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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

ON TUESDAY 29 SEPTEMBER 2009

AT 10.10 AM

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THE COMMISSIONER: Yes. The Commission is resuming the public inquiry, the scope and purpose of which is already been announced. Mr Walsh, I understand Mr Hart has been discharged from hospital and he is here now.

MR WALSH: Yes, Commissioner. He was discharged last Friday and he's here now at my request.

THE COMMISSIONER: Yes.

10

MR WALSH: I'll just put some matters out quickly. I (not transcribable) not been able to catch up with events, I was elsewhere yesterday, but can I just put these matters on the record.

THE COMMISSIONER: Yes.

MR WALSH: Firstly, the heart surgeon indicated last Friday that he apparently, in his opinion, felt that Mr Hart was fit to return to work, whatever that meant.

20

THE COMMISSIONER: Yes.

MR WALSH: Then I referred him to his general practitioner.

THE COMMISSIONER: Yes.

30

MR WALSH: Whom he saw, I believe on Saturday morning before he came to see me or afterwards. I'm just not sure of the sequence. And he was of the opinion that he was fit to give evidence. I then on Saturday also contacted Doctor Roberts, who is a psychiatrist, and he gave me his previous contact with Mr Hart and made an appointment. I thought (not transcribable) put up until tomorrow. What I, what I would ask of you Commissioner, is this, I understand that there are two, I think fairly short witnesses to be called. Whilst that's occurring I would need some time to confer with Mr Hart.

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THE COMMISSIONER: Well, I'll do that (not transcribable). I suppose as a possibility, I would like Mr Hart to answer some questions today unless the medical evidence is that he should not do so and that does not seem to be the fact. I will take account of the fact that we'll listen to what he says or what you say in the course of it, I have to stop asking him questions, well, I will. But I do want to hear something to know what the further advancement of this inquiry is going to be.

MR WALSH: Yes.

THE COMMISSIONER: All right. Well, I'll do that, so you'll be (not transcribable) there's probably a here that you can use and, and we'll call these other short witnesses and then speak to - - -

MR WALSH: Can I be excused, Commissioner?

THE COMMISSIONER: Yes, certainly Mr Walsh. Yes. Yes, Mr Staehli.

10 MR STAEHLI: So, it's proposed that we continue with the, firstly with the evidence of Mrs Grahame.

THE COMMISSIONER: Yes. Mr Grahame.

MR STAEHLI: Mrs Grahame.

THE COMMISSIONER: Mrs Grahame.

20 MR MADDEN: Commissioner, you've previously granted me authority to appear for Mrs Grahame.

THE COMMISSIONER: Yes, I did. I'll just make sure I have done that.

MR MADDEN: I have explained to her the declaration that she would ask you - - -

THE COMMISSIONER: And she would like that?

MR MADDEN: Yes.

30 THE COMMISSIONER: Take a seat, Mrs Grahame. Mrs Grahame, you are represented so I'm assuming that you have had explained to you your obligations and entitlements under this legislation.

MRS GRAHAME: Yes, I have.

40 THE COMMISSIONER: I'll just remind you again that it's very important that you recognise that you must tell the truth and if you are prosecuted for not telling the truth, there is a very serious criminal penalty attached to that. You may object to answering questions but I'm not going to go through that in this case because it's obviously been explained to you that even though you object, you still have to answer the questions and in any event, I'm going to make a declaration as you heard your lawyer request me to do on your behalf to say you don't actually have to object because I will deem you to have objected so it is to be regarded by everybody who reads this transcript as though you've objected to everything. So that will give you the protection that the section gives you. But I do have to emphasise this, that whether you object or not or whether I make an order deeming you to have objected, if you are charged with the offence of not telling the truth, what

happens here in this hearing with you will be used in evidence against you.  
Do you understand that?

MRS GRAHAM: Yes, I do.

You have to take an oath to tell the truth. Do you want to affirm or take it  
on the bible or is there some other way - - -

MRS GRAHAM: The bible.

10

THE COMMISSIONER: The bible.

THE COMMISSIONER: Yes, take a seat, Mrs Graham. Yes, Mr Staehli.

MR STAEHLI: What's your full name please?---Deborah, Anne Graham.

Thank you. I want to ask you about some court proceedings earlier this year in which your son was involved?---Correct, yes.

10

What's your son's name?---Benjamin Blackman.

Thank you. Did you become aware at some stage earlier this year that he'd been charged by police with offensive driving with a mid-range prescribed content of alcohol in his blood?---Yes, he did.

How did you find out about that?---My son rang me and told me.

At the time, where were you living?---Woronora Road, Engadine.

20

At the time, where was your son living?---Milperra.

Do you know the actual address?---I don't know the street, it starts with a Z the street, I'm not sure.

All right. Zonnebeke Crescent?---Yeah.

30

Z-0-N-N-E-B-E-K-E, Commissioner. Do you remember when it was earlier this year that he was, that he had been charged, what month it was, for example?---No, it was earlier in the year, maybe March, April, I'm not sure what it was.

What did you do when you heard that he had been charged in terms of anything you might have done to obtain to some legal representation for him?

THE COMMISSIONER: Did you contact Mr Hart?---At, I, I, a family member of ours father was represented by Mr Hart and recommended him so he gave me his mobile phone number and I then rang Mr Hart.

40

You spoke to him?

MR STAEHLI: And did he agree to represent your son?---Yes.

Did you discuss with him how much it would cost?---Probably in the second phone call, I asked how much it would cost.

THE COMMISSIONER: And what did he say?---\$2,000.

MR STAEHLI: At the end of the day, is that how much he was paid?---  
Yes.

Who paid him?---My son.

That is your son provided the money?---Yes.

10 Did your son hand the money over to Mr Hart or did you?---On the day of  
Ben's hearing, he got some money out of the bank to give to Mr Hart and  
then I delivered, I attempted to deliver the rest to his home but he wasn't at  
home and he came around to my home and picked it up.

He being Mr Hart?---Sorry, yes, Mr Hart.

All right, thank you. Prior to the hearing, the final hearing that is, was there  
any discussion between you and Mr Hart about what should be said to the  
court about where your son lived?---No.

20 On the day of the hearing, at Sutherland Local Court which I can tell you  
was on 23 April 2009 do you remember Mr, before I ask you that, were you  
in the courtroom when your son's case was heard before the magistrate that  
day?---Yes, yes.

Is that right? Do you remember Mr Hart telling the magistrate that your son  
had moved back to home to be with his mum and dad?---Yes.

Was that true?---No.

30 Had you told Mr Hart that that was the case?---No.

Do you know why he said it?---No.

Did he ever say anything to you about the fact that he was going to tell the  
magistrate that?---First I heard of it was when we were sitting in the court.

All right.

40 THE COMMISSIONER: And you didn't raise it with him afterwards, I  
take it?---No, I didn't at all, no.

MR STAEHLI: Commissioner, I seek to tender a transcript which has been  
prepared by Commission staff of the hearing on that day at Sutherland Local  
Court on the 23<sup>rd</sup> of April, 2009 which is - - -

THE COMMISSIONER: Yes. I'll mark that as an exhibit.

MR STAEHLI: - - - behind Tab 33.

THE COMMISSIONER: 55. I'll mark it Exhibit 55 as the transcript of proceedings at Sutherland Local Court on the 23<sup>rd</sup> of April, 2009.

**#EXHIBIT 55 – TRANSCRIPT OF PROCEEDINGS AT  
SUTHERLAND LOCAL COURT ON 24/04/09**

10

MR STAEHLI: Yes. Might I show - - -

THE COMMISSIONER: Yes.

MR STAEHLI: - - - Mrs Graham a hard copy please, Commissioner, and we have one for you.

20 Could I ask you to read – you haven't got your glasses?---I have in my handbag.

Might Mrs Graham retrieve them please?

THE COMMISSIONER: Yes, yes.

MR STAEHLI: Could you read that to yourself, please, Mrs Graham. Thank you. Have you had a chance to look at that, Mrs Graham?

30 THE COMMISSIONER: Do you remember hearing that being said in the - - -?---Yes.

- - - court?

Yes.

40 MR STAEHLI: I want to ask you about the things which are said at the bottom of the first page of that transcript, apparently by Mr Hart. He told the court that your son hadn't been able to afford to pay his rent at Milperra because he'd lost Saturday work as a result of this matter. Was that true? ---Was it true that it was said or true that it happened?

No. Was it true that it happened?---Not that I know of.

All right. And then, a bit below that, it mentions that he'd moved back home to be with his mum and dad and you've answered questions about that. Then in the last five lines of that page Mr Hart tells the magistrate about the extent of travel said to have been experienced by your son as he

travelled to work from Engadine to Bankstown or Milperra or wherever. Do you see that at the bottom of the first page?---Yes, I do.

Was any of that true?---No.

Did you tell Mr Hart any of those things?---No.

Were you present when your son told him any of those things?---No.

10 Did you know that they were untrue when Mr Hart told them to the magistrate?---Yes.

Did you discuss with him afterwards why it was that he had done that?  
---No.

What did you think that he was attempting to achieve by doing what he did?

THE COMMISSIONER: Well, I don't know her thoughts really matter in this regard.

20 MR STAEHLI: As you please, Commissioner.

Did you believe that what he'd done was wrong?---I suppose so, yes.

But you didn't discuss it with him afterwards?---No. He had other cases, I think. We just walked outside, shook hands and that was it.

All right. And save for the payment of money, was that the only further contact that you had with him in relation to this matter?---Yes.

30 Have you had any contact with him subsequently in relation to anything else?---No.

Have you spoken to him about him having appeared for your son on this matter since that time?---No.

Thank you. They're the only questions that I need to ask.

40 THE COMMISSIONER: Yes. Now, first of all, do you want to ask any questions?

MR MADDEN: No.

THE COMMISSIONER: Does anyone else want to ask any questions? Mr Staehli, has this been – information been given to Mr Walsh?

MR STAEHLI: No.

THE COMMISSIONER: Well, you better give it to him to see whether he wants to ask any questions and I'd better let this witness not go until I hear from him.

MR STAEHLI: All right.

THE COMMISSIONER: Yes. You may step down for the moment but you – please remain in the vicinity. I won't keep you very much longer but just remain here for the time being?---Thank you.

10

**THE WITNESS WITHDREW**

**[10.27am]**

THE COMMISSIONER: Yes.

MR STAEHLI: And so we'll follow with Mr Bleckman who's - - -

THE COMMISSIONER: Yes, yes.

20

MR STAEHLI: - - - who was Mr Hart's client.

THE COMMISSIONER: Are you appearing for Mr Bleckman too, Mr Madden?

MR MADDEN: No, Commissioner.

MR LEWIS: I am.

30 THE COMMISSIONER: Mr Lewis.

MR LEWIS: I'm seeking your authorisation, Commissioner, to represent Mr Bleckman.

THE COMMISSIONER: Yes, yes, that's granted.

MR LEWIS: Thank you, Commissioner.

THE COMMISSIONER: Oh, Mr Walsh - - -

40

MR WALSH: Sorry, Commissioner.

THE COMMISSIONER: - - - just before this next witness is called - the last witness who was called was a Mrs Graham and this is the essence of what she said. She said that on the 23<sup>rd</sup> of April, 2009 at the Sutherland Magistrate's Court a statement was made on behalf of a Mr Bleckman, her son, to the effect that he had moved residences and returned home and it was done in circumstances where you'll see – done obviously to attract what

he hoped was a charitable outcome but she said that she never told Mr Hart to say those things to the court. Now, the question I have to ask you is do you want to ask her any questions about that? Well, you probably wouldn't know until you - - -

MR WALSH: Well, could I ask (not transcribable) could I reserve my position?

10 THE COMMISSIONER: Yes, and what you should do is be given a copy which is going to be – of Exhibit 55 which is the transcript of what took place.

MR WALSH: That would be very helpful if I could.

20 THE COMMISSIONER: Yes. Mr Bleckman, is he here? Just stand there, Mr Bleckman. You probably heard me give some information to your mother but I'll give the same information to you and also you have been legally represented so you obviously know what you're entitled to and what your obligations are. It's most important that you remember that the legislation or the Parliament has said that if you do not tell the truth to this Commission you have committed a serious criminal offence which can lead to a gaol term. Do you understand that?

MR BLECKMAN: Yes.

30 THE COMMISSIONER: I've no doubt you've had explained to you that you can object to questions and if you do these questions and answers can't be used in other proceedings but I'm prepared to make a declaration that you have objected to everything so you don't have to object yourself. Do you understand that?

MR BLECKMAN: Yeah.

40 THE COMMISSIONER: You have to take an oath to tell the truth. Well look before I go to that, can I say this, that although I will make the declaration that you are deemed to have objected to everything, you must remember, and ordinarily that means that the information you give can't be used against you in other proceedings, that would not apply if what you were charged with was not telling the truth to this Commission. In that event, object or not, the evidence would be used because that would be the case against you. Do you understand that?

MR BLECKMAN: Yep.

You have to take an oath to tell the truth, Mr Bleckman. Did you want to take an oath on a bible or do you want to affirm or is there some other means by which you wish to - - -

MR BLECKMAN: The bible.

THE COMMISSIONER: The bible.

THE COMMISSIONER: Take a seat. Thank you. Yes, Mr Staehli.

MR STAEHLI: Commissioner, do I take it that you - - -

THE COMMISSIONER: Oh, I'm sorry, I haven't made that declaration yet.

10

MR STAEHLI: Thank you.

THE COMMISSIONER: I'm sorry about that. Pursuant to an application being made on your behalf I declare that all questions asked of you, all answers given by you, all requests made of you shall be deemed to be the subject of your objection and hence there's no need for you to object to any particular question asked, request made or answer given. Do you understand that?---Yep.

20

Again, I'll remind you that if you're charged with not telling the truth, the evidence would be used against you. Do you understand that? Did I do that for Mrs Grahame? Did I make a formal declaration? I don't think I did. You were asleep obviously.

MR MADDEN: (not transcribable)

THE COMMISSIONER: All right. Well, I'll just announce that that declaration is deemed to have been made for Mrs Grahame.

30

MR MADDEN: Thank you, Commissioner.

THE COMMISSIONER: Yes.

MR STAEHLI: What's your full name, please, Mr Bleckman?---Benjamin Peter Bleckman.

Thank you. Were you charged earlier this year by police as a result of being pulled over and breath tested when you were driving?---Yes.

40

And were you charged with having a mid-range prescribed content of alcohol in your blood?---Yes.

Do you remember that initially having been charged you were directed to attend before the court at Bankstown?---Yes.

Did you ever go to Bankstown yourself?---No.

Do you know or why was it that you did not go?---Mr Hart recommended that I moved it to Sutherland Court.

All right. When you say he recommended, was that something that you discussed yourself with him or was it something your mother told you? ---That's something, I couldn't tell you the truth about it, 'cause I can't remember exactly how it happened.

10 All right. In any event, you eventually appeared at Sutherland Local Court. Is that right?---Yep.

Is that the only court that you appeared at in relation to that charge?---Yes.

And did you only appear once?---Yes.

And was that on the occasion that you were finally dealt with by the magistrate?---Yes, once, yes.

20 And do you remember that you were fined \$800 and disqualified from driving for fourteen months?---Yes.

All right. And were you there when Mr Hart told things to the court in support of you at the time that the magistrate was dealing with your case? ---Yes.

All right. Might Mr Bleckman be shown Exhibit 55?

THE COMMISSIONER: Yes.---I've read it already.

30 MR STAEHLI: You've read that already on the screen?

THE COMMISSIONER: You have read it already?---Yep.

MR STAEHLI: All right.

THE COMMISSIONER: Having seen it, does it refresh your recollection, do you remember that being said?---Yes.

40 MR STAEHLI: Your mother has told us certain things about her belief as to the truth of some of those things that were said on your behalf by Mr Hart. Did you hear her evidence?---Yes, I did.

Did you agree with what she said?---Yes.

All right.

THE COMMISSIONER: Did you tell Mr Hart any of this information that we're talking about?---Yes.

What did you tell him?---What happened was, maybe an hour before we went into the courtroom, he said, "Ben, come with me." We went into a room. He scribbled on a notepad what, like what I done for work, how much I earn, where I live. He asked me, "Where does your mother live?" I said where she lived at Engadine. How do I get to and from work, just questions like that.

10 MR STAEHLI: Right. At the time, that is at the time of the hearing, where were you living?---I was living at Milperra.

All right. In Zonnebeke Crescent?---Yeah.

And did you say anything to Mr Hart about, did you tell him where you were actually living?---I just told him everything, yeah, the truth.

THE COMMISSIONER: That you were living at Milperra?---Yes.

20 MR STAEHLI: Did he tell you he was going to tell the court that you were living with your mother?---Yes.

He told you that did he?---I think so, yeah.

All right. Before the hearing?---What happened, he jotted it all down and he said, very quickly he said sort of what he was going to say. And I might've sat in the room with him for five minutes and then I was, went into court.

THE COMMISSIONER: Well, you've read what was said.---Yeah.

30 And there's certain things on there, as I understand it, that was said that were not true.---Yes.

For example, you weren't living with your parents.---Yeah.

Did you raise that with him when he said he was going to say that?---I, I just put my trust in him and that was it. I, I don't know nothing about law or nothing like that.

40 No, no. Just think of what, just - - -?---Yeah.

MR STAEHLI: And did you describe to him, as that transcript of the hearing records him saying the details of how a trip might be made from your mothers home to your workplace?---Yeah. He asked me how I, 'cause I used to travel from Engadine, I did live at, I've grown up at Engadine. And I did travel to Southern Steel for six months that way. I just told him and that's how he said it.

MR STAEHLI: All right. And so, what, you told him you'd kept, you'd get a train to, from Engadine to Wolli Creek and then to Bankstown and then a bus and so forth? Did you give him those details?---Yeah. Well, previously that's how I did get to work, yeah.

All right. Is it the case that you had been unable to pay your rent at Milperra?---No.

10 All right. Had you lost any work, he told the court that you'd lost Saturday work driving forklifts. Was that - - ?---No.

Had you actually had a Saturday job driving forklifts?---Occasionally I do work Saturday.

All right. But that was unaffected by the fact that you'd lost your licence. Is that right?---Yes.

20 All right. And then, had you actually seen Mr Hart or spoken to him at all prior to that day of the court hearing?---Not that I can remember. I think the first time I seen him was when I was introduced to him. He went and, he went and then came and seen me. I sat down with him for a couple of minutes and then I went into the courtroom with him.

Right. All right. Is it the case that he, did he ever tell you what his fees were going to be, tell you?---No.

Did he ever give you any documents in writing at all?---No.

30 At the time that you were there on that morning expecting him to appear for you, as he did, did you know how much it was going to cost?---Mum said it was going to cost roughly two thousand because he spoke to mum about the costs.

THE COMMISSIONER: And I think your mother has said you gave him some and she gave him some.---Yeah. I only, I only had \$900 on me at the day. And I had to work a couple more weeks and give remaining to mum to, 'cause I didn't have a car, so I gave the money to mum and mum fixed it up.

40 THE COMMISSIONER: Okay.

MR STAEHLI: All right. Yes, well I think they're the only questions I have for Mr Bleckman. Thank you, Commissioner.

THE COMMISSIONER: Do you want to ask any questions?

MR MADDEN: No thank you, Commissioner.

THE COMMISSIONER: All right. Well, maybe Mr Walsh again could be asked that, he's not here, he's outside.

MR STAEHLI: Yes.

THE COMMISSIONER: So, well it might be convenient for me to now to take a short adjournment and see what's going to happen.

MR STAEHLI: Yes.

10

THE COMMISSIONER: All right. Thank you. We'll take a short adjournment. Mr Bleckman, you still remain in the area. I'll do my best to have you excused and your mother excused as soon as possible. But I can't do it just now.---Yep. Thank you.

THE WITNESS WITHDREW [10.39am]

20 SHORT ADJOURNMENT [10.39am]

THE COMMISSIONER: Mr Walsh, the last witness was the son of the first witness. He said that he'd had one meeting with Mr Hart and at that meeting he said, he didn't tell Mr Hart that he had this job what he was doing but he did give him information about how, when he was living at home, he travelled. Now, the question I want to ask you is do you want to ask either of these witnesses any questions because if you do, you're obviously entitled to, but I want to, I don't want them hanging around any longer than they have to.

30

MR WALSH: Could I just, at this stage, technically reserve my position to see. I understand that Mr Hart would now be called.

THE COMMISSIONER: Yes.

MR WALSH: Maybe my position could be clarified if Mr Hart is asked earlier.

40 THE COMMISSIONER: Well, I might go for about a half an hour with Mr Hart and then maybe I'll take an adjournment and you can work that out and then these people will have some idea.

MR WALSH: Yes, if you don't mind, Commissioner, if I do it that way.

THE COMMISSIONER: No, I'll do it that way. Yes, Mr Hart.

THE COMMISSIONER: Mr Hart, you are represented, and also, and you are a barrister in any event, went through your entitlements and obligations. I won't go through those again. I have made a declaration in your favour about the objections that are deemed to have been made on your behalf?--- Yes, sir.

10 And they will continue seeing as you're, giving that declaration will continue in operation, so long as you're giving evidence at this public inquiry. Do you understand?---Yes, sir.

There's no need for you to take a further oath, but just remember that you're still bound by the oath you previously took?---Yes, sir.

Yes.

20 MR MADDEN: Could I just raise something, Commissioner. My friend was kind enough to interpose Mrs Graham because I have something personal to deal with. Mr McIlwaine has said that he will appear for my clients if there's any questions from Mr Walsh.

THE COMMISSIONER: Well, there's no, I can't see any conflict with that.

MR WALSH: No, you're right.

THE COMMISSIONER: All right, yes.

30 MR MADDEN: Thank you very much.

THE COMMISSIONER: Yes.

MR STAEHLI: Mr Hart, would you mind telling us your full name again for the record please?---John Peter Hart.

40 Thank you. When this public inquiry started there were a series of validations outlined, firstly the scope and purpose of the hearing was put by the Commissioner and then in any opening address that I made there were various matters that were listed. Do you remember those?---Oh, I remember you saying them, I was in the back of the court, but I understand what you, what you're referring to.

What I'm going to do now is to ask you some questions about those allegations and seek your response to them?---Yes, sir.

All right. The first allegation which was put by me in this way, that on a number of occasions in 2008 and 2009 you represented to some of your

clients that money given to you might in turn be paid to public officials employed in the criminal justice system and that those public officials would then act favourably in the interests of that client. Do you remember hearing that?---Yes, I do.

Is it the case that in 2008 and 2009 you did seek to get money from some of your clients on the basis that you told them that you would pay it to public officials?---Yes.

10 Was one of those instances, one of those clients, Jason Kelly?---I can't recall it to be absolutely honest. I may have said that. I, I'm an alcoholic and I'm not drinking at the moment but I've been an alcoholic for a long long time. Thinking about what Mr Kelly said I cannot recall saying the, that I would fix something up for him, I can't recall the words he used, but I may have. That's a, that worries me, because I may have. But if I did say that, I can truly say to you I can't recall it but I never paid anyone any money, I just didn't.

20 THE COMMISSIONER: Yes, I was going to ask you that?---Sorry, sir.

Did you say that, whether you paid money to or approached a public official?---Never did that, sir.

All right. You may recall that Mr Kelly said that you'd asked for 15,000 and it was then reduced to 12,000. Did you hear, remember that evidence?--  
-I do remember that evidence, sir.

30 Are you saying you have no recollection of that but you do not deny that happened?---I don't believe there was the sum of 15,000 was mentioned, I just don't, I, I distinctly recall talking to Mr Kelly during the trial about monies that were, that he, he was going to pay me for the, during the trial, because I wasn't getting enough money. I know he agreed to it and I know he paid me an extra, I thought it was 5,000. As it turns out it was seven for the trial. What's in my mind today and what, is that that was what that was for. If I misrepresented it in relation to speaking to a Crown Prosecutor, I may have but I can't remember it. But I don't believe he gave me any cash, I just don't.

40 When you say you don't believe it, is it because you, you can't recall it or you're saying it didn't happen?---I can't recall it, sir, I, I listened to part of the tape of Mr, a friend of mine, Mr O'Rourke and that horrified me.

Before a question is asked by Mr - - -?---I'm sorry, sir.

No, no, it's all right. You heard Mr Staehli put the proposition to you - - -?--  
--Yes, sir.

- - - with which you agreed?---Oh yes, sir.

Now, would you give me an instance of an occasion when you do remember that you took money from people telling them that you were going to bribe an official?---I don't know if I used that terminology.

I'm sorry, I thought - - -?---Bribe, bribe an official, but if an inference that I could use, my position and people that I knew to get a better result, I would have said that, sir.

10 Well, give me an illustration of one you remember because you said you did remember it and you weren't, you didn't remember Kelly?---I, no, I, I can't, I cannot recall saying, even talking to Neil O'Rourke, I would have been intoxicated at the time. I've heard that and, and I did say that but I can't recall it because I was intoxicated so I had said that.

THE COMMISSIONER: Please, it's not for me, it's later on. But you are conscious of the question that was put to you by - - -?---Yes, I'm sorry, sir, yes I, I have misled people.

20 - - - Mr Staehli and the answer that you gave?---Yes, sir.  
Yes, all right, yes, sorry, Mr Staehli.

MR STAEHLI: So in the case of Mr O'Rourke where the telephone call which was played recorded you asking him for show money?---Yes, sir.

In the sum it seemed of \$1,000?---Yes, sir.

30 Are you saying you can't remember saying that to him either?---I can't remember that, I've rung him from a hotel, I just can't remember it but I did say it and that would have been to urge a plan that I needed the money and I'm very very sorry for that.

THE COMMISSIONER: But I think what's being put to you it's suggested that the use of the word show money meant that it was money that was going to be shown to a potentially corrupt public official?---Yes, I would have used that in that terminology.

40 MR STAEHLI: And if, when you did use that term, that's what you were intending the person who heard that term used by you to accept?---Yes, sir.

So in Mr O'Rourke's case, you'd told him that, hoping that he would accept it with a view to you getting the money in the sum that you mentioned?---  
Yes, sir.

But are you saying are you that you did that because you needed the money not because you intended to pass the money on to someone?---Yes, sir.

And just to go back to Mr Kelly's case, you know that he said here that you told him, this is page 15 of the transcript, "I can make a payment to some people, I can make a payment and make it go away", and they were the circumstances in which he said that he paid you some money and had a conversation with you about how much you should pay. Do you remember that evidence of his?---No, I don't but I accept that.

10 All right. And I gather from what you've said here this morning that you say, consistently with what you said the other day when your evidence was interrupted, that the only conversations that you can recall that you had with him about extra money that he owed you for acting for him in the trial. Is that it?---Yes, yes, sir.

So in so far as he says that you were getting that extra money from him in that conversation in the trial, are you saying that so far as you recall, the only conversation you had then as well was one which was about extra money for the trial?---That's my recollection, sir.

20 What about the conversation with Detective Hall? Did that actually occur?  
---I'm, I'm certain that occurred.

And you did raise that with Mr Kelly, did you?---I did.

So you remember those two things?---I did. I do, I do remember those.

30 And are you denying that what Mr Kelly said in relation to you having said to him, "I can make a payment and make it go away?"---I just can't recall that conversation at all, sir. If it happened, it happened but I just can't remember it.

All right. So it's a pretty significant statement?---Oh, it is, sir, that's the truth.

At the time, it being just after the trial and before you'd had a chance to have a few beers, you were presumably sober?---Oh, I wouldn't say that.

40 What, might you have been drunk straight after the trial?---Well, it was only -- from memory the jury were going out that morning. I would have had a big night the night before.

So what, you might still have had a prescribed content of alcohol in your blood that morning. Is that what you're saying?---I hate the term absolutely but absolutely, I would have.

So putting to one side your recollection of which you have none relevantly to that allegation, I gather you're prepared to accept though that it might well have happened?---I have to accept that, sir.

Oh well, when you say you have to, do you mean because you don't know one way or the other or because you accept Mr Kelly as a witness of truth? ---Oh, I don't accept Mr Kelly as a witness of truth but one way or the other, and I've thought about it a lot as you would appreciate, one way or the other I have said it. I may have. I just can't remember.

10 Because Mr Kelly himself accepts the proposition that he might well have owed you more money for the trial. Did you remember him – did you hear him give any of that evidence or – I'm not sure if you were here for a lot - - -?---I don't think I heard that evidence.

All right. And did you ever believe that Mr Kelly was resistant to paying you more money for the trial?---Well, no, because he did pay me.

Well, when you say he paid you, are you referring to the \$7,000 that ended up in your TAB account or some other amount?---Yes, sir, and, and the other five.

20 And the other five?---I've never asked him for any more money 'cause as far as I'm concerned he paid me.

But he says he paid you the \$7,000 not in, not in payment for the trial but as part of a larger sum which you said you required in order to make the other investigation go away. You appreciate that, don't you?---I appreciate that but I, I, I – one, I can't recall but two, I don't think that happened. I, I just don't think it did.

30 Which part?---I, I don't believe, even though as I say I have no recollection of it, but I never had any intention of bribing a Crown Prosecutor and he owed me the money. He agreed to pay me the money and the money turned up. That's my understanding of, of why he paid me.

Well, I was hopeful that we wouldn't descend to matters of detail in this segment of your evidence but - - -?---I may have said it, sir, it may – I, I can't deny I may have said it, sir.

40 THE COMMISSIONER: I appreciate that but just from my point of view you've told me that you had, on occasions, taken money from people leading them to believe that this was going to be paid to some other official? ---Yes, sir.

But your claim was that you were going to, well, you didn't say it, but you were going to keep the money because you believed it was owed to you anyway, that's right?---Yes, sir.

So if that was your, it might be said, modus operandi, why could you be sure that Kelly was not telling the truth when he said just that?---Well, perhaps it's because I know Mr Kelly but it may be that that is the case, sir.

If I could remember it I would say it but I, I can't remember it. It may be the case, sir.

All right?---But I can't recall, I apologise. I don't mean to prevaricate, sir.

No, no, no. Mr Staehli, from my point of view, it might be – keep it at the general level now and move on to the other two before I rise at a bit after 11.30 to let Mr - - -

10 MR STAEHLI: All right. Can I just ask one other, one or two other questions about that issue?

You might remember, Mr Hart, hearing in the time that you were here in Mr Kelly's first segment of evidence, I think on the first day, some telephone intercepts being played - - -?---Yes.

- - - of conversations between him and you. Do you remember that?---Yes, I do.

20 One of them became Exhibit 3 and in that there's a conversation between you and him, that is, you and Mr Kelly, about the investigation which was being carried out by Detective Hall after the trial?---Yes, sir.

Do you remember? And you said to him in that call, page 1 of the relevant transcript, about that. "My bloke said he wouldn't do anything about that?" ---Yes, sir.

30 "Leave it with me. Leave it with me otherwise it'll be straight back. Don't worry about that. Otherwise it'll be straight back." Do you remember that? Do you remember having that call?---I remember you playing the call, sir.

And when you, when you said in that call, "It'll be straight back," and you said it on three or four occasions, that was you talking about, to Mr Kelly, the money which he had paid you, isn't it?---It appears that way, sir, and that's why I've said I may have said that.

THE COMMISSIONER: Well, do you want to put another interpretation on it?---Oh, what time was the conversation, Mr Staehli?

40 Well, they say in vino veritas, don't they? I mean, what's - - -?---Well - - -

MR STAEHLI: 20 to 6.00 in the evening?---I would assume that I'd be, would have been intoxicated at the time but that's a reason not an excuse. I vaguely recall that conversation.

THE COMMISSIONER: Well, that might be why you don't now remember but it wouldn't be an excuse - it wouldn't mean it didn't happen?

---I'm not saying it didn't happen, sir. And when I – and I have thought about it and thought about it and that's the – that is a logical explanation and it may well be that that is – it follows from what Mr Kelly said but I just can't remember it.

All right?---I'm not denying what Mr Kelly said. I can't remember it.

10 MR STAEHLI: No. Well, I was asking you not about what Mr Kelly said but about what you said, of course?---I, I accept I said that, sir, and it's a, a strong inference to say that the money was for that.

It's not only strong, it's the only possible inference, isn't it?---Well, it's certainly a – it may well be. It's a matter of conjecture but I can't remember it.

Do you think you might be able to think of some other explanation if given some time?---Not off the top of my head, sir.

20 Pardon?---Not off the top of my head.

No. Can I ask you then about some of the other allegations?---Yes, sir.

Firstly, well, it's been said this morning in evidence by Mrs Graham and her son, Benjamin Bleckman, do you remember appearing for Mr Bleckman at Sutherland Local Court earlier this year?---Vaguely.

30 Do you remember, as has been put before the Commission this morning in the form of a transcript, that you told the magistrate who was to sentence Mr Bleckman, various things about Mr Bleckman's circumstances?---I can recall. I just vaguely read it when – quickly read it when Mr Walsh had it and I accept that, sir. He - - -

THE COMMISSIONER: When you accept it, do you mean you are accepting that you said what's recorded?---Yes, I do.

40 But are you also accepting that what's recorded there was not what you were told by your clients or your client?---I, I can recall that there was a – something to do with the address. I've certainly indicated to Mr Bleckman it would be better in the long run for him if he, if he was still living with - at, I think it was his mum and dad's.

Yes, it was. That's what was said?---Yes. And, and I have misled the court in that regard.

By saying that he had already done it?---Yes, sir.

All right.

MR STAEHLI: And previously, when you went to Bankstown Court, you managed to achieve the matter being transferred to Sutherland, didn't you?  
---I would have.

And in order to do that you would have told that court as well, I suggest to you, that Mr Bleckman lived in the Sutherland area, whether at Engadine or somewhere else?---Yes, sir.

10 And you did that knowing it to be untrue. Correct?---I've misled the court, sir.

THE COMMISSIONER: No, it's contrary to what he supplied?---Yes, sir.

MR STAEHLI: Knowing that your client lived at Milperra or Revesby?  
---Well, he was living there and as it turns out he didn't move back to Sutherland or Yarrowarra, wherever it was, I've misled the court in that regards, sir.

20 MR STAEHLI: And so you misled the court at Bankstown to have the matter transferred?---Yes, sir.

And that was something which you regularly did wasn't it?---I done it, yes I have on a number of occasions.

All right. And when he came before Sutherland Local Court you misled the court about his circumstances in that passage of what you told the magistrate which became Exhibit 55 here this morning. Isn't that right?  
---Yes, sir.

30 So you misled the court, wilfully misled the court about him having moved back home to live with his mother and his father?---I'm not sure about the word wilfully. At the time, I don't know if, what was happening upstairs with my brain and I've thought about it over and over again. Up until this year, at the end of February, I was drinking anything from ten, twelve to fifteen or maybe twenty schooners a day. And it's a blur. I'm not using that as a excuse, sir, it's a reason, that's the only reason I can give why I would do such a thing. And - - -

40 THE COMMISSIONER: Well, Mr Hart, are you saying that this was a one off or - - -?---Oh, no, I'm not saying it's a one off.

- - - you're saying (not transcribable) thing before?---I'm not saying it's a one off, sir, I know in relation to Miss Smith, and I, I've gone over and over it again, and I just can't see why I would do that. Why I would mislead the court. I just can't understand it.

About Miss Smith?---Oh about, and Mr Bleckman. I mean there's - - -

What about Miss Smith?---I can't understand why I would do that.

Do what?---Mislead the court about, I can recall having things sent to different areas and different addresses and I can - - -

10 What do you remember that you did that mislead the court with respect to Miss Smith?---I had, the matter went to Wagga. I can recall suggesting that she have another address, would be handy. I actually gave her the address, if my memory serves me correct. And I just don't know why I would do something, such a thing. I hardly knew the girl.

Did you ever tell her stay away and that you would make up some excuse for her in court?---I can remember something along those lines, sir. And it's just ridiculous. I don't know why I would do that, sir.

20 THE COMMISSIONER: Well, no. Anyway - - -?---And, and I can recall doing that, today I can. And my only, it's not an excuse, my only reason is I just wasn't thinking straight. I just can't, I won't accept that it was wilfully, I knew it was happening, but I didn't think about it. I'm sorry.

Well, it might be said that, when we get to the detail that you were thinking straight all right, in the sense that you were thinking logically but that what you were doing was something that you shouldn't be doing.---Oh, absolutely, sir. I shouldn't of done it. And I don't know why I did it. I sat down with Mr Walsh, my family, I just don't know why I would've made things up like that on behalf of people I didn't, didn't matter.

THE COMMISSIONER: Yes.

30 MR STAEHLI: Well, one reason which might be suggested for you doing it is that it's enabled you to present yourself as a person who could manipulate the system to get a predicted result. That's the reason why you did it isn't it?---When I think about it, I expect it would be true.

So that in relation to the shifting of Mr Bleckman's matter, you did, you could predict with reasonable certainty on your knowledge of how the court system worked that if you told Bankstown Court that he lived at Sutherland, that you'd be able to transfer the matter from Bankstown to Sutherland?  
---Yes, sir.

40 And that if you told the court certain things in relation to his circumstances, certain untrue things, that there was a chance, at least, that a magistrate might be more sympathetic to him then he would otherwise be. That was in your mind wasn't it?---I don't know what was in my mind, sir.

Because I suggest to you it's not the case is it, that the actual matters which have been identified by the Commission are the only matters in which you have transferred, sought to have cases transferred by using misleading

information. There are others aren't there?---I can't recall them, sir, if there are.

THE COMMISSIONER: Well, I think you mentioned Miss Smith was one of them didn't you?---That's, I thought that was a matter that was before the court.

MR STAEHLI: Yes. I meant the other ones.

10 THE COMMISSIONER: When you (not transcribable)?---Oh, yes, I can recall that, sir. Because when Mr Staehli mentioned it I was trying to think about it.

Well, Mr Staehli, just before I adjourn, you might just ask him his general view of allegation 3. And then I'll adjourn this. All right.

MR STAEHLI: The third allegation is Mr Hart, one concerning the inflation of the costs bill for the trial of Mr Kelly. Do you understand the evidence which has been given in that regard?---Yes, I do.

20 And the essence of the allegation is that you and Mr Paul deliberately inflated the bill which would otherwise have been rendered to Mr Kelly because you believed that the Attorney Generals Department would pay a larger sum than Mr Kelly was actually due to pay. Did you do that?---I wasn't really aware of, of how the bill went. The, I wasn't aware if it was whatever, the money that was, we would put in, that was put in was what, what he should've paid or he actually paid. I certainly can recall saying to Anthony Paul, I'm worth more than two a day, I think I said those words. I'm probably worth about four. I think I said that.

30 THE COMMISSIONER: But I think what's being put to you, the comment is, that all that happened because you knew that there was a possible source of somebody else paying more money than you had previously agreed to appear for.---I don't agree with that, sir. I actually don't, I think I said the other day, and last Tuesday is a bit hazy, I actually don't know what the amount of money I was going to get when I went down to do the trial. And as I found out later, a substantial amount of money went missing which would turn out I was supposed to get four grand a day. I was aware of some of it.

40 Sorry, I missed that last bit. What did you say?---I understand that quite a number of cheques that were made out to me were cashed. I thought there was only two of them actually. As it turns out I should've got more money. But, I don't think I, I wasn't aware of a lot of the things that were happening in relation to that bill.

Well, I don't want to necessarily go into the details at the present time, but are you telling me that you had no arrangement at all with Paul or Kelly as

to how much you would charge before you appeared?---I, I didn't have a, an exact figure, I don't think for Mr Paul. It was that the money in the can and it'll be right.

The money was?---In the, well, that's a vernacular for he had money from Mr - - -

(not transcribable) in the can?---I don't know the amount of money that Mr Paul had.

10

Well, why did you know it was or believe it was right?---Well, I didn't think Anthony would do the wrong thing by me. And there'd be enough money for me. I didn't think the trial would go seven days.

So you left it to Paul - - -?---Yes, sir.

- - - to determine to determine what your fee would be?---Yes, sir. If the trail finished - - -

20 Well, even if he determined it to be \$2,500 a day?---If the trial had of gone five days, I would've anticipated there'd be more money for me.

Anticipated or hoped?---Probably both.

MR STAEHLI: More money then what?

THE COMMISSIONER: Yes. More then what?---More money then, then what I was getting during the trial. And (not transcribable) at the end of the trial. If there was any money left over, well, O.K., there's more money for you.

30

I've never understood the logic of this, but I'm not saying you're not right. But I mean, if the trial went on longer then you thought it would, you say that's a reason why from day one you upped, nearly doubled your fee? ---Sorry, sir, I - - -

You said that you thought the trial would go five days.---Yes, sir, four to five.

40 And that you left it to Mr Paul for the purpose of fixing your fee?---Yes, sir.

For a five day trial.---Yes, sir.

And then are you telling me that because a trial went longer then that you thought your fees should be fixed at a higher rate from day one. Is that what you're saying?---Yes, sir.

Why? Why did you think you'd get an increase in the daily rate because the trial went more days than was allowed for?---I think that - - -

Generally speaking you get less, that's what usually happens?---Well, as it turns out, we did get less. I assumed that two and half a day, that would keep me going, the trial finished in five days, we work out the bill and there'd be another cheque for me. It finished in seven days, as it turned out there wasn't anything left for me.

10 Yes, but I don't see what the justification is to go back for the first five days and say I want to bump this up from 2,500 to 3,900 or whatever the figure was. I just don't understand the logic behind that?---I, I assumed that, as it turns out the, the Crown only pay 1500 a day anyway, but I assumed that you could put in a costs application for what the trial would be worth. If I'm doing at a discount, I'm doing at a discount, I wasn't - - -

20 Yes, but you didn't apply your mind to this until after you knew the Crown was going to pay the cost?---Oh no, sir, I, I never even thought of that. I was never intending to ask for costs, only the co-accused did. Costs had never come into my mind.

All right. Is there any more general questions you want to ask about this before I adjourn?

MR STAEHLI: No. I haven't asked about some of the other specific cases like Mr Wheaton's case and Mr Donohue's case but that can be put to one side if you like or I can ask them now.

30 THE COMMISSIONER: And Smith's case, I suppose.

MR STAEHLI: And Smith's case, should I ask those?

THE COMMISSIONER: Yes, perhaps you should and then I'll adjourn then. They're more direct.

MR STAEHLI: Yes. You mentioned you remembered Ms Smith's case. Is that right?---Yes, sir.

40 Do you agree that you misled the Local Court so that her matter would be transferred from, in the first case, from Sutherland to Wagga?---Yes, sir.

And do you agree that you misled the court at Wagga when she was sentenced - - -?---Yes, sir.

- - - by telling the magistrate that she worked in Wagga four days per week as a special needs teacher?---Yes, sir.

Knowing those things to be untrue?---Well, I asked her about it but I strongly suspected it wasn't true and I misled the court.

Well, when you say you asked her about it, she didn't tell you that she worked in Wagga four days a week did she?---No, sir.

In fact you knew that she didn't work in Wagga but was working in Sydney. Isn't that right?---As it, as it turns out, yes, sir, I misled the court.

They were the things which she told you which you believed to be the truth, that is that she worked in Sydney. Isn't that right?---As it turns out, yes, sir.

10

Well, there's no as it turns out, that was the truth?---Well - - -

And you believed it to be, didn't you?---When we went to Wagga I believed that she was still working in Sydney.

Yes, but you had her transferred to Wagga because, and this was the reason you told her, I suggest to you, that you could get a better result for, in Wagga. Is that right?---Yes, sir, that's correct.

20 By appealing in front of Magistrate Dear?---Yes, sir.

Rather than leaving it to the vagaries of whoever you might draw with Sutherland?---That's correct.

And on an earlier occasion before the matter was finally dealt with at Wagga, there was an occasion outlined in my opening about, on 14 April 2009, when Ms Smith was apparently booked on a plan to come to Wagga for a sentence hearing to occur on that day?---What date was that, sir?

30 14 April 2009?---Yes, sir.

And I suggest that you found out that Magistrate Dear wasn't necessarily doing the lists, it might be Magistrate Murray?---Yes, sir.

And you encouraged Ms Smith to not come, not go to Wagga on that day?--I did.

40 And you caused a letter to be written to the court which contained false information about Ms Smith's circumstances with a view to obtaining an adjournment?---That's correct.

Is that right?---Yes, sir.

You knew that that information in that letter was false?---It was false, I just can't explain why I did it.

THE COMMISSIONER: You said you did it so that you would avoid having to come before a particular magistrate?---Oh yes, sir, but I, I, I sit here today and I can't understand why I would do that, I just can't.

Then another case involved appearing on behalf of a young man called Todd Donohue whose case initially arose down the south coast and was listed at Milton Court?---Yes, sir.

You knew his father, Chris Donohue, is that right?---Yes.

10

And you told Chris Donohue at one stage that he needed to get 5,000 or five to \$6,000, five of which was for show money. Do you remember telling him that?---I don't remember that.

Do you accept that you may well have told Mr Donohue that?---I may have. I don't, I don't remember it, sir, but I may have.

20

And that five, meaning \$5,000, is in excess I suggest to you, of the amount of money which you might reasonably require for your fees. Do you agree with that?---I agree with that.

And so in asking for that money, if it happened, you were seeking to get money from Mr Donohue to which you weren't legitimately entitled. That's right, isn't it?---I agree with that.

And do you say that if you had got such money or if you did get such money that you were not going to apply it to paying a prosecutor or other public official?---Absolutely.

30

What were you going to do with the money?---I didn't get it but if I had of, I would have kept it.

And accepting that you did it for the moment, that is made the offer, did you have an expectation that you would be able to get a result in the proceedings which would entitle you to justify charging that amount of money to Chris Donohue?---Oh, if the matter went for hearing it would have gone for a couple of days.

40

And so are you saying that in those circumstances you would have been entitled to that money or would have used it for that purpose?---I would have.

When Mr Donohue appeared at the Sutherland Local Court, well sorry before that, do you remember when you got his matter transferred from Milton to Wagga?---Yes.

And do you remember that you did that by giving false information to the Milton Local Court about Mr Donohue's, Mr Todd Donohue's

circumstances?---He was working somewhere out there, I, I can't remember where he was but it was, he certainly wasn't living in Milton or Lake (not transcribable) where his mum and dad were, he was living away from home.

Do you remember you told the magistrate when you had that matter transferred that Todd Donohue was living at flat 6, 20 Travers Street, Wagga Wagga?---I don't remember it but I would have.

Do you know whose address that is?---I think it's Mr Peacock's.

10

Mr Peacock's a friend of yours in Wagga?---Yes, yes.

And you knew therefore that there is no prospect of the possibility that that address was Todd Donohue's address?---Yes, sir.

So in telling the court that at Milton you were deliberately misleading that court, weren't you?---I misled the court, sir.

20

And when you appeared for Todd Donohue in Wagga on 12 January, do you remember that you then caused the matter to be transferred from Wagga back to Sydney?---Yes, he was living and working up at Caringbah, I think, from memory.

At where?---At Caringbah somewhere on the southern shore, that was my recollection.

30

Well, do you remember that you told Mr Murray, the magistrate in Wagga on 12 January that Todd Donohue had been working in Wagga for Fugen Holdings?---I don't remember it but I would, if I said that, I accept that it wasn't true.

All right. Neither of those things were true to your knowledge?---Yes, sir.

Isn't that correct?---That's correct, sir.

40

And when the matter did come before the court at Sutherland on 12 February, you told the court various things about Todd Donohue in relation to his work and his TAFE education and other things which were untrue, didn't you?---I can't remember the TAFE thing but I certainly misled the court.

MR STAEHLI: All right. Well, what can you remember that you misled the court about, if anything?---Oh, I remember he - who he was working for but he certainly told me he was bricklaying up there or apprentice bricklaying and I've a recollection he said he was going to TAFE or going to go to TAFE but I had misled the court, I accept that.

Yes. And then the other matter, which was mentioned at the start of the hearing, was the matter of Mr Wheaton. Do you remember appearing for him on a drink driving charge?---Vaguely. What, what month was that, sir? What date was it?

The hearing - - -?---I don't think it was a hearing.

- - - was in 2008?---I don't believe it was a hearing, sir.

10 The sentence hearing I mean?---I'm sorry, yes, yes, a plea, yes.

A plea at Camden?---Yes.

And you'd caused the matter to be transferred from the Downing Centre to Camden by telling the court that Mr Wheaton lived at an address at Oakdale. Do you remember?---I do, sir. I misled the court.

20 All right. And you misled the court again when Mr Wheaton appeared at Camden Local Court and you acted for him in the – in his sentencing?---  
Yes, sir.

There you told the court again that he lived at a particular address at Oakdale which you knew to be untrue. Is that right?---That's correct, sir.

And you'd caused that to happen, I suggest to you, because you were representing to Mr Wheaton that you could get a better result before that Camden magistrate. Is that right?---Yes, sir.

30 Was that in fact your belief, that you could?---Oh, probably not, thinking back now. I don't, I don't know why I said that because at the Downing Centre you could have got anybody.

And you wanted to what – get it before a magistrate who you had some belief you might be able to predict the result with more certainty? Was that the issue or what?---Well, I didn't know who I – you don't know who you're going to get at the Downing Centre and looking back now I don't know why I, I did it. I just don't. As I - - -

40 THE COMMISSIONER: Well, was it because you hoped to implant in the mind of the person who paid you the money that you had influence and therefore you could use that influence and that would justify larger sums being paid to you than might otherwise be the case?---I don't think he paid me any more than he ordinarily would. I think he paid me \$2,000 but I accept, sir, that I would have big-noted myself. I know everybody and I can get you a better result, lots of derogatory terms come to mind in that regard as far as myself. At the time I just wasn't thinking straight, sir. That's the truth. I was a raving alcoholic, drinking enormous amounts of alcohol,

sometimes talking to myself. The family have come out and caught me in the garage talking to the fridge. It's just ridiculous.

All right. This might be a convenient time, Mr Staehli. I'll take a short adjournment.

SHORT ADJOURNMENT

[11.43am]

10 THE COMMISSIONER: Yes, Mr Staehli. What I'm going to do, Mr Walsh, is there's a bit more evidence from Mr – that will have to be put to Mr Hart then I think I'll probably adjourn that till tomorrow morning but hopefully we'll finish that aspect of it by tomorrow.

MR WALSH: Thank you.

THE COMMISSIONER: But there are other witnesses that have to be called. Yes. Yes, Mr Staehli.

20 MR STAEHLI: Commissioner, what's proposed to be done immediately is that I'll play some recordings of telephone calls to Mr Hart, firstly in respect of some conversations which have, which are the subject of interceptions which have not previously been tendered in the hearing today.

THE COMMISSIONER: All right.

MR STAEHLI: Mr Hart, you'll firstly hear some calls in which it is believed that you are talking to Mr Brad Wheaton?---Yes, sir.

30 A client of yours who's – about whom I asked you some questions this morning. Would you listen firstly to this call said to have occurred on the 10<sup>th</sup> of July, 2008 at 5.06pm.

THE COMMISSIONER: It should come up on that screen as well as the main screen?---Thank you, sir.

**TELEPHONE INTERCEPT PLAYED**

**[12.33pm]**

40

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

THE COMMISSIONER: That'll be Exhibit 56.

**#EXHIBIT 56 – TELEPHONE INTERCEPT G00226\_00\_00 ON  
10/07/2008 AT 17:06:06 (HART TO WHEATON)**

MR STAEHLI: Do you remember Mr Wheaton?---I do. I saw him when I came to court so I do remember Mr Wheaton.

10 Amongst other things in that call you talked to him about having to transfer it around, that is his court matter, around a bit, page 6. Did you hear that?  
---I heard that.

What did you mean by that?---I could transfer it from one court to another if he lived in Tamworth and he could move to Tamworth well, I could transfer it there.

20 But if you were to transfer it to Tamworth your purpose, so far as the call displays, is because partly, it would seem, you told him that you had a mate who may well have gone up to Tamworth as a magistrate. Was that true?

THE COMMISSIONER: First of all, did you say it?---I did say it.

Yes. Well, was it correct? Did you have a mate who was a magistrate who went up to Tamworth?---No. I don't even think I know who the magistrate is at Tamworth.

So the answer is no?---No.

30 MR STAEHLI: So you were misleading Mr Wheaton about that in this conversation, were you?---I would have been, big-noting myself.

Big-noting yourself?---Yes, sir.

With a view to him thinking that you were worth the amount of money that he was going to pay for you. Was that the purpose?---Part thereof.

Partly that?---Partly that, yeah.

40 There's a further call which occurred on the 23<sup>rd</sup> of July, 2008 at 12.51pm, apparently between yourself and Mr Wheaton. Would you listen to this call, please. I'm sorry, we've got a tech - - -

**TELEPHONE INTERCEPT PLAYED**

**[12.44pm]**

THE COMMISSIONER: Exhibit 57.

**#EXHIBIT 57 – TELEPHONE INTERCEPT PLAYED G00226\_00\_00  
ON 23/07/2009 AT 12:51:17 (HART TO WHEATON)**

MR STAEHLI: Mr Hart, did you recognise your voice on that recording?  
---Yes, sir.

10

At the end of it you said, “I don’t talk, want to talk on the phone?”---I did say that.

Why did you say that?---Well, without being, well, being the circumstance, I wish I never spoke on the phone to be fair but that was just something I said. I just said it.

20

You said it because you knew that there were some things which were improper to be discussed with Mr Wheaton, didn’t you?---It may well have been. I can’t recall all that conversation but I had it. I think Mr Wheaton came and saw me.

But that’s the explanation which I have suggested, is why you said to Mr Wheaton, “I don’t want to talk on the phone”, is it?---Oh, it may well have been, yeah. I accept that.

You’ve suggested to him that it might be better for the matter to be transferred out of the Downing Centre?---Oh, I’ve suggested that.

30

And you suggested that so you could at least give the appearance of having more control over the matter. Is that right?---Yes, sir.

And you told him that you could organise to get it out of the Downing Centre?---I’ve said that.

And what did you have in mind when you said that to him about how that would happen?---I could say to the court that he’d moved an address and get it transferred.

40

All right. And you did suggest somewhere like Camden to him. Why was that?---There was a magistrate who’d moved to Camden who I thought may well be a bit more lenient than magistrates at the Downing Centre.

All right. Which magistrate was that?---Mr O’Brien.

Mr O’Brien. Right. And did you, had you had dealings with Mr O’Brien in, with him as a magistrate and you as a barrister before?---I would have.

You, yourself had a, some court proceedings in relation to the offence of driving with a prescribed content of alcohol in your blood. Is that right?  
---Yes, sir.

Was that last year?---Last year or the year before.

Where was that dealt with?---That was a Camden before Sue Andrews, I believe.

10 Right. And how did it come to be at Camden?---It was at Katoomba and I intended to call some referees who were from that area.

From the Camden area or the Katoomba area?---Camden. And it was moved to there in case they had to give evidence.

Right. Did they?---They didn't on the day, no.

Did you, someone appear on your behalf?---Yes, sir.

20 Who was that?---David Loch, my solicitor.

And were references from persons tendered on your behalf at that hearing?  
---They would've been.

And what was the result which was imposed?---A section 10 bond for an 0-6-0.

THE COMMISSIONER: A what, sorry?---Sorry, it's a point zero six zero in driving, mid-range.

30

So what was the result I think you were asked?---Section 10, bond.

MR STAEHLI: And any period of disqualification?---No. I'd already done about ten weeks as a suspended driver.

All right. Were you initially charged with, that's a low range - - -?---Yes, sir.

40

- - - prescribed content of alcohol offence?---Originally, no, mid-range.

How did it come to be reduced in that way?---I made representations to Professor Grahame Starmer in relation to my drinking on the day. For instance if you have a schooner now, and then blew in the breathalysing machine, you'd be high-range. Forty minutes later you'd be 0-5-0-6, and an hour later you'd be zero. It's more often than not it is, and there's a scientific reason for this, I'm only repeating what I understand of it, more often than not, it's the residual alcohol in your mouth that you, that you blow. The police officers who observed me indicated that I showed no sign

at all of being intoxicated. And I think that was in the statement, none whatsoever. I'd had one beer when I'd found out some bad news about a friend. I was with Mr Loch and I skulled a beer, drove, within five or ten minutes, I was pulled over by police. From my recollection I blew 1-5-8. And then 1-6-1 and then back at the police station, however long after that, I was point one. Which shows that I was coming down rapidly and indicated in particular the, in the light of the observations of the breath analysis and the police officer, that I didn't appear affected at all. That it would've been residual alcohol on my breath. I, the matter was set down for hearing and there was a plea accepted on the day by me to 0-6-0.

Are you saying that you obtained some report from Professor Starmer about those issues?---Yes, sir.

And was that relied on in your hearing or just relied on in representations? ---Well, as it turned out, it was relied on and on the day of the hearing the officer in charge and the police prosecutor offered me a plea to low range rather than run a hearing because Professor Starmer indicated that he, he's, in his opinion, I'd be under .05 at the time of driving. To save the hearing, I, I accepted .06R.

THE COMMISSIONER: So what, he was saying the instrument that measured you must have been wrong?---No, I didn't say that.

So why did you say, I don't understand?---Well, if at the time of driving, as I say again, if he just had a glass of wine or scotch or beer now and then blew, he would be high range, but that's not in your blood, it's in your, in, in your mouth and I hadn't had any water at all and I didn't exhibit the signs.

I thought the offence was what was recorded on the machine?---Ah, that the what, the offence, the offence is recorded at the police station with breath analysis machine. It doesn't necessarily mean that you would've been that at the time of driving because you would be rising or falling.

So you weren't breathalysed on the spot?---No, no one's breathalysed on the spot, it's an indicating, an indication that you, the thing you count to ten to or blow into, that's only an indication, that's not a legal, you've got to go back to a police station and blow in a machine.

I see?---And I've obtained numerous reports from Professor Starmer as most other criminal lawyers have in relation, and the police have another pharmacologist called Dr Judith Perl (not transcribable) and all the reports are sent to them, in particular as I say the, the arresting officer and the breath analysis machine, I mean if they had indicated that he was slurring his words and he was off his face, he was obviously drunk, well the, the prosecution would not accept an external report, well just on what I'd said, so I accepted a plea of .060.

MR STAEHLI: Then Mr Hart would you listen to this further call, please, on the, said to have been recorded on 20 October 2008 at 8.38am, again apparently between yourself and Mr Wheaton.

**TELEPHONE INTERCEPT PLAYED [12.58]**

10 THE COMMISSIONER: That'll be 58, exhibit 58. Yes.

**#EXHIBIT 58 – TELEPHONE INTERCEPT G00226\_00\_00 ON  
20/10/2008 AT 8:38:31 (HART TO WHEATON)**

20 MR STAEHLI: Now, before I ask you questions about that recording, Mr Hart, I want to show you a transcript of, read by Commission personnel of the court hearings, some of the court hearings which took place in this matter.

THE COMMISSIONER: Well, I might, it's 1 o'clock.

MR STAEHLI: Is it?

THE COMMISSIONER: I'll adjourn to 2 o'clock.

30 MR STAEHLI: All right.

THE COMMISSIONER: Yes.

**WITNESS WITHDREW [1.01]**

**LUNCHEON ADJOURNMENT [1.01]**