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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 2.10 PM

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

Yes, Mr Staehli.

MR STAEHLI: Commissioner, I was about to show Mr Hart the transcript prepared by the Commission of the various court hearing dates in the matter of Bradley Wheaton.

10 THE COMMISSIONER: Yes.

MR STAEHLI: Which, are the copies in – the transcript, which is behind Tab 16.

THE COMMISSIONER: You're a good soul, thank you. That'll be Exhibit 59.

20 **#EXHIBIT 59 – TRANSCRIPT OF PROCEEDINGS AT CAMDEN LOCAL COURT ON 7/10/2008, 17/10/2008 AND 25/11/2008**

MR STAEHLI: I'll just make a handwritten amendment to something on the second page.

THE COMMISSIONER: Have you given them to him yet?

30 MR STAEHLI: No, I have it here. I was just changing on the second page, I don't know if your Honour has a copy.

THE COMMISSIONER: No, I don't have a copy.

MR STAEHLI: There's a reference in the – to the proceedings in the Downing Centre on the 17th of October, 2008 and - - -

THE COMMISSIONER: On the page where?

40 MR STAEHLI: The second page.

THE COMMISSIONER: Yes.

MR STAEHLI: And that heading of the bottom of the page, Downing Centre Local Court.

THE COMMISSIONER: Yes.

MR STAEHLI: Where it says “magistrate” in fact as the text reveals, that’s Mr Hart talking.

THE COMMISSIONER: Yes.

MR STAEHLI: So I’ve changed the word magistrate, crossed that out and put Hart.

THE COMMISSIONER: Oh, so it’s Hart, is it.

10

MR STAEHLI: And now, thank you, Mr Hart, if you might look at this document. Just if you’ll just read through that to yourself you’ll see that there are three dates apparently transcribed there, Downing Centre, 7th of October and 17th of October and Camden Local Court on the 25th of November?---Yes, sir.

Could you just read through that to yourself, please?---Yes, sir, I said that. That was – and I’ve misled the court.

20 THE COMMISSIONER: Sorry, I didn’t hear that?---I misled the court, sir, that’s the Downing Centre.

All right.

MR STAEHLI: Sorry, are you looking at that passage under the heading The Downing Centre Local Court on the 17th of October?---Yes, sir.

30 And where you said in the last three lines of that page, “He comes from Tamworth but he’s working in Oakdale which is, I’ve got his address to, 5 Stevens Lane at Oakdale and he’s a suspended driver,” etc. etc?---Yes, sir.

Are you, you accept, do you, in telling the court that his address was 5 Stevens Lane at Oakdale that that was you misleading the court?---Yes, sir.

Where did you get that address from?---I can’t recall. Was it Angela? I just can’t recall.

40 Is it possible that you just made it up?---Oh, I, I really can’t recall and similarly in relation to Camden, it’s not Mr Wheaton’s fault, it’s my fault and I, I certainly misled the court in relation to that.

All right. Well, on, on – that’s on the following page under the heading Camden Local Court 25 November, 2008?---Yes, sir.

The last line apparently records you telling the magistrate on that day that he, that is Mr Wheaton, now resides at 7 Stevens Street, Oakdale. Is that – that was you misleading the court, was it?---Yes, sir.

In between those two days, Mr Hart, there is a telephone call which has already, which was made Exhibit 58 and was played to you before lunchtime, the lunch adjournment?---Yes.

Could Mr Hart be shown page 2 of Exhibit 58, please.

THE COMMISSIONER: Yes.

10 MR STAEHLI: It's Tab 15?---Oh, that was before lunch, yes, sir.

And that date, the 20th of October, on which that call was apparently recorded, is after the – after that appearance made you on behalf of Mr Wheaton at the Downing Centre on the 17th of October recorded in the transcript in which you told the court that he lived at 5 Stevens Lane?---Yes, sir.

Three days later in this call, Exhibit 58, you told him that that's what his address was?---That's correct.

20

In case anyone pulls him over?---That's correct, sir.

By that did you mean in case he just happened to be stopped by a policeman or something like that? Is that what you meant?---That would have been correct.

30 So you weren't - you didn't just have in mind that you would mislead the court in relation to the place where he lived, did you, you, you thought about other ramifications of those things?---Oh, at the time I must have, sir, I don't actually – I accept that that is me talking. I can't recall the conversation but I accept everything's that said, sir.

And on the following page, page 3, about three quarters of the way down, the portion which starts with you apparently saying, "Yep. Mate, it's – so all I want, remember all the references are that you're working, residing out at Oakdale, working out there." Do you see that?---Yes, sir, I said that.

40 That's you telling him that, if he should have references prepared for his court hearing that they should refer to him working or residing at Oakdale. Is that right?---That's correct.

So you intended not only that you would mislead the court but that he would get others to mislead the court in accordance with your instructions. Is that right?---Well, that's the only inference I can draw. I can't recall the conversation but that's, that's true. I apologise for that. It's not Mr Wheaton's fault.

And then in a diary of yours, in a 2008 diary, I think probably the easiest way is to show you a copy of this page. Have you got the copy of the diary which is behind tab 17? I'll just show you this bundle, Mr Hart, consisting of ten pages and if you look firstly at the page that is, that I've turned the bundle over to, which is I think the second last page but in any event you see there written in handwriting the number 69 and then the words, "5 Stevens Lane, Oakdale"?---Yes, sir.

10 Is that in your handwriting?---It doesn't look like it, it may be but it doesn't look like it.

Is everything else on that page in your handwriting?---Certainly on the top left-hand side it is.

And then the Stevens Lane entry appears under the top of the left-hand side. Is that right?---It does.

20 And what about the word Milton and the phone number apparently written there. Is that your writing?---It may be, sir. The phone number doesn't do, doesn't mean anything for me but the next is.

THE COMMISSIONER: All right, this diary will be 60.

**#EXHIBIT - 60 COPY OF JOHN HART'S 2008 COLLINS DIARY
(SEPTEMBER, OCTOBER, NOVEMBER, NOTES PAGE)**

30 MR STAEHLI: The bundle, please. Do you recognise that, those pages as being from a diary of yours?---Yes, sir.

Thank you. If that could be returned, thank you, Commissioner. At some stage, I will wish to tender the court papers in relation to each of these matters but we might, I'll do that all at the end, Commissioner, to speed up the process.

40 THE COMMISSIONER: Yes.

MR STAEHLI: In the case of Mr Wheaton, did you ever provide him with a written fee disclosure?---I don't think I did.

He was a client for whom you acted directly without a solicitor. Is that right?---Yes, sir.

Did you ever provide him with the information a barrister is required to provide a client for whom he acts on a direct access basis?---Ah, I don't think I did.

Did you, was that your practice, that is not to provide clients for whom you acted directly with fee disclosure or other documentary requirements?---I certainly did some but I didn't do all of them.

10 I might just say, Commissioner, in relation to the question of Mr Wheaton's references, that it appears that none of those persons who did provide references for him, which were handed to the court said anything about him living or working at Oakdale.

THE COMMISSIONER: They did not, they do not?

MR STAEHLI: They did not. Can I turn to Jessica Smith's now. And can I ask you to listen to this telephone call, please, on 27 February, 2009 at 2.23pm, 14.23.

20

TELEPHONE INTERCEPT PLAYED

[2.23pm]

**#EXHIBIT 61 - TELEPHONE INTERCEPT G00240_00_00 ON
27/02/2009 AT 14:23:27 (HART TO PAUL)**

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

And the other voice, did you recognise that?---Anthony Paul.

Anthony Paul.---Mr Paul.

Yes. And at the start of the call you were asking Mr Hart something about when Uncle Peter will be on his own in the area and he told you 14 April? ---That's correct.

40 Who is Uncle Peter a reference to?---Mr Dare, the magistrate.

The magistrate?---Yes, sir.

And you were seeking from Mr Paul information about when Mr Dare would be sitting by himself in Wagga. Is that right?---That's correct.

So that hopefully you would be able to have a matter or matters heard in front of him rather than Mr Murray. Is that right?---That's correct.

Because of a, your perception that Mr Dare would give your clients a more gentle result than Mr Murray. Is that the position?---Yes, sir.

Then in the balance of that call, you talk about other things and Mr Paul does as well. And refers to someone saying Tiger rang him that night and said I got stuck into the prosecutor. Did you hear that portion?---Yes, sir.

10 On the second page. Do you know who Mr Paul was referring to when he said Tiger?---That would be Mr Wiles.

Another magistrate?---Yes, sir.

And the reference to Darey, D-A-R-E-Y, a reference also to Mr Dare, magistrate. Is that right?---Yes, sir.

20 And then in the, towards the bottom of page 2, a reference to being out at Bourke with Teddy Brown when Kevin would want to bash you all day. Is that a reference to another magistrate?---Yes, sir.

To who?---Mr Mourne.

Mr who?---Mourne.

Mourne. Then I'll just show you the transcript of the proceedings, a transcript prepared by the Commission, the proceedings in the Sutherland Local Court on 19 March, 2009, behind Tab 29.

30 THE COMMISSIONER: Which will be Exhibit 62.

**#EXHIBIT 62 - TRANSCRIPT OF PROCEEDINGS AT
SUTHERLAND LOCAL COURT ON 19/03/2009**

THE COMMISSIONER: And 61 is the last phone call.

40 MR STAEHLI: Oh, well that's up on the screen, but would you look at the hardcopy, please. Read that to yourself.---Yes, sir.

You see that apparently records you appearing in front of Registrar Lambino at Sutherland Local Court on 19 March, 2009.---That's correct.

And that you told him that Miss Smith was a special needs teacher who had been transferred to Wagga Wagga.---Yes.

That you knew to be untrue didn't you?---Well, she was a special needs teacher, but - - -

THE COMMISSIONER: She was what?---She was a special needs teacher, but she hadn't been transferred to Wagga. I misled the court in that regard.

MR STAEHLI: Yes. And you told the registrar that so that he would, you believed, transfer the matter to Wagga Wagga. Is that right?---That's correct.

10

Which is what happened?---Yes, sir.

And you had it transferred to that day, 14 April, that you referred to in the preceding telephone call when you believed Mr Dare would be the magistrate. Is that right?---That's correct.

Then would you listen to this call please on 6 April, 2009 at 3.40pm.

THE COMMISSIONER: That'll be 63.

20

**#EXHIBIT 63 - TELEPHONE INTERCEPT G00240_00_00 ON
6/04/2009 AT 15:40:02 (HART TO SMITH)**

TELEPHONE INTERCEPT PLAYED

[2.30pm]

30

MR STAEHLI: Did you recognise your voice on that call?---Yes.

And Ms Smith's voice?---I believe so.

You told her towards the bottom of page 1 on the transcript that, "We just need some references saying that you've transferred down to Wagga. Do you see that?---Yes, sir.

40

You have, had you told her before this do you know that she would, that that was a story which was to be given to the court either to transfer the matter or when she was actually at Wagga?---On my head on that, I can't recall, I may have.

In this call at least you'd told her that she needed to have references which said that?---Yes, sir.

Is that right?---Yes.

You told her that knowing that it was, it would be false if such referees said that in references, didn't you?---Looking back now, yes, I don't know if I thought of it at the time but yes, certainly.

Well, there can't, even, whatever you state a sobriety there can't be any doubt can there that you knew what you were doing in saying this to Ms Smith on this occasion?---Well, that's, it's a very reasonable inference, yes, sir.

10 Then on the same day, 6 April, 2009 at 6.07pm, there's a further call. Would you again listen to this and follow it on the transcript.

That'll be 64.

**#EXHIBIT 64 - TELEPHONE INTERCEPT G00240_00_00 ON
6/04/2009 AT 18:07:20 (SMITH TO HART)**

20

TELEPHONE INTERCEPT PLAYED [2.34pm]

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

And it appears that the voice of Jessica Smith?---Yes, sir.

30 She asked you whether or not she needed to get people to lie on the testimonial?---That's what appears to be the case, yes it does.

That request was consistent with the sorts of things which you'd told her of which one example was what was on the previous call. Is that right?---It does.

And when she said that you, I suggest you sought to cut her off so that you wouldn't be saying such things on the telephone?---Oh, I may have. It appears, it appears, it suggests that, sir.

40

Thank you. Then the next day it appears Ms Smith left a message for you on your voicemail on 7 April at 10.44. Would you listen to this please and follow the transcript of the recording.

TELEPHONE INTERCEPT PLAYED [2.37pm]

**#EXHIBIT 65 - TELEPHONE INTERCEPT G00240_00_00 ON
7/04/2009 AT 10:44:01 (SMITH TO HART VOICEMAIL)**

MR STAEHLI: Did you recognise your voicemail recording at the start of that call?---Yes.

10 Did you tell Ms Smith on an occasion at a hotel that you had an address in Wagga that she could use?---Probably would have.

Was that something you did on a number of occasions?---I would have told Ms Smith that.

Well, would you answer my question please?---Oh, are we talking about Ms Smith?

20 No. We're talking about whether or not on other occasions you had done the same thing, that is given clients of yours a false address in, well, an actual address in Wagga Wagga at which they did not live for them to use in information to be put before a court? Did you do that?---I can't recall if I did, sir. I can't recall.

It's almost certain though that you did, isn't it?---I can't recall it, sir, I just, as I was saying, in '08 particularly, I was a, an alcoholic drinking far in excess every day and I, I just don't think the brain was working as it should have. I'm positive it wasn't. And as a recovering alcoholic, it's still not working particularly well.

30 MR STAEHLI: In April '09, that is earlier this year - - -?---Yes, sir.

- - - you were not drinking. Isn't that the position?---That's correct.

So that at the date of this call and around the time of these calls just played to you, March and April 2009, you were sober. Is that right?---I was not, well, if I can use the expression I was off the grog.

40 Yes?---I was still craving alcohol. I don't know if - I don't know the medical or scientific terminology of it but I wasn't functioning as I should and as I used to years ago.

And by that do you mean to say that's a reason why you can't remember whether or not you ever provided false address material to your clients, other than Miss Smith?---It may well be, sir, I just can't remember.

So is it possible that you did this on numerous occasions but you've forgotten?---I don't think so, sir. I may have. I don't think so but I may have.

So you know, because we've mentioned it in passing this morning, that you did approach Mr Peacock to get an address from him that you could use?
---Yes.

Isn't that right?---That's correct.

10 And so in that instance, which we'll come to later on at some stage, you propositioned a friend of yours to provide an address for the very reason of giving it to a court, didn't you?---That's correct.

And that's either something you did regularly or something which is incredibly unusual or perhaps somewhere in between. What do you say about how often you did that?---I, I can't recall if I did it before. I knew Mr Peacock. I shouldn't have done it and I'm very, very sorry for it but I, I just can't recall at that stage what I was doing.

20 You see, you involved Mr Peacock in Miss Smith's matter as well, didn't you?---Yes, sir.

On what basis?---On the basis of an address for her to use. I just don't know why I did it. I just don't know for the life of me why I did that.

Then the 14th of April came around, that was the date on which – to which the matter had been adjourned from Sutherland?---Yes, sir.

30 And this was the occasion, just to refresh your memory, on which you and Miss Smith were due to appear at Wagga Court in respect of her matter that in the end result neither of you did?---Yes, sir.

Right. Would you listen to this call, please, the 14th of April, 2009 at 8.34am.

THE COMMISSIONER: It'll be Exhibit 66.

40 **#EXHIBIT 66 - TELEPHONE INTERCEPT G00240_00_00 ON
14/04/2009 AT 8:34:43 (HART TO TURNER)**

MR STAEHLI: We can't turn up the transcript on the screen, Commissioner, could I provide some hard copies.

THE COMMISSIONER: Yes.

MR STAEHLI: One for you and one for the witness.

Would you listen to this call, please, Mr Hart.

TELEPHONE INTERCEPT PLAYED

[2.44pm]

MR STAEHLI: Did you recognise your voice on that recording, Mr Hart?

---Yes, sir.

10

And did you recognise the other voice?---Yes.

As being that of whom?---Sorry?

Whose voice was that?---Oh, I know it was Steve Turner.

Sergeant Steve Turner. What was his position?---Prosecutor at Wagga.

Police Prosecutor at Wagga?---Yes, sir.

20

And you asked him about the matter of Jessica Smith obviously?---Yes, sir.

And made some excuses about you not being in Wagga as you were apparently supposed to be?---Yes, sir.

Do you know where you were when you made this call, this being Easter Tuesday?---No.

I suggest to you that you were on the South Coast of New South Wales?---I may have been, sir.

30

Do you remember where you spent Easter this year?---I think I was on the South Coast.

Did you have any intention of going to Wagga that day?---I just can't remember, sir, I don't know why I was – and it was listed on the 14th, I don't know why, I don't know why I wasn't there.

You said to Mr Hart that you'd try and organise some tickets for a football game at WIN Stadium?---Sergeant Turner.

40

By organise some tickets did you mean buy them?---Oh, he's a mad Manly supporter and I support St George.

Yes. Did you intend to buy tickets and bear his costs of going to that game? ---Oh, no. I'd buy them and he would have paid me back if I had actually bought them.

I'm sorry?---If I had bought them, which I didn't, I'd buy them and, and he would pay me back.

All right. Do you know whether or not you had had any dramas at home of the kind that you refer to you as the reason why you weren't at Wagga or going to Wagga at 8.34?---I can't recall that, sir. I don't know why.

All right. Then five minutes later there's a further call, on this occasion apparently between yourself and Miss Smith, the 14th of April at 8.39.

10

THE COMMISSIONER: That'll be 67.

**#EXHIBIT 67 - TELEPHONE INTERCEPT G00240_00_00 ON
14/04/2009 AT 8:39:51 (HART TO SMITH)**

20 MR STAEHLI: Would you follow that transcript, please.

TELEPHONE INTERCEPT PLAYED

[2.50pm]

MR STAEHLI: Did you recognise your voice on that call?---Yes.

30 And that's you telling Miss Smith on that telephone call that you had been told by the prosecutor that the, that your bloke had gone off sick. Is that right?---That's correct.

The reference to your bloke was a reference to your preferred magistrate. Is that right?---Yes, sir.

But you hadn't been told by the prosecutor that he'd gone off sick had you?
---No.

40 You'd been told that Mr Dare was sitting in other matters and you were presently before Mr Murray?---Yes, sir.

So you told a small lie to Miss Smith in that regard?---Yes, sir.

Then you suggested to her that it would be a good idea in effect, if she missed the flight she apparently at the airport to catch. Is that right?
---That's correct.

And you did that so that there would be, so that she wouldn't appear in Wagga and that that would facilitate the matter being adjourned. Is that right?---Yes, sir.

Did you think that it was wrong to do that?---I do now.

Are you saying at the time your thinking was confused?---I don't know what I was thinking at the time. It's just madness.

10 Then not long after there's another call on 14 April, 2009, at 9.03, apparently between yourself and Sergeant Turner. Would you listen to this excerpt of a call, please.

THE COMMISSIONER: This is 68.

**#EXHIBIT 68 - TELEPHONE INTERCEPT G00240_00_00 ON
14/04/2009 AT 9:03:33 EXTRACT (HART TO TURNER)**

20

TELEPHONE INTERCEPT PLAYED

[2.54pm]

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

And Mr Turner's voice?---Yes, sir.

30

And that's you continuing your discussion about the magistrates in Wagga who, and their future availability. Is that right?---Yes.

Reference to it being, a reference to Mr Dare, Magistrate, at the start of the transcript?---That's correct.

And Mr Turner mentions another magistrate, Mr Hogg. Is that right?---That's correct.

40 And then there's discussion about you sending a letter - - -?---Yes.

- - - to excuse your attendance and that of Miss Smith's from the proceedings that day?---That's correct.

And you told Mr Turner that Miss Smith, this is half way down page 3, sorry, half way down the second page, perhaps. You told Miss, told Mr Turner that Miss Smith had rung you and said she couldn't get a flight out

of the Gold Coast. Do you see that?---Yeah. I don't know where that came from.

Because you knew that was complete rubbish didn't you?---Yes. I just don't know where that came from.

It was something which you made up to tell a lie to Mr Turner.---Well, I just don't know why I said that, because she was in Sydney.

10 Well because if you'd told him the truth that she waiting at Sydney to catch a plane to come to Wagga, that might not suit the purposes of the adjournment. That's the reason isn't it?---(not transcribable) It may have - -
-

That's the only logical explanation for it isn't it?---Well, it certainly is a logical explanation.

Then three minutes later it seems you spoke to Miss Smith again. Would you listen to this call, on the same day, 14 April, at 9.06am.

20 THE COMMISSIONER: That'll be 69.

**#EXHIBIT 69 - TELEPHONE INTERCEPT G00240_00_00 ON
14/04/2009 AT 9:06:50 (HART TO SMITH)**

30 **TELEPHONE INTERCEPT PLAYED** [2.58pm]

MR STAEHLI: In that call, towards the bottom of the second page, you told Ms Smith that he's a lovely bloke, he's a real good mate of mine, I spoke to him last week and, and because I was in Wagga last week. You were referring to Magistrate Dear when you said that, weren't you?---Yes, sir.

40 Is he a lovely bloke?---Yes, he is a lovely person, a nice person.

Is he a very good friend of yours?---I've know him a long time, sir, he's a very nice, he used to be a Crown Prosecutor.

And is he a friend of yours?---I would say so, yes.

Earlier on that page you'd referred to him, I suggest to you, as our bloke?---That's an expression I use.

By that you intended to convey to Ms Smith, by everything you said on that page, that Mr Dear would give her a softer penalty than some other magistrates. Is that right?---Yes, sir.

And that your association with him would assist in that, that's what you were intending to convey, wasn't it?---Well, it may well have given that implication, yes.

10 And you said that the other fellow had to be avoided, that was a reference to Magistrate Murray. Is that right?---That's correct.

Did you, at around this time, socialise with Mr Dear, that is outside the court precincts?---No, I don't believe so.

Then three minutes after that you had this further call on 14 April at 9.09.

THE COMMISSIONER: So that'll be exhibit 70.

20

**#EXHIBIT 70 - TELEPHONE INTERCEPT G00240_00_00 ON
14/04/2009 AT 9:09:16 (HART TO GRANT)**

TELEPHONE INTERCEPT PLAYED [3.03pm]

30 MR STAEHLI: And then the call continues, apparently having been cut off, Commissioner, on the same day obviously, with Paul starting at 9.17.

THE COMMISSIONER: I'll make it part of the same exhibit.

MR STAEHLI: 70.

TELEPHONE INTERCEPT PLAYED [3.08pm]

40 MR STAEHLI: Mr Hart, did you recognise your voice on those two calls?
---Yes.

And Louise, who is she?---She's a lady that works for Creaghe Lisle.

Mr Paul's firm?---Yes, sir.

The lady you've apparently known for some time. Is that right?---That's correct.

Louise, Grant is her surname. Is that right?---I believe so.

And in that, those combined calls you were dictating to her a letter to be written apparently to the courts to give an explanation about Miss Smith's whereabouts and, indeed, your whereabouts. Is that right?---That's correct.

10 And Miss Grant, perceptively perhaps, asked you whether or not you were lying in what you were dictating to her. Did you hear that?---It says that, yes.

And you denied to her that you were?---I said that.

So to this point, on this day, you'd lied firstly to Miss Smith about the magistrate being sick?---It appears that way, yes, sir.

You'd lied to Mr Turner about Miss Smith being on the Gold Coast?---It appears that way.

20 And you'd lied to Miss Grant, a person you'd known for years, about the contents of this letter. Is that right?---Yes, that's right, sir, yes.

And then you intended that the letter thus written would be sent to the Wagga Local Court for the reasons already discussed. Is that right?---That's correct.

30 And, Commissioner, it appears that it was from the court papers which are compiled in a bundle. Could I turn to the relevant but tender the whole - I'm sorry, I've got too many spares.

Would you look at this letter, being the third last page of the bundle - - -?
---Yes, sir.

- - - of court papers. And do you see that's a letter apparently written on letterhead with your name on it?---Yes, sir.

Which the Commission knows from other evidence was available to be used by people in Mr Paul's office?---That's correct.

40 And the letter appears to record what presumably was typed by Miss Grant on the instructions given by you in those telephone calls?---That's correct.

You knew that there were untruths in the letter which you had dictated?---I did.

And you asked that Miss Grant convey that to the court. Is that right?---I did.

THE COMMISSIONER: I mark that 71.

**#EXHIBIT 71 - BUNDLE OF LOCAL COURT DOCUMENTS
RELATING TO JESSICA SMITH**

10 MR STAEHLI: Did you just mark the letter, Commissioner, or the whole
bundle?

THE COMMISSIONER: The bundle.

MR STAEHLI: The bundle, thank you.

Then the matter was adjourned, as it turns out, to the 4th of May in
accordance with the request made in that letter and if I can play you this
further call on the 2nd of May, 2009 at 17.10. Now, would you look at this
20 hard copy of the transcript, please, Mr Hart, the 2nd of May, 1710.

THE COMMISSIONER: Did I have a copy? This will be 72.

**#EXHIBIT 72 - TELEPHONE INTERCEPT G00240_00_00 ON
2/05/2009 AT 17:10:28 (HART TO SMITH)**

30

TELEPHONE INTERCEPT PLAYED

[3.16pm]

**# EXHIBIT 73 - TELEPHONE INTERCEPT G00240_00_00 ON
4/05/2009 AT 10:27:03 (SMITH TO HART)**

40 MR STAEHLI: And in that call, when you said, "It's dearest my bloke
there so it's, it's, we'll get the best result possible, were you intending to
refer to Mr Dare?---Yes, sir.

And were you intending to convey to Miss Smith that you had a special
relationship with Mr Dare which assist her in getting the best result
possible?---Oh, no, I think what I meant was he's a very fair and I consider
relatively lenient magistrate and she would get the best result possible.
Some magistrates are a lot harsher than others, they just are.

Yes. You didn't say that though, did you? You didn't express that?---Oh, no, I didn't express that.

You called him my bloke?---Well, that's just the terminology I use.

Is it? Then on the 4th of May, 2009, two days later, the day of the hearing, there's this call at 10.27am.

10

TELEPHONE INTERCEPT PLAYED

[3.19pm]

**#EXHIBIT 74 - TRANSCRIPT OF PROCEEDINGS AT WAGGA
WAGGA LOCAL COURT ON 14/04/2009 AND 4/05/2009**

20 MR STAEHLI: Did you recognise your voice and that of Miss Smith on that call?---Yes, sir.

And then can I show you this transcript which includes what happened on the 14th of April when you and Miss Smith didn't arrive but the portion I want to direct you to is the transcript of the 4th of May, 2009.

Do you need one, Commissioner? Would you read through that to yourself, please, Mr Hart.---Yes, sir.

30 And you didn't take long to read through it. Did you recognise the things that were said in there as sufficient to - - -?---Yes, sir.

- - - convince you that that's a transcript of the proceedings in which you appeared for Miss Smith in front of Mr Dare?---Yes, sir.

And did you see that on the second page of that transcript you told him that, she, that is Miss Smith, comes down here of a Tuesday morning and works Tuesday to Friday and goes home Friday night?---Yes, sir.

40 You knew that to be untrue didn't you?---Yes, sir.

You said she, after that she's a special education teacher and this four days a week here gets her something else back in Sydney. I don't quite understand that. Did you see that?---I see that.

And do you remember that the magistrate mentioned on the following page that his daughter was apparently involved in special education?---Yes.

Did you know that before you raised - - -No, I didn't.

- - - what you said about Miss Smith?---No, I didn't.

And on that page, which that is mentioned is the third page of the transcript, you've told Mr Dare that she, Miss Smith, had been offered a full time job down here, meaning in Wagga. Is that right?---That's correct.

10 And you told him that a conviction could result in consequences (not transcribable) real and undue hardship to others. Apparently a reference you intended to be to her teaching disadvantaged children or children with special needs?---Yes, sir.

Is that right?---Yes, that's correct.

And all those things were untrue weren't they?---Oh, I think any, any, a loss of a licence for anybody is a, and I know, is a, is difficult. But it wouldn't matter where she worked, it would've been very difficult for her. But she
20 wasn't working in Wagga.

And why did you make up those things?---As I sit here today, sir, I just don't know. I honestly, it's just ridiculous. A person of my background and the amount of years I've been in law, it's just ridiculous. I can't explain it. I have sat down and thought about it time and time again, I just don't know why.

THE COMMISSIONER: Mr Staehli, Mr Hart has to come back tomorrow, but I thought you told me there was other witnesses you want to call before
30 4.00, it's 3.30 now.

MR STAEHLI: There are. There's just one, one final short call, which I would like to play that call. It's the same day, 4 May, 15.41. It's a message Mr Hart - - -

THE COMMISSIONER: 75. Yes.

40 **#EXHIBIT 75 - TELEPHONE INTERCEPT G00240_00_00 ON
4/05/2009 AT 15:41:37 (HART TO SMITH VOICEMAIL)**

MR STAEHLI: Did you recognise your voice leaving that message, Mr Hart?---Yes. Yes, sir.

That was said to Miss Hart's voicemail because you knew that what had happened in court was something which was wrong.---I agree with that.

You agree?---Yes, sir.

And you didn't want her to broadcast it?---Yes, sir.

10 Doesn't that fly in the face of what you say sitting here today about what you knew about what you were doing on this day?---Well, I didn't want her to go and tell that for mid-range drink driving she got a Section 10 and - - -

What possible harm could that do?---Because I suppose when you, people get misconceptions in relation to the, it's extraordinary the difference in penalty people can get from going through different courts, when everyone will tell you, all the bush lawyers, well, my mate go this, my mate got that or whatever. That's merely all I meant really by it.

20 You say that's why you told Miss Hart not to tell anyone about this?---Miss Smith.

Miss Smith, I'm sorry.---I think so, yes sir.

I suggest to you that what you didn't her to tell people was that lies had been told about her in court.---Oh well, I don't know if I thought about that at the time, sir.

If that was a convenient time to - - -

30 THE COMMISSIONER: Yes, you may step down (not transcribable) Hart.

MR STAEHLI: - - - interrupt Mr Hart's examination.

THE WITNESS WITHDREW

[3.27pm]

THE COMMISSIONER: Who do you want to call?

40 MR STAEHLI: Miss Smith.

THE COMMISSIONER: Miss Smith here?

MR McILWAINE: I seek your authority to appear - - -

THE COMMISSIONER: Yes, yes, Mr McIlwaine. You seek a, do you want a declaration.

MR McILWAINE: Certainly, Commissioner.

THE COMMISSIONER: Miss Smith, you are represented and I'm assuming you have been, had explained to you your obligations and entitlements under this legislation.

MISS SMITH: Yes.

THE COMMISSIONER: I am, I will make a declaration as asked by you to deem all questions asked of you to be subject to your objection. Do you understand that?

10

MISS SMITH: Yes.

THE COMMISSIONER: But also do you understand that whether that's done or not – if what you're charged with is the serious offence of telling lies to this Commission the evidence will be used against you and the penalties for telling lies could result in imprisonment. Do you understand that?

20

MISS SMITH: Yes.

THE COMMISSIONER: I'll declare all the questions, declare pursuant to section 38 that all questions asked of this witness, all answers given and all requests made will be subject to her objection and she therefore, there is no need for her to object to any particular question and that this declaration will (not transcribable) her for the time she is in the witness box in this public inquiry. Yes, Mr Staehli. You'll have to take an oath to tell the truth. Do you want to take it on the bible or do you want to affirm?

30

MISS SMITH: (NO AUDIBLE REPLY)

THE COMMISSIONER: Take a seat Miss Smith, yes.

MR STAEHLI: Miss Smith, you accept, I gather, that Mr Hart who has just been giving evidence acted for you as your barrister in relation to a drink driving charge- - -?---Yes.

10 - - - which ended up being heard in Wagga. Is that right?---Yes.

And how did you come to know Mr Hart?---I knew him when I worked at Boyles Hotel in Sutherland for about 18 months. I knew him as a patron and I was a bar tender.

Thank you. And what, he would drink there. Is that right?---Yep.

And you came to know that he was a barrister?---Yes.

20 So what, you thought of him when you were charged with this drink driving offence. Is that right?---He was the only barrister that I knew of at the time when.

Right. Boyles, is that somewhere near the court house in Sutherland?---It's just around the corner, it's on Boyles Street and Old Princes Highway.

When you were charged, how did you first make contact with Mr Hart?---I, I think I called someone from the pub that worked there and I asked them to let me know when Mr Hart came in and then I acquired his phone number
30 from someone local I think – I don't really remember.

All right. So in relation to this matter, you got in touch with him first on the telephone. Is that right?---I believe so or - - -

It may have been in person. All right. In any event, you came to talk to him about the matter and what was going to happen. Is that right?---Yes, yes.

And at any stage, did you have a discussion with him about transferring the matter?---Not transferring, Mr Hart said that if he could get it some place
40 else, the Judge would be more lenient because I got a mid-range PCA.

Right. So by, I think we might be talking about the same things, by getting it somewhere else he meant having it heard at some court other than Sutherland?---Yes.

And do you remember there being, was there a suggestion that the matter might be transferred or go to another place namely Wagga at some stage?--- To another place, I wasn't aware that it was going to be Wagga.

All right. At what point did you become aware that it was to be Wagga?---
After Mr Hart had checked his diary and he let me know where it was going
to be. I'm not sure whether it was in a phone call or whether I'd seen him.

All right. Have you been sitting in the courtroom this afternoon while a
series of calls have been played including calls apparently with you?---Yes.

10 And in them there are various references to things which were to happen
obviously and in a call which became exhibit 63, Mr Hart said, it seems,
"And we just", to you, "And we just need some references saying that
you've transferred down to Wagga. Did you hear that this afternoon?---I
did.

Yes. And you responded, "Ah, as in like work wise", and he said, "Yeah,
work wise." And you said, "Like school or teaching", and he said, "Yeah,
yeah, yeah." Do you remember hearing that call?---Yes, I do.

20 We can show it to you again if you - - -?---No, I remember it.

All right. And what did you understand him to mean by that conversation?
---May I just quickly say something?

Yes?---I, I didn't remember until just as soon as I heard those calls,
unfortunately I, I wasn't able to recall that and I'm really sorry that I didn't,
but I never - - -

30 On another occasion when you were at the Commission?---When I've been
talking to legal and et cetera, I never got those, I had three character
references that I got from my employer, my current employer, none of them,
I did not ask them to write any such thing that I was working in Wagga.
He's got my references and they were all true.

All right. I think the court records bear that out, Commissioner, but I'm
asking you a slightly different question?---Sorry.

40 Although what you said is relevant, what you understood Mr Hart to mean
when he said, "We need some references saying you've transferred down to
Wagga", did you talk that through with him at any other occasion other than
in these telephone calls?---Not that I recall, I didn't really understand it and
I said yes but I don't remember talking to him anymore about it. I was a bit
confused.

All right. In the call which followed that, on the same day about three hours
later, a similar topic was discussed and he said to you, this is exhibit 64,
6 April '07, "Give me a ring in the morning and I'll talk to you about what
we have to say on the testimonials all right?" And you said in response to
that, "Okay. Now, do I, am I organising this myself? Do I need to get

people to lie because I'm just a bit worried, like that they'll say", and then you get cut off by him saying, "Why don't I, I talk to you tomorrow?" Did you hear that call when you were here today?---Yes, I heard it.

And that is apparently about the same topic. Is that your understanding of what was said by you at least on that call?---Yes.

10 And then the following day, 7 April at 10.44, sorry I've lost the exhibit number of that, Commissioner, but I imagine it would be 65, you left a message for Mr Smith and, 65 yes, and in it you said, "I don't really know what to do. I'd, I'd get a character testimonial for me but I'm not quite sure what I'm supposed to write about how I'm going to be working down in Wagga. I'm just a bit confused so I thought you mentioned when I saw you at the pub that you had a reference or you had an address that I could use." Did you hear that this afternoon?---Yes.

20 We know what you say about references or testimonials but was there some discussion at some stage with Mr Hart about him having an address that you could use?---If there, if I've said that, then it, I don't, I do not recall him telling me any address or any specific name. I do not remember that, I'm sorry.

All right. Do you remember any general conversation about him possibly having an address that could be used for that purpose?---Not until the day that I went down to Wagga for the final appearance.

Which was, and then you met someone else. Is that right?---Yes.

30 All right, well, I'll come to that. Then, did you know that the matter was transferred from Sutherland to Wagga, did you hear about that happening? ---Yes.

And did you understand that that happened because the court was told that you had been, you were working in Wagga?---No.

You didn't know that?---I didn't know that.

40 All right. And then it was listed for 14 April in Wagga which was that day you were to catch the plane?---Yes.

And you heard those calls apparently recorded on the day that you were at the airport on the morning of 14 April?---Yes.

And those calls in which Mr Hart is talking to you there was discussion about postponing your case because of reasons associated with the magistrate, the right magistrate not being there. Is that right?---Yes.

And you, it seems at one point, were upset about the cost of the airfare which you might have lost. Did you lose that cost of the airfare?---No, I was able to change the date down to the time, the next date.

4 May?---Yes.

When it was adjourned to, all right. Did you know that Mr Hart was giving false explanations to the court about the reasons why you could not be there on that day?---No.

10

Then eventually you came to actually go to Wagga on, apparently on 4 May 2009?---Yes.

And during the hearing, I'll withdraw that, before the hearing did you, were you were with Mr Hart outside the court somewhere?---Yes.

20

Whereabouts?---When, I met him at the pub across the road from the court and then we walked down, down the road to another pub and then he met up with two or three people that I was introduced to and then we sat down for a little bit and had a drink and then we were going to get lunch but it was late and then we walked up, we walked back up to court.

All right. And was anything said at around that time about the use to which the other man or the other men might be put in your case?---I was introduced to all three and for the last man that I met Mr Hart said, "This is your reference."

This is your reference?---And that's all I - - -

30

All right. And did you understand, what was your understanding about what he meant when he said that?---When he said that I, it must have been his reference as in maybe he'd be speaking up, he'd be speaking for me because I was at Wagga.

All right. Well, you're guessing it would seem of what the use of that man was to be based on just that, those words that were spoken, is that right?---Yes. I didn't really, I was a bit worried, I didn't really know what was going on. We just shook hands and I just, I sat there, I didn't hear any of the conversation that they were talking about.

40

All right. Why were you worried?---Because it was my licence and that's all I thought about, just losing it.

All right. Were you worried about the fact that Mr Hart, your lawyer, might be recruiting someone, some friend of his in Wagga to give a testimonial for you or to be a referee or something?---I feel very naïve. Now, I didn't really put another thought to it. I just, I knew Mr Hart from the pub from when I

worked and I really like, I liked him and I, I just thought that he would do what he could do best, I suppose..

All right. So what – you trusted him to do the right thing?---Yes.

And there has been put before the Commission the transcript of some of the things, all the things that he said to the court on your behalf that day. Do you understand that?---Yes.

10 Amongst them were things which he told the court about the fact that you had been transferred to Wagga to work. Did you hear him say those things on that day?---Yes, I did.

Did you appreciate - - -

THE COMMISSIONER: Did you know he was going to say those things before he said them?---No, not until just before we went into court.

You knew then?---Yes.

20 Did you tell him it wasn't true?---No.

Why not?---I, I didn't, I don't know. I just didn't.

Did you think there was anything wrong with that behaviour?---Yes.

But you still didn't say anything?---No.

30 MR STAEHLI: And when he said it to the court did you appreciate that there was, it was wrong to tell lies to the court?---Yes.

In the end result you were not convicted?---No.

And you were – your licence was not suspended or disqualified?---No.

So you walked away with a very good result?---Yes.

How much did you pay Mr Hart?---\$1,700.

40 In total?---Yes.

Did he ever give you a, a document in which he disclosed the basis on which he would charge?---No.

Did he ever give you a document in which he told you any other information about how barristers can act directly for clients without solicitors?---No.

When you said, when I first started asking you questions about the telephone calls that you'd forgotten such things, did you mean on an earlier occasion when you were here in this room, that you'd forgotten when you were here on that occasion, if I might disclose that, commissioner, to that extent, that at that time you had no recollection of the content of those calls?
---No.

Is that what you mean?---That's right.

10 What was your status at the time of the court hearing, the final court hearing, in relation to being a teacher or a person in training as a teacher?---I am qualified to be a teacher.

Yes?---I was a casual teacher which means - - -

At that time?---Yes.

Yes?---Which means you are appointed to different schools - - -

20 Right?--- - - - to do days, weeks, whatever so at that time I was casual teaching in Sydney and also working at a nightclub.

All right. And by casual teaching you mean what, being a locum, filling in for teachers who are away?---Like a substitute, substitute.

And had you done some training in relation to children with special needs?
---No, I was not qualified – I'm not qualified to be a special needs teacher however I work at a respite centre in the holidays which deals with kids with disabilities and at the time that I lost my licence I was working at a
30 school within a support unit so I had been on a class teaching kids with low to moderate learning disabilities for about eight weeks - seven weeks I think it was.

At the time that you lost your licence, you mean when you were charged with the drink driving offence?---Yes.

All right. What about at the time of the hearing which was in May?
---During that time I was not teaching at that school in that class.

40 All right. So as at the time of the hearing, although you had worked in the past helping children with special needs, you were not strictly speaking a special needs teacher?---No.

Is that right?---That's right.

All right. And did Mr Hart know those details?---He, he knew that I was working at the school when I lost my licence but I told, I didn't tell him that I was special needs trained.

All right. Because in that hearing, as you know, some of the things which he told the magistrate included the proposition that you were a special needs teacher and, apart from any other reason, your licence was important for that purpose?---Yes.

That was untrue as well, wasn't it?---Yes.

10 THE COMMISSIONER: And also, I think, that the magistrate was persuaded to think that you were engaged in a calling instead of an occupation. He was impressed by the nobility of your call. That's what he was saying, wasn't it? That was the whole point of it, wasn't it?---Yes.

MR STAEHLI: I've got no further questions.

THE COMMISSIONER: Yes. Does anyone have any questions?

MR McILWAINE: I do, Commissioner.

20 THE COMMISSIONER: Yes, yes, Mr McILWAINE.

MR McILWAINE: There's a document which is not yet an exhibit which is court papers.

MR STAEHLI: It is an exhibit.

MR McILWAINE: It's an exhibit now?

30 MR STAEHLI: Yes. 71, I think.

MR McILWAINE: 71. If I could just show you these court papers and I've turned the page of that document to the document headed Traffic Offender Programme Report. Perhaps the witness could be shown those documents. The court officer's directing your attention to a document, that's a report from the Traffic Offender Programme report. Do you see that document? ---Yes.

40 And that's in relation to a programme you undertook with that organisation at Sutherland?---Yes.

And that's a legitimate, genuine document?---Yes.

Correct. Can you turn to the next page. There's a reference under the hand of Mr Tim Nola?---Yes.

You see that?---Yes.

And that's a truthful document?---Yes.

The next page is a document under the hand of Mr David Cox. That's a truthful document?---Yes.

And the next document is what appears to be your CV?---Yes.

And that shows your address as 36 Seaforth Avenue at Oatley?---Yes.

And that's truthful?---Yes.

10

It was truthful at the time when it was placed before the magistrate. Now, in addition to those documents, did you – I'll go back a step. When you first contacted Mr Hart you had never been, never appeared before a court before in your life. Is that correct?---Yes, that's correct.

You had no knowledge of the legal system?---No.

You knew Mr Hart and you knew he was a barrister of some years standing. Correct?---Yes.

20

It's true that you relied on the advice that he provided you?---Yes.

And in fact did you provide him with a document, and I'll show you a document which hasn't been tendered. It's a document addressed to the Honourable Magistrate. Have you read that document?---Yes.

Is that a document you prepared?---Yes.

And that set out the truthful circumstances of your life. Correct?---Yes.

30

And that's a document you handed to Mr Hart?---Yes.

That's correct, prior to you – can you recall when you handed that to him? ---The day that I went to Boyles to first speak with him about everything.

So right from the start of these proceedings you had provided him with that document which had set out your truthful personal circumstances?---Yes.

Correct?---Yes.

40

And perhaps that document could be tendered, Commissioner.

THE COMMISSIONER: I'll mark it 76 and I'll just put S76.

**#EXHIBIT S76 - LETTER TO THE HONOURABLE MAGISTRATE
BY JESSICA SMITH**

MR McILWAINE: And they were the instructions that you were giving to Mr Hart about your personal circumstances. Correct?---Yes.

And notwithstanding you haven't – having given him those instructions in writing, he at the Wagga Local Court, placed matters before the court which were not true. Correct?---Yes.

10 Now, in regards to the first appearance at the Sutherland Court, your evidence here, is it that you were not aware – firstly you weren't at the Sutherland Court when the matter was adjourned. That's correct?---Yes.

And you were not aware of what Mr Hart said or was going to say on that occasion. Correct?---Yes.

And, of course, the second occasion at Wagga, as we've heard, you weren't present there, you were in Sydney. That's correct?---Yes.

20 And you certainly were not aware at that stage of the story about being caught on the Sunshine Coast?---Yes.

When was the first time that you heard that suggestion?---I was first shown the letter when I appeared here Tuesday, the 18th of August at the private hearing.

Nothing further, Commissioner.

MR STAEHLI: Can I just ask one or two questions?

30 THE COMMISSIONER: Yes, you can.

MR STAEHLI: I assume when you saw Mr Hart at Boyles that on that occasion or occasions he was drinking?---Yes.

When you spoke to him about your matter did he appear to understand what you said and to be coherent and not drunk?---Yes, I believe so, yes.

40 And when he acted for you at Wagga on the 4th of May, when you went down there, was he sober on the morning that you saw him?---Yes.

At least so far as you could tell?---Yes.

Is that right?---Yeah.

And did he – did you ever have any doubt that he knew, so far as you could tell, exactly what he was doing?---Not on that day.

Not on that day?---(not transcribable).

Are there any other days on which you have seen him drunk?---Perhaps times before when I'd worked at the pub, not, not intoxicated to the extreme perhaps you'd see with some of his friends.

Yes. All right. But he wasn't in that condition on any of the times that you dealt with him in relation to this legal matter?---No.

All right. Thank you.

10 THE COMMISSIONER: Yes, Ms Smith, you may step down. I think she can be excused from further attendance. You're excused from further attendance.

THE WITNESS EXCUSED

[3.50pm]

20 THE COMMISSIONER: Yes.

MR STAEHLI: There are two gentlemen left in relation to today. I think it's possible for us to deal with one of them, Commissioner, if that suits.

THE COMMISSIONER: All right.

MR STAEHLI: Mr Evan O'Rourke.

THE COMMISSIONER: Mr O'Rourke. Is he here?

30

MR LEWIS: Commissioner, I think you gave me authorisation to represent Mr O'Rourke on - - -

THE COMMISSIONER: (not transcribable) Yes, I did. Do you want a declaration, be seeking a declaration, Mr Lewis?

MR LEWIS: Yes, Commissioner.

40 THE COMMISSIONER: Mr O'Rourke, you have been represented or are being represented by a number of lawyers so I assume that you understand your entitlement and obligation and whether you may object or not object, but whether you object or not object the questions have to be answered. However, on the application made on your behalf I will declare pursuant to the Act as I am empowered to do that all questions asked of you, all answers given and all requests made shall be deemed to be subject to your objection. Hence you do not have to object yourself in order to get the protection the legislation affords. But do you understand this, that if you are charged with the offence of not telling the truth to this Commission whether you've

object or not, those questions and answers would be used against you. Do you understand that?

MR O'ROURKE: Yes.

THE COMMISSIONER: You have to take an oath to tell the truth. Do you want to take an oath on the bible or do you wish to affirm or how else - - -

MR O'ROURKE: Bible's fine.

10

THE COMMISSIONER: Very well.

THE COMMISSIONER: Take a seat, Mr O'Rourke. Yes, Mr Staehli.

MR STAEHLI: What's your full name, please, Mr O'Rourke?---Evan John O'Rourke.

- 10 And last year during 2008, were you the subject of some charges laid by police arising out of an incident at a night club?---Yes.

And as a result of that, did you have to appear at Sutherland Local Court on a number of occasions?---Yes.

And did Mr Hart, Mr John Hart who has given evidence here today, did he act on your behalf from time to time including on the day on which the matter was finally resolved?---Yes.

- 20 Do you remember on how many occasions you actually met him?---No, I couldn't tell you.

All right. Is it more than one?---Yes.

And did you see him from time to time on the occasions before the final day when the matter was resolved at Sutherland Local Court?---Yes, but also, you know, being in his presence opposed to discussing the matters as much if that makes sense.

- 30 THE COMMISSIONER: Sorry, I didn't hear that?---Like, I would see Mr Hart and I've seen him, you know, at the pub but I mean as far as talking about the case, not so much.

Yes that's what he's meaning by that, yeah?---About the case?

Yes?---Dad pretty much dealt with that, you know, really.

All right. Your father?---Yes, yeah.

- 40 MR STAEHLI: Your father, Neil?---Yes.

All right. And when you say pretty much dealt, was it you or your father who actually engaged Mr Hart to appear on your behalf?---Oh dad, my father, yeah.

All right. And was it you or your father or both of you who ultimately paid Mr Hart for appearing on your behalf?---No, only dad paid.

Do you know how much he paid?---Only from what I've read, like, I knew, I knew it was over, like a couple of thousand dollars but not exactly, no.

All right. So what, you knew independently of what you've read in relation to these proceedings in the, in this Commission, apart from that you knew at the time, did you, about how much was being paid to Mr Hart?---At the time, no. I think after it was done, dad said, you know, "It cost me a couple of thousand dollars", and you know, so like, I mean specific amounts and things, no.

10

All right. Did your father ever discuss with you that Mr Hart had said to your father that there was a need for some show money?---No.

And that he had sought a grand or \$1,000 from your father for that purpose, that is for show money?---I don't recall that, no.

Is it possible that you've forgotten it?---It's possible but it's not at the front of my mind, no.

20 Did Mr Hart ever say things to you about, which suggested that he, for the payment of money, could cause favourable things to happen to the proceedings taken against you?---Not that I recall.

Is it possible that you've forgotten about that?---it's possible but again it's not at the front of my mind of, you know, I don't think so, no.

When you say it's not at the front of your mind, do you mean that it might have been once and that you've now forgotten it?---I don't believe so.

30 You don't believe so?---No.

So am I, are we to gather from the way in which you're answering these questions that it's possible that such a suggestion, that you were told of such a suggestion, but now you just can't remember it. Is that what you're saying?---Well, it's possible when dad and Mr Hart spoke but, you know, I wasn't privy to pretty much what they said, so now I've read about it, you know, but you know they spoke and stuff, I just kind of turned up on the day and that's about it.

40 All right. So are you saying it's possible though that your father told you about it but as you sit here today you just can't remember whether he did or not?---I don't think dad made specific reference to an amount, you know, being paid to, of this show money. I don't think so, no.

Was there any ever discussion between you and Mr Hart about whether or not he could or he would get the matter before a favourable magistrate?---Not that I recall specifically.

Well what about generally if not specifically?---It could have happened but I can't recall.

Did you know a man who apparently worked at Sutherland Court called Colin McDermid?---I know of him.

How do you know of him?---I just knew he worked there.

How did you know that?---Dad might have mentioned it.

10

Did you know him to be a friend or associate of your father's?---Yeah, I knew he was, like he drank with dad sometimes.

And did you encounter Mr McDermid in the course of your visits to Sutherland Local Court?---At the time I didn't know it was him but afterwards when I saw him, I did encounter him once at the court, yes.

20

What were the circumstances of that?---I turned up on one day to have it adjourned and Mr Hart wasn't there and I didn't know what I was doing and so I went into one of the courts where the registrars are and I didn't even know you had to line up, I sat down, so I actually jumped the queue and that was a bit embarrassing. And then, I know now that it was him but he said, "You've already adjourned, you shouldn't be adjourning again." I said, I think, "Well, Mr Hart's not here, my barrister's not here." And he said, "Okay, we'll adjourn it", or something to that kind of - - -

All right. And what, are you saying that when that happened you didn't know who he was?---At that time no, I don't believe so.

30

All right. But are you saying that you found out who it was later on?---Yes.

In what circumstances did you find out later?---I don't know, maybe, maybe we were in the court. I can't -- I really don't know.

All right. Is it something that you mentioned to your father, for example? ---It might have been. Oh, well, you know, it's back (not transcribable).

40

You see, there was a conversation which was played here, I don't know if you've heard about it either from your father or otherwise, that was played here during your father's evidence which became Exhibit 37 in which he said, in relation to you, this is your father talking on a telephone call 1st of September, 2008, "He reckons he went to see Col. He jumped the queue. Col was angry and didn't know who it was and turned around and wanted him to plea. He didn't know what to do and he said something about you not being around and then said I don't care, you've got to have a plea and went on to adjourn the matter." Did you tell your father that you'd appeared before Mr McDermid?---Yes, so that makes more sense now so on the day when that happened I obviously called or spoke to my father afterwards.

Right?---And he said, "What did the man look like?" which I explained and he said, oh, "That would be Col."

All right. What was your description of Mr McDermid?---He looks a bit like Santa Clause.

Right. All right. What, with a white beard do you mean or what?---Yes.

10 Just in relation to the offences with which you were charged, when the matter was finally resolved in front of the magistrate there was possibly a reference to a drink which you had consumed on the night in question having been spiked or you having drunk something which you didn't know was alcoholic or something like that?---Yes.

Was that the truth?---Yes.

And in the court papers there's a letter from a female - - -?---Yes.

20 - - - who talks about having smuggled a bottle of vodka or a bottle containing vodka into a nightclub - - -?---Yes.

- - - from which you drank?---Yes.

Was - did you - are familiar with that letter?---Sorry?

Are you familiar with that letter?---Yes.

30 It's intended to tender the bundle of court papers in respect of Mr O'Rourke's matter, Commissioner. Could I just ask him to look at this letter under the hand of Tara Cootes dated the 12th of February, 2009, please?---Thanks.

Would you read that to yourself please.

THE COMMISSIONER: This is 56. Oh, no, that letter will be 76 and this bundle will be 77.

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**#EXHIBIT 77 - BUNDLE OF LOCAL COURT DOCUMENTS
RELATING TO EVAN O'ROURKE**

MR STAEHLI: That letter apparently talks about certain things that Miss Cootes did on the night in question?---Yes.

Insofar as it refers to you, as it apparently does, is the letter truthful?---Yes.

All right. And when your matter was finally resolved, do you recall what the penalty was?---Section 10.

That was in respect of a common assault charge. Is that right?---Yes.

And the other charge or charges which involved failing to quit premises had been withdrawn on a day before the final day. Is that right?---Yes.

10

THE COMMISSIONER: I've given that letter Exhibit number 76 but it's actually in the bundle.

MR STAEHLI: It is, yes.

THE COMMISSIONER: I'll just keep it like that.

MR STAEHLI: They're the only questions I have of Mr O'Rourke.

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THE COMMISSIONER: Does anyone want to ask Mr O'Rourke any questions?

MR WALSH: Just one brief question, Commissioner.

THE COMMISSIONER: Yes, Mr Walsh.

MR WALSH: Mr O'Rourke, do you recall any issue about an allegation you allegedly had spat at someone in the club?---Yes.

30

From your point of view, did you dispute that allegation or - - -?---Yes, because as it was I didn't recall too much because of, you know, what had happened with that drink and I was a bit out of it. I've never spat on anybody before - - -

I appreciate that?--- - - - and I just don't think that's my nature.

All right. Is that something that you discussed with your father, your disputation of that part of the allegations against you and your concern about that?---Yes, and also in the facts as it be the police said that there was spit on the bouncer's, or security guard's, face half an hour or 20 – whatever it was after it had happened and we disputed that. I don't – didn't think that to be the case.

40

Is it a matter that you raised with Mr Hart?---Dad would have raised it with him.

When you were in court, were you aware as to whether that specific aspect of the matter was raised before the court, as to whether you had spat at the bouncer?---So they asked me had I spat at him?

No, not asked you. Do you remember when the matter was dealt with by way of a plea by Mr Hart on your behalf - - -?---Yeah.

- - - was that issue, did it arise before the magistrate?---Is this at the final hearing?

10

Yes, the final sentencing?---Yeah. We spoke of – because they had witnesses and things, yeah, I think it came up, yeah.

It came up. So is it your understanding that that aspect of the matter, that is the allegation of spitting, wasn't removed from the facts that were ultimately accepted by the magistrate when he sentenced you?---That's correct.

Nothing further.

20 THE COMMISSIONER: Does anyone else have any more questions?

MR STAEHLI: Nothing arising, Commissioner.

THE COMMISSIONER: You may step down, Mr O'Rourke, and I think you're excused from further attendance?---Thank you.

THE WITNESS STOOD DOWN

[4.05pm]

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THE COMMISSIONER: The Commission will adjourn until 10.00am tomorrow morning.

MR STAEHLI: Yes. It leaves Mr Wheaton who's here, unfortunately, and will have to return at that time.

THE COMMISSIONER: Yes.

AT 4.06PM THE MATTER WAS ADJOURNED ACCORDINGLY[4.06PM]

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