to whoever he was making that payment to", he hadn't given any names or anything, "And \$5,000 for

himself for facilitating it.” And I said, “Well, I’ve just sold my car, took out a bank loan and maxed out my credit cards to pay for this trial. There’s no way I can come up with that.” And he suggested I talk to Mr Nankivell and Mr Trinder and get them to contribute as well.

Now, I haven’t asked you about their names but Chris Trinder and Geoff Nankivell were people who you knew?---Yes.

10 And is it the case that you were aware at the time of this conversation with Mr Hart that they were also the subject of a police investigation?---That’s correct.

And did you know that the investigations which they were subject was in effect the same investigation to which you were subject?---Yes, I did.

That is the three of you were the subject of allegations made by the same person?---That’s correct.

20 All right. So what did you say, if anything, to Mr Hart in response to that mentioned by him of that figure?---I said that’s ridiculous. I said, “Why should I have to pay anything, I’ve done nothing wrong?” And once again he reiterated that we both knew I’d done nothing wrong in the first case but I still ended up in court. And he suggested that I talk to them and see if they can come up with some money with me.

I assume perhaps wrongly that neither of them were with you?---No.

Or in the vicinity?---No.

30 Is that right?---That’s correct.

And in this conversation which you say you had with Mr Hart, this was actually at the hotel, was it?---Yes on the footpath out the front, there was an outdoor seating area and it was just across to the side.

And was it a conversation which was had so far as you could tell within the hearing of any other person?---No.

40 And did you say anything more to Mr Hart or he to you on this topic of making the investigation going away?---He said, he said, “I suggest you go and talk to your friends. You don’t, they don’t want to go through what you’ve just been through I bet.”

And what did you say in response to that?---I said, “Yeah, okay, I guess I’ll, I’ll talk to them.

All right. And was there any more to that conversation?---No.

And what happened after that at the hotel?---At the hotel, he, he joined my parents were there and a couple of friends and we just, we had a couple of drinks and nothing more was said at the time.

Did you at that stage convey to any of your family or associates who were there what it was that Mr Hart had said to you?---Not at that, not at that point, no.

Did you later?---Yes.

10

Later, to whom did you relate it?---I had a friend, Glenn Lazzar, visiting me from Melbourne. He was there to provide some support during the trial and I spoke to Glenn because he was staying at my house and then I think I also mentioned it to my girlfriend at the time, Karen Wright, and also Michael McCauley. And all of them said, basically, "Just do whatever you've got to do. You, you don't want to go through that again."

So I gather from that that each of those three persons who you nominated were supportive of you making some such payment. Is that right?---Yes.

20

As I said, Michael, Michael had attempted suicide in the lead up to the trial. I asked him how many pills he took and how many it would take to do the job and he made reference to that conversation. He said, "You don't want to do what I've done."

All right. He, just to mentioned it if I haven't specifically, he had also been acquitted at the trial which had just ended?---That's correct.

At the time of the conversation with Mr Hart, did, was any person identified as being the recipient of the payment that was to be made other than

30

Mr Hart himself?---Certainly nobody by name and I don't recall anyone buying the offers or anything, it was just the matter of, I'm not sure whether it was at that day or it was a couple of days later but he said to me that, "When the fog hits on somebody's desk, it won't go any further."

THE COMMISSIONER: All right. What did, that's the word he used when he gets on somebody's desk or did he say who the somebody was?---He never told me a name that I recall. He did refer, make reference to the DPP.

MR STAEHLI: Well, later I'll ask you some further questions about nominating people but I'm just interested in the day of this conversation, firstly?---Ah hmm.

40

You've told us about how you responded to Mr Hart but at the end of that conversation or perhaps at the end of the time in the hotel that day, what was your intention about whether or not you would act in accordance with what had been suggested?---I, I didn't give any indication either way. I didn't know what I was going to do.

All right. And so you, you went away from Mr Hart that day. Do you know whether or not you saw him again in the, say the next day or in the days which immediately follow?---I don't recall seeing him. We spoke on the phone but I don't recall seeing him.

10 All right. And what did you do if anything about acting in accordance with what he had suggested?---I rang Chris Trinder, firstly, and told Chris what had happened and, and the offer and Mr Hart had said and then I, I rang Jeff Nankivell, Jeff lived a couple of doors down from me and he came down and saw me and I spoke to him and explained to him what the, what had been put to me and the proposition was as well.

All right. And in putting the proposition to both those people, do we understand that by that time you had decided to make such a payment?---I wasn't really sure what I was going to do at that point in time. I was just seeing what they, what they, what they thought we should do.

20 All right. So can we deal with Mr Trinder first? He, as you've said, was to your knowledge the subject of the same allegation which apparently grounded the police investigation which was ongoing. Is that right?---Yes.

And did you – what did you say to him about the proposition that had been made, if anything?---Basically that Mr Hart had said the police weren't going to stop until they got us, or got me specifically, and that he said I should talk to these guys or talk to you and Chris, about whether you really want this to go to trial or whether we just make a payment to get it over and done with.

30 All right. And what was Mr Trinder's response to that?---He freaked out the same way I did at first and said, "This is bullshit. We've done nothing wrong," and we talked for a little while. I don't recall the exact words or anything but basically we both determined the view that given what I'd put up with with my original trial I, I was verbally assaulted and threatened with violence down the street and my reputation was destroyed, that neither of us wanted to go through that again.

40 All right. And from that do I gather that by that time, that is by the end of the conversation with Mr Trinder, you had agreed with him that the two of you should both make such a payment?---That's correct. We, we talked about the fact that we both had small children and the effect it would have on our families and the psychological issues and pressures that that would give us.

All right. I gather from what you said about mental issues, which were – had some effect on you at that time, that you had a particular view about the timing of the proposition that had been made to you by Mr Hart?---Oh, absolutely. To me this was never an issue about right or wrong, justice or anything. It was just doing whatever I had to do to survive each day.

Right. So you and Mr Trinder had in effect agreed that you would contribute - - -?---Yes.

- - - in the way suggested by Mr Hart?---Yes.

Did you discuss with Mr Trinder how much each of you would put in?---I said, I told him we were up for \$5,000 each.

10 Meaning you, yourself?---And, and Jeff if Jeff was prepared to come on board.

All right. So Mr Nankivell, Mr Trinder and you?---That's correct.

But at the time that you spoke to Mr Trinder you'd not spoken to Mr Nankivell?---No.

All right. And was there anything more said in relation to this issue in this conversation with Mr Trinder, this first conversation?---Not that I recall.

20 What was - he was a friend at the time?---Yes.

Lived in Wagga?---He has been living at Wagga but he moved to Queensland.

Had he by the time of this conversation?---Yes. He was in Queensland at the time. This whole conversation took place over the telephone.

30 I see. I'm sorry?---He moved before my trial.

All right. So everything that you've said about this, I think I called it a meeting with Mr Trinder, that everything about what you've said in relation to the conversation you've just related with Mr Trinder, was said on the telephone?---Yes.

All right. Did you tell Mr Trinder anything about whether or not you would approach Mr Nankivell?---Yes.

40 Did you tell him that you would?---Yes.

Did you?---Yes.

Can you remember when it was that you made the approach to Mr Trinder that you've just referred to?---Oh, it was probably, if not the day after the verdict it was certainly no more than two days.

Right?---But I'm pretty sure it was the next day.

Okay. And did you then approach Mr Nankivell?---Yes, I did.

What did you say to him?---I, I rang, I rang Jeff. As I said, he lived two doors down from me. I said, "I need to talk to you," so he came down and we, we had a meeting standing out the front of my house.

All right. This meeting, to state the obvious from what you've said, was in person?---Yes, that's correct.

10 Right. And what did you tell him?---Basically reiterated what I'd - exactly what I'd said to Mr Trinder, that Mr Hart told us that he could make this whole investigation go away and, and he - that we needed to think about whether we wanted to go through that trial process. Jeff made mention to the fact that he's a reasonably successful business person in town and that sort thing could ruin his reputation and potentially his business and we both agreed that the whole thing's bullshit but we really didn't see we had any choice.

20 When you say the whole thing was bullshit, you mean the police investigation and the complaint. Is that what you mean?---That's correct, yes.

All right. At the time that Mr Hart told you what you say he did at the hotel and up to this point, your discussion with Mr Nankivell, had you accepted as being truthful what Mr Hart said he would be able to achieve?---I guess. As I said, I hadn't really put a lot of thought into it to be honest. I accepted that, yes, he could make it go away and, as I said, to me that was just the most important thing, was just making it go away.

30 All right. And Mr Nankivell, did he make any commitment at the time of this meeting that you had with him?---Absolutely. He said, yeah, he said, "Do whatever it takes." He goes, "There's no way I'm going through what you boys have just been through."

All right. And so at the end of that there were three of you in effect who had agreed that Mr Hart's request to you should be complied with?---Yes.

40 Did you have available money which you could apply to that purpose? ---No, absolutely not. I - as I said, I sold my car, took out a bank loan and maxed my credit cards just to pay for the trial to that point. I don't recall whether Mr Hart rang me or I rang him but (not transcribable) said that the other two guys were on board but I couldn't come up with the \$5,000 and he said he'd be prepared to accept two because that was his, that was his part for doing the job and my girlfriend at the time, I'd lent her some money for a business, for a business that she'd set up and I told her that I just needed, I needed a couple of thousand dollars back and so she gave me the \$2,000 and that's what, that's what I contributed to the money.

All right. And the discount which was offered, that happened in a telephone call with Mr Hart, did it?---That's correct.

Right. Can you remember - - -

THE COMMISSIONER: (not transcribable) what was – what was it? Is it dropped from, what was it – 15,000 to 13,000 or - - -?---No, to 12,000.

10 12,000?---He originally was going to get \$5,000 for facilitating it and he said he'd be prepared to accept two because he knew that I didn't have any money.

Was there a discussion about the 10,000 still had to be - - -?---Oh, the ten was always – that was always what he was paying to somebody else. That was not negotiable.

I see. So he said that the first five had come down to two?---That he – this his – yeah, that his fee for doing it, for facilitating it would come down from five to two.

20 Yes. All right.

MR STAEHLI: And do you remember when it was in relation to the first conversation you had with Mr Hart, that you made this arrangement involving a lesser sum of money?---Within a couple of days. It was after I'd spoken to – as I said, it was the next day, I think, that I'd spoken to Chris and Jeff so it was probably within a day or two after that 'cause Mr Hart had told me that time's of the essence and he was really pushing us to get the money paid as quick as possible.

30 All right. So the process up to this point, that, is the discount offered by Mr Hart had taken two or three days, you say, from the, from the date of your acquittal. Is that right?---That's correct.

And did you make any arrangements in relation to the payment which was required?---Yes. Mr Hart rang me and gave me his sports - or his TAB account. He gave me both the account number and the PIN number and he said to go to any TAB outlet or a pub TAB and make the payment that way.

40 All right. And did you make such a payment?---I did three separate payments. The first time, from memory, Mr Nankivell gave me \$5,000 cash. I went to a TAB outlet and paid the money. Mr Trinder transferred some money because he had to apply for a new credit card because he didn't have any cash either and he transferred some money into my bank account. I withdrew that. I made a second payment and I gave Mr Hart \$2,000 in cash.

Right. So when you say you gave Mr Hart \$2,000 in cash do you mean directly to him?---Yes. He was in town. We organised for me to meet with him at a coffee shop across the road from the courthouse. Karen transferred some money into my bank account. I withdrew that, put it in an envelope and walked over and handed it to him.

THE COMMISSIONER: Was anyone else present when you did that?
---No.

10 MR STAEHLI: So of the money which you've mentioned, which was 12,000 in total, how much of it do you say you deposited into Mr Hart's TAB account?---There was two separate payments of - or two separate deposits that were \$5,000 each.

All right. Do you remember where you were when you made those payments? You've mentioned I think, a TAB outlet, did you say?---One – the first one was at a TAB outlet in Bayliss Street, Wagga Wagga and the second payment was at the William Farrer Hotel. I don't recall which came first. I think it was the actual TAB outlet.

20 All right. And this occasion when you gave, you say, Mr Hart \$2,000 in cash, did that coincide with any other event?---I, as I said, Karen had transferred some money out of my account and I'd withdrawn the cash from the, from the bank.

But I mean, how did you come to see Mr Hart?---I think, I don't recall if he rang me to see how it's going or I rang him and told him that I had the other money and, and he said that he was in town and, and he suggested bring it down to him.

30 So, was that, are you saying that was a coincidence that he happen to be in town that day?---Oh, he was, he was in town fairly often and during my trial he said he'd had a few cases coming up where he was going to be in town a fair bit.

All right. Then by the time those transactions had finished, you had (not transcribable) \$12,000 to be conveyed to Mr Hart by the means you've mentioned. Is that right?---That's correct.

40 And in that particular regard, that is in relation to the suggestion he made to you and the payments you then made to him, after that did you make any other payments to him in respect of that proposition that he'd made?---No.

So it was a total of \$12,000. Is that right?---That's correct.

THE COMMISSIONER: So where did the money, you've said that you got money from, I think, Trinder?---Yes. Mr Trinder deposited \$5,000 into my account.

Five thousand?---That's correct.

O.K. That was his five thousand for - - -?---Yes. Mr Nankivell gave me \$5,000 in cash. And then I withdrew the last \$2,000 from my bank account.

And there were \$2,000 in cash you say went to Mr Hart?---Yes.

10 And the other \$5,000 on two separate occasions - - -?---They were two separate deposits into his TAB account.

His TAB account.---That's correct, Commissioner.

MR STAEHLI: Now, the Commission, Commissioner, if I might just refer to something which has happened external to the hearing?

THE COMMISSIONER: Righto.

20 MR STAEHLI: Mr Kelly, the Commission has obtained records of Mr Hart's TAB account, which includes records of payments made into it from time to time. And can I, may I just tell - - -

THE COMMISSIONER: Yes, you can.

- - - Kelly, the results - - -

THE COMMISSIONER: Identify it for the purpose of Mr Hart's representative, what you are referring to and show him the documents too.

30 MR STAEHLI: Yes. And I'd be happy to show Mr Walsh these now or later, but can I just refer to what the records apparently show, Mr Kelly, and that is that between the time of the trial and finishing - - -

THE COMMISSIONER: Which was, you got that date again?---29 February, Mr Commissioner.

MR STAEHLI: But as I mentioned in asking that question about the time the trial finished, strictly speaking it appears, Commissioner that the verdict was returned on Tuesday, 26 February.

40 THE COMMISSIONER: All right.

MR STAEHLI: And that on the, it's commencing on Monday - - -?---My apologies, yes, I got the dates wrong. Yes.

All right. Can I just review that with you?---The 26th.

The trial started on Monday, 18 February?---Yes. Sorry, I've got the 21st in my head, but I'm thinking of today being the 21st and I counted nine days after that.

That's all right. Let's just see if we can get it straight. The trial started on Monday, 18 February?---That's correct.

The, there were addresses and summing up the judge on Monday, 25 February. I don't know if you remember that?---Yes.

10

And then the jury went out to consider their verdict on Tuesday, 26 February and were out for a short time, came back with the acquittal.---Forty minutes they were gone.

Came back with the acquittal that day?---That's correct. My apologies for getting the dates wrong.

20

That's all right. And then the following day, the 27th, there was a brief hearing in relation to the question of a costs certificate application, as the Commission understands it. All right. Having gone through that chronology, do you now, do you accept the dates that I mentioned (not transcribable) occurred?---Yes. Yes.

And as for the date of the conversation with Mr Hart, which happened after the verdicts, do you still say that that happened on the day that the not guilty verdict - - -?---Yes. It was twenty minutes after the verdict.

30

All right. So that would be on the Tuesday when the verdicts were returned, which happens to be 26 February?---Yes.

40

All right. Thank you. Then might I just return to what I was going to mention to you about what is shown in relation Mr Hart's TAB account. Although, there may be other explanations for this, but it would seem that on 8 March, that is about ten days after you were acquitted, there was a substantial cash payment made into Mr Hart's TAB account, but that it was of \$7,000, rather than \$5,000. Now, having told you that, does that give you cause to reflect on what you previously said about the way in which the payments that were made by you were made?---I recall giving Mr Hart some cash once, but I, yeah, I may have confused those two payments. I apologise. It may well have been that I added my \$2,000, if I check my bank accounts to see whether that was the same day or around the same time I made the withdrawal from my account, that would, that would tally up that I would've put that money with Mr Trinder's and my own money or Mr Nankivell's rather, and made that \$7,000 deposit, because those sums certainly add up with the \$2,000 I was contributing plus the \$5,000 from either Mr Nankivell or Mr Trinder.

All right. Well, of course the other thing that is implicit perhaps in what I've said, but I didn't say in expressly is that the TAB account shows only a \$7,000 deposit and not a \$5,000 or two \$5,000's. Do you understand what I'm saying?---Yeah.

10 All right. Now, I'm not suggesting to you, hopefully, Mr Kelly that you've made a mistake. I'm just asking you to do your best to give us your recollection about the payments?---As I said, I recall handing Mr Hart some money directly in an envelope. It may well have been the second that came from that, two years ago, I was in a coma, my, my memory's not as sharp as a tack. I do apologise. I recall making two different payments at two different occasions. It may well have been referring to another matter that the Commission is dealing with, but that's how I made that second payment to Mr Hart. It may well have been that I made the \$7,000 straight into his TAB account and, and I made reference to giving him some money already, it may have been the \$5,000 that I gave him.

20 All right. In any event, you're saying, as I understand it, if I might put this in a leading form, Commissioner, just to recap?

THE COMMISSIONER: Yes.

MR STAEHLI: That there's no doubt in your own mind that the total amount was \$12,000?---Absolutely.

And that payments in that amount were made by you to or on behalf of Mr Hart?---That's correct.

30 All right. Thank you.

THE COMMISSIONER: I might just take a short adjournment now Mr Staehli, I've got a couple of things to do and I'll come back.

SHORT ADJOURNMENT

[11.27am]

40 THE COMMISSIONER: Yes, Mr Staehli.

MR STAEHLI: Yes. So thank you, Commissioner. Mr Kelly, I was asking you questions about the payments you say you made to Mr Hart beforehand and you told us about the way in which you received money from Mr Nankivell. Would you mind repeating that?---Yes. Mr Nankivell brought the cash down and handed it to me at my house.

And you, you mentioned although I didn't ask you in detail I think about how it was that he received money from Mr Trinder. How was that?---From

discussions I had with Chris at the time, he, he'd taken out a credit card because he didn't have access to cash funds and, and then he transferred the money into my bank account.

THE COMMISSIONER: From his credit card into your bank account?---
Oh, I'm not, I'm not sure, Commissioner. He may have made a cash withdrawal and then transferred it into his own account.

And then it was paid into your bank account?---Yes, that's correct.

10

\$5,000?---Yes.

MR STAEHLI: Now to deal with that issue, Commissioner, I'd like to show Mr Kelly a page which the Commission has of his Commonwealth bank account which is, can be brought up on the screen, I think, and should be on the screen there in front of you, Mr Kelly. You see that?---Yes.

20

Now, there's no identifying details on that page by way of name and so forth but I want you to accept that that's a page from, from your Commonwealth bank account at roundabout the relevant time, February, March 2008. You might see other entries there which suggest that to you?--
-Yes.

And I want to take you in particular to 29 February where there's a reference to a cash deposit?---Yes.

Can you see that?---Yes.

30

Of \$5,000. Did you receive \$5,000 in cash into your account at around that time from anyone other than Mr Trinder?---No.

THE COMMISSIONER: Sorry, whose writing is that, Trinder, that's not his, is it?

MR STAEHLI: I'm sorry, that's the Commission writing, Commissioner. So there's a withdrawal of such a sum on 4 March. Do you see that?---Yes.

Presumably, that withdrawal was made by you?---Yes.

40

And something was done by you with that money?---Yes.

Are you able to say that that \$5,000 which was withdrawn was applied in a way about which you've given evidence earlier today?---Well, I certainly made the payment to Mr Hart. I'm just not, I just don't recall whether that was, that \$5,000 I gave to him in cash or that's the \$5000 that I added another two of my own money and, and made the payment into the TAB account.

All right. Thank you.

THE COMMISSIONER: I notice below that there's a \$2,000 from Karen Wright. Is that connected with, is that connected with the money you paid - -?---Yes, Commissioner. That was - - -

- - - that you referred to earlier?---That's the money I referred to earlier from, from Karen Wright.

10 MR STAEHLI: Well, having said that it would seem that that money stays in your account at least to the bottom of this particular page. Do you see that, that is the balance before that deposit was \$1,706?---Yes.

It was made \$3,706 by the addition of the two thousand?---I think from memory my credit, my cam, sorry my EFTPOS card had a one thousand dollar unit on cash withdrawals. I see that there's a, a withdrawal there on March 10 of \$1,000 and I suggest if we went to the next page I reckon you could just about put your house, there'd be another \$1,000 the next day or soon thereafter.

20

I'm sorry, Commissioner, we don't have the next page available.

THE COMMISSIONER: Well, we'll check that out later.

MR STAEHLI: We might return and come back to that. I should tender that particular page.

THE COMMISSIONER: Yes. I think another one's been shown to you. Perhaps on this one, you want to do them together.

30

MR STAEHLI: Commissioner, we don't have, I do have the further page of the account but regrettably it's not in a form which permits it - - -

THE COMMISSIONER: Will it show another thousand dollars?

MR STAEHLI: It does, yes. Could I just show that to Mr - - -

THE COMMISSIONER: You'd better show that, I think, to - - -

40 MR STAEHLI: To Mr Kelly. Would you look at this page, Mr Kelly. I'll show you the previous page which has just been put on the screen which is page 3 of statement 36 and show you in this folded over bundle, page 4, of statement 36. I want you to look at that, please?---Yeah, I see the further withdrawal of \$1,000.

THE COMMISSIONER: So you want both those pages?

MR STAEHLI: Yes, but we do that - - -

THE COMMISSIONER: This is the first exhibit, isn't it? That'll be exhibit 1.

**#EXHIBIT 1 – COMMONWEALTH BANK STATEMENT OF
JASON KELLY SHOWING \$5,000 CASH DEPOSIT ON 29
FEBRUARY**

10

MR STAEHLI: Might we technically do that with the documents at a later stage, please Commissioner?

THE COMMISSIONER: Yes. I'll just mark them at the present time as the two pages of this.

MR STAEHLI: Thank you. We'll make copies available at the - - -

20

THE COMMISSIONER: Yes.

MR STAEHLI: However, did you note that the two withdrawals of \$1,000 were made on 10 March?---Yeah. It may have been, that may have been the day that I asked for an increase to my limit on the card because I knew I needed the extra \$1,000.

30

All right. And are you saying that those \$2,000, those two separate thousand dollar transactions were applied by you in payment to Mr Hart?--- That's correct. I think from memory that it's probably the same day that I went to the William Farrer Hotel to make the deposit.

All right. Having made those payments in the way that you've described, you became aware, did you not, of the fact that the police investigation was continuing?---Yes.

And did you hear from either of Messrs Trinder or Nankivell in that regard? ---Yeah, from Chris.

40

Trinder?---Yes, sorry, Mr Trinder.

And do you remember what it was you heard from him?---He told me that Detective Hall was going - intending to go and interview him in relation to the complaint and he wanted to know what was going on.

All right. Now, I want to play you a recording of a telephone call which you might think, when you hear it, deals with that topic. Now,

Commissioner, this is a recording of a call which took place on the 18th of April, 2008 at 5.26pm.

THE COMMISSIONER: Between?

MR STAEHLI: Between, it is said, Mr Kelly and his girlfriend or partner, Miss Wright.

THE COMMISSIONER: O.K.

10

MR STAEHLI: Now, yes, thank you. We're going to play a number of calls in the ensuing parts of this hearing, Commissioner. Might I just mention at this stage that in respect of some of them, to remove irrelevant and, on occasions, embarrassing material which is of no relevance to the hearing, we have edited down the calls so that what will be heard and what transcript will be displayed will not represent the entirety of the call although we have both those aspects of transcript and the recording available if people do want to hear - - -

20 THE COMMISSIONER: If people want to hear the full – yes, all right.

MR STAEHLI: Yes. But in this case, it's a call which will be heard in its entirety. We're ready to play it. I understand the transcript will be displayed on the screen. Or if not in its entirety, then most of it. I think there's – yes.

TELEPHONE INTERCEPT PLAYED [12.02pm]

30

THE COMMISSIONER: All right. I mark that exhibit 2.

**#EXHIBIT 2 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00087 ON 18/04/2008 AT 17:26:32 (KELLY TO WRIGHT)**

40 MR STAEHLI: Thank you, your Honour – Commissioner.

Mr Kelly, did you recognise the voices on that call?---Yes, I did.

As being whose?---Mine and Karen Wright and Blake about the helmet.

And in the call there was reference to a person called Pop?---Yes.

Who was that?---Pop is Chris Trinder's nickname.

All right. And in the call there's a reference to Pop having apparently just sent you a text?---That's correct.

And the terms of the call deal with the content of it. Apparently it would seem that was incidents of the kind you mentioned before you heard the call. Is that right?---Yes.

10 And the effect of it being that it would seem that, well, you tell me rather than me putting (not transcribable)?---Basically that Tina Hall rang him up and said she was intending to go up to the Gold Coast and interview him.

Yes?---And he sent me a text obviously that he was very angry about that because he didn't think there was going to be any more problems coming out of it.

All right. And that you told us earlier that you had conveyed, after the offer had been made to you by Mr Hart, Miss Wright aware of that proposition? ---Yes.

20 And in this call she suggested that you should ring John bloody Hart? ---That's correct.

Can I ask you then to listen to this next call, Commissioner, which occurred some 16 minutes later or so on the 18th of April, 2008 at 5.42pm. It will be played in the same way. Again on this occasion it's the whole of the call.

TELEPHONE INTERCEPT PLAYED [12.07pm]

30 THE COMMISSIONER: No, you've got the wrong - - -

TELEPHONE INTERCEPT PLAYED [12.08pm]

MR STAEHLI: Now, Mr Kelly, did you recognise the voices on that recording?---Yes, the, the bloke who swears more then he probably should was myself and John Hart.

40 All right. Now could I take you to page 1, please, of the transcript. And Commissioner, it would be noted that the, that the name has been obliterated in the course for reasons which are perhaps obvious, but if it's necessary for - - -

THE COMMISSIONER: I'll mark that Exhibit 3 instead.

**#EXHIBIT 3 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_0008 ON 18/04/2008**

MR STAEHLI: Thank you, your Honour, Commissioner.

10 MR MCILWAINE: Commissioner, is that going to become a public exhibit (not transcribable) be heard at some stage, obviously there's parts of it which are relevant in the public interest and be made public. It seems to me, there's large parts of it which perhaps are not so much in the public interest and of personal nature in relation to the matter which never led to the prosecution being commenced. (not transcribable) counsel assistants views on matter. But I'd ask at this stage anyway, that that exhibit not become a public exhibit.

THE COMMISSIONER: Well, I better hear your argument about that. I'll have to hear it in private, I suppose.

20 MR MCILWAINE: Well, there's nothing I need to say - - -

MR STAEHLI: Yes. I don't think, I gather my friend is referring to parts of the discussion which don't directly involve the issue with which we're concerned - - -

THE COMMISSIONER: (not transcribable) No, it'll remain in public.

30 MR STAEHLI: Would you look at that page which is on the screen, please, Mr Kelly. When Mr Hart said, "Because my bloke said he wouldn't do anything about that", after you had apparently spoken to him about Tina Hall and the text message. What did you understand him to mean by that? ---That he had somebody who wasn't going to take any action on, on this complaint.

40 Right. And when he said four lines below that, "Leave it with me, otherwise it'll be straight back. Don't worry about that." And repeated, "Otherwise it'll be straight back", two lines further down. What did you understand him to mean by that?---That if the police did proceed with anything against me, Chris or Jeff, that we'd get our money back.

All right. Thank you. And the same general proposition was made about three or four times in the balance of that call, Commissioner, that is referring to something coming straight back, Mr Kelly - - -?---Yes.

- - - was your understanding the same about each of those mentions?
---That's correct.

All right. Thank you. Did you find out what happened in relation to whether or not Mr Trinder was actually spoken to by police?---I don't recall. Chris, we, we weren't really talking much at that time.

10 All right. Was there ever any discussion with you, sorry, well, yes, discussion with you, that is between you and Trinder, about the issue of whether or not the money should be returned?---I, I don't really recall. I remember trying to get hold of him, but as I said to Karen, I'd left him a message on his voicemail to call me and I was still trying to call him around that time. I just don't recall whether I actually managed to speak to him or not.

All right. Well, let me, in those circumstances have a further call played to you, this being 6.8, Commissioner, a call on the 21 April, 2008, some three days later at 2.41pm. Which is between it would seem, Mr Kelly and Mr Trinder. Again, this is a complete call.

20 TELEPHONE INTERCEPT PLAYED [12.16pm]
THE COMMISSIONER: That's Exhibit 4.

**#EXHIBIT 4 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00236 ON 21/94/2998 AT 17:41:45 (KELLY TO
TRINDER)**

30 MR STAEHLI: Mr Kelly, do you recognise those voices?---Yes, they were myself and Chris Trinder.

All right. Thank you. And accepting that that was the call which took place some three days after the call with Mr Hart previously played to you, do you know whether or not your reference to speaking to that other bloke – which is about a quarter of the way down the second page of the transcript – well I spoke to that other bloke.---I was referring to John Hart.

40 Do you say whether or not you were referring to that call which we've heard?---Yes.

And the money comes back, which is in the same passage on that page, was a reference to the topic about which you've already given evidence. Is that correct?---That's correct.

Thank you. Then having had that conversation with Mr Trinder, five minutes later there's further call, 21 April, 2008 14.46hours, 2.46pm, apparently you, Mr Kelly, leaving a message, if that could be played please.

TELEPHONE INTERCEPT PLAYED [12.22PM]

THE COMMISSIONER: That will be Exhibit 5, thank you.

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**#EXHIBIT 5 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00238 ON 21/04/2008 AT 14:46:46 (KELLY TO HART)**

MR STAEHLI: And is that your voice leaving a message apparently on Mr Hart's voice mail?---Yes.

20

Now, you talk somewhat obscurely about the matter in question in that message. Do you agree?---Yes.

And I didn't ask you directly, but in the previous calls, in particular in those in which the name of the complainant has been edited out, were those calls about the investigation which was pending at the time of your acquittal on that other trial in February?---That's correct, yes.

30

Thank you. Then on the same day, I'm sorry, that's not right. Excuse me. Six days later, excuse me a moment, Commissioner, I'm sorry. Yes. I'm sorry, can I just change course briefly. On the same day, as I said firstly, the 21st of April, at 5.28pm, a further call was recorded. In this case Commissioner, the call has been edited down substantially, although the balance is available. So this call I ask you to accept, Mr Kelly, when it starts, when the recording starts – which you will hear – it's some distance into the telephone call. Would you listen to it on that basis, please.

TELEPHONE INTERCEPT PLAYED [12.25PM]

40

MR STAEHLI: So in that part call, Mr Kelly, did you recognise your voice?---Yes.

And?---Yeah, Chris again.

All right. And in the last segment of that call, on the second-last page, there's a reference to the DPP about two-thirds of the way down, sorry about a third of the way down.---Yep, that is correct.

When you said that, were you, were you speaking from a position of knowledge as a result of what you've been told by Mr Hart or something else?---No, from what Mr Hart had told me.

Right. But in relation to the DPP having some involvement - - -?---Yes.

10

- - -is that something which you say he had taken?---Yeah, I don't recall at what time frame that was but at some stage Mr Hart had told me that the police will do their investigations and then the person at the DPP that, that Mr Hart paid the money to, allegedly paid the money to, would determine that it wouldn't go further and that no one would proceed with it.

Right. So when you say that at some stage he told you that, you're saying that he did expressly tell you - - -?---Yes.

20 - - - that. Is that right?---Yes.

That is, that it was someone in the DPP.---Yes.

Is that what you're saying?---That's correct.

And Mr Hart used those words to you?---Yes.

Right.

30 THE COMMISSIONER: That will be Exhibit 6, 7, 6. 6.

**#EXHIBIT 6 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_250 ON 21/04/2008 AT 17:28:04 (KELLY TO TRINDER)**

40 MR STAEHLI: But are you saying you can't remember whether or not it was before or after this particular call?---Oh, it was certainly before that call.

Right.---I just don't recall whether it was the day Mr Hart told me that we had to come up with the money or whether it was in the ensuing weeks or months.

I see. And do you remember whether or not he told you such things in person, on the telephone or otherwise?---Oh, I don't recall whether it was in person or on the phone.

All right.---It could have been either, could have been both.

So your discussion with Mr Trinder from the point where the DPP is mentioned onwards, is you speculating to him about your belief as to what might happen?---That's correct.

10

But in part it was because you say Mr Hart had told you about the DPP having a part in it.---Yeah. And, and that was what I was referring to about it could go either way, that either the DPP will hit it on the head or we'll get our money back and we'll just go through the court process. That's what I was making reference to in that call.

All right. Thank you. Then on the 27 April, 2008, there was this call at 5.34pm, between two people, which will now be played to you.

20

TELEPHONE INTERCEPT PLAYED [12.30pm]

MR STAEHLI: Right. And a part of that call has been edited.

THE COMMISSIONER: Yes, I saw. That will be exhibit 7.

30

**#EXHIBIT 7 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00544 ON 27/04/2008 AT 17:34:59 (KELLY TO HART)**

THE COMMISSIONER: And I take it the last bit of that call relates to another aspect of this inquiry we haven't yet engaged in.

MR STAEHLI: That's so.

40

THE COMMISSIONER: And I also saw a name mentioned there which I was told before I came would be in called but who denies any knowledge of what it is being alleged in the (not transcribable).

MR STAEHLI: That's so, your Honour, yes, Mr Corr who is a Crown prosecutor.

THE COMMISSIONER: Anyway, we'll hear from him later. Yes.

MR STAEHLI: Thank you.

Mr Kelly, did you recognise the voices on that call?---Yes. Myself and John Hart.

Thank you. And on the – half way down the first page there is a reference to a name, “I’m telling you, my bloke Gary Corr, who’s the,” but he doesn’t go on and describe who or what he is, did you know who Mr Corr was?
---No. I don’t recall that name ever being said to me.

10

All right?---I don’t recall that part of the conversation.

Right. Though plainly it was said to you, though?---Oh, I don’t, I don’t dispute that. I’m just saying I don’t recall it.

Did you ever know who that person was?---No.

Did you ever ask Mr Hart who it was?---I, I don’t recall. I may have.

20

All right. Did you have any interest in finding out the particulars of what it was that Mr Hart had done with the money, for example, in relation to whom, if anyone, he had paid it?---Oh, I think I got angry at the time when the police were still interviewing us and stuff so I may have confronted him or said something to him. I don’t recall the specifics of any conversation though.

All right. At the bottom of the first page apparently Mr Hart says, “We organised that other one,” and then at the top of the next page there’s a mention of the fact that it won’t go ahead and a mention of insurance?

30

---Yes.

You see that. You’re the first person who mentioned insurance in this call. What did you mean by that?---The payment to the DPP and the fact that whoever it was that Mr Hart had paid the money to wouldn’t be pursuing with anything.

All right. And Mr Hart responds using the same words, I gather you understood it to have the, in effect, the same meaning as you applied to it?
---That’s correct.

40

And then, as the Commissioner pointed out, the conversation turns to the question of costs which we’ll come back to later. So the next call is two days later at 3.57pm, apparently again between yourself and Mr Trinder. Would you listen to this edited call, please, which starts part way through the conversation.

TELEPHONE INTERCEPT PLAYED

[12.36pm]

THE COMMISSIONER: Marked exhibit 8.

**#EXHIBIT 8 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00665 ON 29/04/2008 AT 15:47:42 (KELLY TO
TRINDER)**

10

MR STAEHLI: Thank you.

Was that yourself and Mr Trinder talking about the same topic?---Yes.

And the reference in the last part of that call to your barrister, that is, Mr Trinder's reference to that and your description of what you were apparently told, was that, as you understand it, a reference to the call which you previously heard between you and Mr Hart or something like that call? ---Yes. My next reference was to the fact that I didn't think it would even
20 get to that stage because surely they would have taken one look at the evidence that I provided and the ridiculous complaint and even if the police took any action the DPP would have just thrown it back at the detectives and told them to wake up to themselves.

All right. Assuming things were being done properly I suppose?--- Absolutely assuming things were done properly.

All right. So - - -?---That was my point. This whole thing about why we had to pay the insurance in the first place.

30

What do you mean by that?---Well, given that there it such a ridiculous thing. We should never have even been put in that position.

All right. So just to put those things in their place: you thought that if things were being done properly the police investigation would stop before it got to the DPP?---Yes, indeed.

But if it did, your position was that if things were being done properly the DPP would throw it out?---Yes.

40

But if things were not being done properly then you had the insurance? ---Because Mr Hart told me that the police were out to get me regardless and, and they would do anything to get, to get something on me. And that's why the first case ever got to court, and, and the judge said that it was unreasonable for the police or DPP to have ever taken any action. And that's why the jury took twenty minutes to acquit us. And Mr Hart basically said to me that, put all that together and you can see it. He made reference before that Tina Hall hates me and that she was out to get me.

All right. But did you have any views yourself about whether or not those things were true?---I, I believed it was all true.

All right. Then some three days later there was this call at 9.22am. You were (not transcribable) one of the parties. Would you listen to this call, please, which will be played - - -

THE COMMISSIONER: What date is it?

10

MR STAEHLI: 30 April, Commissioner. It cuts off and then is the balance of a call, if we can play them one after the other, please.

THE COMMISSIONER: Yes.

TELEPHONE INTERCEPT PLAYED [12.41pm]

MR STAEHLI: That cuts out and then the second call takes place in effect immediately thereafter, time recorded as 9.23.46am.

20

TELEPHONE INTERCEPT PLAYED [12.43pm]

MR STAEHLI: We're just having trouble locating the transcript. Would you just list to the call. Put it straight on the call, please.

THE COMMISSIONER: Well, I'll make, that will be Exhibit 9, because it's the one phone call isn't it, just separate.

MR STAEHLI: In effect, yes.

30

**#EXHIBIT 9 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00676 ON 30/04/2008 AT 9:22:24 (KELLY TO HART);
NSW POLICE TELEPHONE INTERCEPT C04938_00_00676 ON
30/04/2008 AT 9:23:46 (KELLY TO HART)**

40 MR STAEHLI: And the first call, part of the call which was played, you saw the transcript of that, Mr Kelly?---Yes. This is the reference to yeah, he read that?

That's right. Yes. That's right. And what was that reference to, do you know?---That was a statement that I'd written to give to the police in relation to this investigation.

All right.---I took it down to Mr Paul's office to show him before I gave it to the police.

And then there was a mention, there's a transcript in the call recorded of Mr Corr again?---Yeah. So I saw.

10 All right. Various things were said about that. Then in the second part of the call of the transcript, which you haven't seen. Could I just show Mr Kelly a hardcopy which we can't put up on the screen of that second part of the call. Part of Exhibit 9. About a third to a half of the way down the first page there's a reference to "She's going to try and give it to the other Crown Prosecutor". Do you see that? It starts with the passage, "Oh, what she's saying - - -?---Oh, O.K. Sorry, yes.

Just have a look at those four lines again.---Yes, I've got that.

"She's going to try and give it to the other Crown Prosecutor". Did you understand that to be a reference to Detective Hunt?---Detective Hall, yes.

20 Detective Hall, I'm sorry. Excuse me. And then Mr Hart apparently says, "But I've already told my bloke to expect the brief and I know what he's going to say." Do you see that?---Yes.

Who did you understand that to be a reference to?---I didn't recall him by name, but just that Mr Hart's contact at the DPP.

All right. Thank you. Yes, we've now got that on the screen, Commissioner.

30 THE COMMISSIONER: Yes. I saw that.

MR STAEHLI: And then the matter goes on to talk about other, other topics.---The, the reference to the 20 past 8.00 thing was basically Mr Hart at every opportunity whenever I spoke to him on the phone or saw him, he just kept reinforcing that the police weren't going to stop until they found something on me. And this was all part of Detective Hall coming after me.

40 All right. What, ringing on a Saturday night on the weekend?---20 past 8.00 on a Saturday night, hoping I was at the pub and I'd say something stupid to her.

I see. All right. But I'd imagine it might be fair to say that you were, you had a similar view. Is that right?---Absolutely.

All right. Thank you.---Because, as I said, the second complainant, she told me that Detective Hall told her that they couldn't stop me doing things like that unless she proceeded with her complaint. And I was aware that somebody, somebody else came and saw me and said that Detective Hall had rang her and said, "I understand you had sex with Jason Kelly. Do you

know about his criminal case? Do you want to make any charges or lay an complaints against him?

All right.---So I definitely did have the same view that the detective was out to get me.

10 All right. Now, you've taken the opportunity to express your views about that. In once sense understandably, I suppose, but have you actually made a complaint yourself about Detective Hall?---Yes, I have, to the Ombudsman, to the police department - - -

THE COMMISSIONER: You made a complaint.---And to PIC, yes.

MR STAEHLI: All right. Thank you. But in any event the investigation apparently continued despite, well, I'll (not transcribable) the word despite, the investigation did continue?---Yes.

20 And on the same day, a little later, there's this call, 30 April, 2008 at 16.53. On this occasion, we'll play an extract of that call, Commissioner. So the start of the call is missing Mr Kelly and we won't play the end of the call as well.

TELEPHONE INTERCEPT PLAYED

[12.49pm]

30 MR STAEHLI: All right. And in the passage which is on the screen now about three quarters of the way down which starts with the words, "They've got even fucking less", and it goes on to say, "Anyway, I spoke to my barrister and he said that", et cetera, et cetera, is that a reference, who is that a reference to?---Once again, to the, I, I still didn't know the guy's name, didn't recall his name, but just the, the person at the DPP.

All right. And the reference to my barrister?---Was Mr Hart.

All right. Thank you.

THE COMMISSIONER: That will be exhibit 10.

40

**#EXHIBIT 10 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_00709 ON 30/04/2008 AT 16:53:45 (KELLY TO
TRINDER)**

MR STAEHLI: Then three weeks later did you listen to this, there was a further call which I'd ask you to listen to on 21 May at 10.37am. The end of this call has been edited out.

TELEPHONE INTERCEPT PLAYED [12.51pm]

MR STAEHLI: So that, the edited call does go on a little longer but it's - - -

THE COMMISSIONER: Also, there's a part of it I think that they have - - -

10

WITNESS: It's actually been attributed to Mr Hart but it's me speaking.

MR STAEHLI: Yeah. It's a statement that he made it.

THE COMMISSIONER: It's recorded as though Hart made it but you can tell it's his. Can you just go back, further back, there, "After all the emails, yeah", and then they say "Hart", but it's not Hart, it's Kelly (not transcribable) talking I think. Isn't that right?---Yes.

20 Right?---That's correct.

Anyway, that's exhibit 11.

**# EXHIBIT 11 – NSW POLICE TELEPHONE INTERCEPT
C04938_00_01524 ON 21/05/2008 AT 10:37:52 (KELLY TO HART)**

30

MR STAEHLI: Yes. But in the transcript, it's exhibited, well contain a little more conversation but it doesn't deal directly with the issue, Commissioner, on our analysis of it. But did you recognise the voices on that call, Mr Kelly?---Yes.

As being whose?---Myself and John Hart.

40 Yes, thank you. Would you just excuse me for a moment please, Commissioner. At the time that you paid the money to Mr Hart in the way that you described earlier today, did you appreciate that it was apparently intended by you to be a bribe that he would pay to someone to stop something happening?---As I said, I don't recall at what stage during the conversations that, that he told me who was going to but yeah, in effect yes.

Is it the case that you believed that the money was to go from him to someone else?---Yeah, it is.

In the proportions that you previously mentioned?---Yes.

Did he ever tell you whether or not the money had gone to someone else?---
No.

Did you ever get any of that money back?---No.

In the course of 2008 though there were other things happening, some of
which has been referred to in these calls in relation to your application for
costs arising out of the District Court trial in which you've been acquitted.
10 Correct?---Yes.

During 2008, other than the money which you paid to Mr Paul for the trial,
which you paid before or during the trial, did you pay other money to
Mr Hart other than the money about which you've given evidence?---No,
not that I recall.

What about when you had received the cost payment from the Attorney
General's department subsequently?---Yes.

20 Then you paid him some money?---Yes.

But the money that you paid him then which I'll ask you questions about
later on, was that money which was due to him in some way or other arising
out of the circumstances of the trial in which you've been successful?---Yes,
that was planning for the extra couple of days during the trial and the work
was done after the trial.

All right. So of the \$15,000 which he requested in relation to this issue
about which you've been answering questions, there was only ever the
30 \$12,000 paid to him in the way you've already described?---That's correct,
yes.

Yes. Well, Commissioner, that completes the questions that I'd like to ask
of Mr Kelly in this segment.

THE COMMISSIONER: Well, it's probably best, it's almost 1 o'clock, so
I'll adjourn. Yes, adjourn till 2 o'clock.

MR STAEHLI: Thank you.

40

LUNCHEON ADJOURNMENT

[12.58PM]