

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JERROLD CRIPPS, QC, COMMISSIONER

PUBLIC HEARING

OPERATION SEGOMO

Reference: Operation E08/1139

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 30 SEPTEMBER 2009

AT 2.08 PM

Any person without publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Hart, You're still under your former oath.
You understand that?---Yes, sir.

<JOHN HART, on former oath

[2.09pm]

Yes, Mr Staehli.

10 MR STAEHLI: Mr Hart, I want to tender a further telephone interception, apparently of a call between yourself and Mr Kelly on this occasion it's Exhibit 9 which is behind Tab 6.18, being a call in two parts which occurred on the 30th of April, 2008 at 9.22 and 9.23.

THE COMMISSIONER: That's Exhibit - - -

MR STAEHLI: 9.

THE COMMISSIONER: 9. Yes.

20

MR STAEHLI: Would you listen to this call, please.

TELEPHONE INTERCEPT PLAYED

[2.10pm]

MR STAEHLI: That continues on the – sorry, perhaps it's all part of the same one. They seem to have been run together on that one.

30 THE COMMISSIONER: Can you go on with something else while this is being found, Mr Staehli?

MR STAEHLI: Well, it completes a section.

THE COMMISSIONER: All right.

MR STAEHLI: It won't take long, I'm sure. Perhaps if it could be done just by me showing Mr Hart the transcript on this occasion.

40 THE COMMISSIONER: Yes. Just show him the transcript, yeah.

MR STAEHLI: That's all right.

THE COMMISSIONER: Or just show him the hard copy, show him Exhibit 9.

MR STAEHLI: Yes.

THE COMMISSIONER: The second part of Exhibit 9. There are two bits. You've just seen the first bit read, Mr Hart, you're now showing the second bit after you'd been cut off?---Yes, sir.

Do you recall that evidence?---I do, sir.

THE COMMISSIONER: So what's the question?

10 MR STAEHLI: The question is, on the first page or the part which was previously played you referred to Gary Corr telling you, "They won't, that is, they won't run it." Are you saying that Gary Corr told you that they would not run it?---That's exactly what I said before. I only ever spoke to either – whether it was Gary or – and I assume it must have been – who said I was – the thing that's in my mind is somebody said to me and it must have been Gary I assume, and I'm only saying that because up until I saw a conversation that I'd had I thought it was Max Pincott I'd spoken to but I'd only ever spoken to whoever it was once, probably twice, as I indicated before, sir, in relation to him that we're not going to touch it with a 10-foot bargepole. That's what I have in my memory bank.

20 THE COMMISSIONER: What was your understanding of the way the DPP and the police work down in Wagga? I mean, I would have thought that it wouldn't get to the DPP until the police had decided they want to start proceedings?---That happens sometimes, Commissioner.

Does it ever happen that they, in the middle of an investigation, they start - - -?---I, I think that – it's my understanding if there's a – appreciating that there had been a trial of a very similar nature they would - - -

30 It was a similar case, though?---Oh, yes. But I, I understand that sometimes they would seek a – usually I think they do put it through the Police Prosecution Branch and I think they then send it to the - - -

The DPP?--- - - DPP for an advice, I think, sir. I think that's how it works. It certainly used to work there.

40 Well, sir, I just want to go through it. Are you saying that you have actually spoken to Corr or somebody else about it or are you telling me that's what you told Kelly and it probably wasn't true?---I, I spoke to somebody in relation to this other matter of Nankivell and in the context sir, that we were talking about this group sex thing and, and it was every day. And it wasn't a thing that people weren't aware of in, in the DPP and Mr Paul, myself, and that there are other matters coming up. And that was the context, sir, and it was - - -

Yes. But were you putting to him that you've spoken to Corr because you think you, or someone like him, because you think you had or are you saying you spoke to Corr just to keep him on the hook, as it were?---I hadn't

spoken to Gary Corr immediately prior to this, no way, no. I only spoke to him - - -

You just made this up?---I would've say that, sir. I can't remember the conversation. But I would've said, I didn't speak to Gary Corr immediately prior or after this conversation at all about this matter. I may have spoken to him about other matters, sir. I certainly didn't speak about this matter to him, other than once or twice around about the trial. I'm sorry, sir.

10 Yes, Mr Staehli.

MR STAEHLI: Can I just remind you, Commissioner about what Mr Corr said about these issues?

THE COMMISSIONER: Yes.

20 MR STAEHLI: He couldn't recall any such conversation, but he conceded that it was possible that he had spoken to Mr Hart about the other matter and the context of the trial, which was running. Although he had no such recollection. And then he later said that he would not have said anything definitive about the prospects.

THE COMMISSIONER: Yes, I remember him speaking. Yes.

MR STAEHLI: But no doubt on the basis that the investigation was not complete and there wasn't a brief in the office.

THE COMMISSIONER: Yes, yes.

30 MR STAEHLI: Although the DPP had seen the complainants statement.

THE COMMISSIONER: Yes. That's what. he'd been given advice on.

MR STAEHLI: Yes.

THE COMMISSIONER: Yes. All right.

40 MR STAEHLI: But in the following page, which I think is the hardcopy you have in front of you, Mr Hart, half way down there's mention of a Crown Prosecutor, not by name but by title. Can you see that? The passage that says, oh, what she's saying is, referring to Tina Hall, she's going to wrap the brief up and give it to the police prosecutor and then give it to, that she's going to try and give it to the other Crown Prosecutor?---I just made that up, sir.

And then you go on and say that, "But I've already told my bloke to expect the brief and I know what he's going to say." So when, accepting perhaps that you were not telling the truth to Mr Kelly, who did you intend him to

belief? I'm sorry, who did you intend him to think was your bloke, Mr Corr?---I assume that, sir. I said, that. I, I think Mr Corr did send a letter in relation to that, I believe he sent a letter in relation to the outstanding matter, I think, to the DPP.

..(not transcribable).. intended. Is that right?---I, did I, did I say that?

10 That's an internal, a letter which has been tendered here from a memo from Mr Paul to others in the DPP, which you may have seen.---No, I think I spoke to Mr Paul at some to say send him a letter and if they do pursue it put them on notice that we would be seeking costs if we won the trial, I think. That's, that's in my memory somewhere. I don't know if that happened.

Yes. All right. So, sorry, is that the letter you're referring to?---Yes, sir. Not anything with the DPP.

20 All right. In any event you say that the reference here to a Crown Prosecutor was a fictitious one meant to inspire confidence in Mr Kelly? ---Yes, sir. I can only assume that.

And is that something that you did in other matters?---I may have, sir.

And in other matters involving, in other matters at Wagga or in the Riverina generally? Was this something that you did from time to time?---I use the term, big noting myself, trying to tell people I had contacts and trying to tell people I was probably better than I, I was and self ..(not transcribable).I suppose you'd call it. Well, I would call it.

30 I don't mean just, well lets accept the term big noting for this, but I mean, big noting with the intent of getting your clients to pay you money on the basis that what you were saying was true. Had you done that on any other occasion other than in Mr Kelly's case?---I can't recall, sir.

Do you accept that it's possible that you have done it then?---I have to accept that, sir.

40 And have you sought to obtain in other cases in the Wagga region similar sums of money from clients for such purposes? That is say, \$5,000, \$7,000, \$12,000?---I can't recall if I have, sir.

But you, what, it's possible that you have done so, is it?---Well, I have to say it's possible, sir. So I can't remember talking to Kelly about it, I - - -

No. So because you can't remember to Kelly, you're thinking there might be others that you can't remember. Is that the position?---I, I have to accept that, sir.

All right. Can you identify any possible clients who might have, might fit into that category by their names?---No.

No?---I can't, no I can't, sir.

But if another client or clients came forward and said the same thing happened to me as to Mr Kelly, that is Mr Hart told me that something could happen to my case if I paid him a sum of money, do you accept that that's, it's possible that that has happened, do you?---I have to say that, sir.

10 Last year is a bit of a blur and the year before to be honest.

I'm sorry?---The last couple of years have been the worst in my life in relation to alcoholism.

Then can I move away from the matter involving Mr Kelly and ask you about some of the calls relating to the witnesses who have given evidence in the last two days?---Yes, sir.

20 Yesterday, you were played the calls relating to Mr Wheaton's matter and Jessica Smith's matter?---Yes, sir.

There's just a few calls that I want to play to you in relation to the three other cases about which evidence has been given. Firstly, a case involving Mr O'Rourke and a telephone call.

THE COMMISSIONER: Exhibit?

MR STAEHLI: Exhibit 37. In fact, exhibit 36.

30 THE COMMISSIONER: As well as 37 or - - -

MR STAEHLI: No, I'll start with 36, I'm sorry, 6 August 2008, just behind tab 2 in the file at 6 August at 15.26.

TELEPHONE INTERCEPT PLAYED

[2.23pm]

40 MR STAEHLI: Did you recognise your voice and Mr O'Rourke's on that call?---Yes.

And in it at the start there's a reference to show money?---There is, sir.

And that was you suggesting to him that he'd have to give you, he should give you some extra money, the implication being that you intended him to have guessed that that money would be payable to someone involved in the prosecution?---That's the proper inference, sir.

Do you say that it was never your intention to give money to someone involved in the prosecution?---That's correct.

Did you ever give money to anyone involved in that prosecution?---No.

10 Then - - -?---May I say, sir, I, I have no recollection of that phone call at all. I've known Neil O'Rourke thirty years, he was a good friend of my (not transcribable) and I've known his family. I'm horrified that I said that. I have no recollection of it. I, I, I was intoxicated. I remember my wife
10 ringing me one night to say come down and see Neil, he's in ICU, intensive care at Sutherland and he may not see tomorrow and I went, he's a friend of mine, I went down and saw him and cried with him and spoke to him. I, I can't believe I said that. I am deeply ashamed and embarrassed of course and horrified that I could say that to anybody, but a particular friend, I feel disgraced, disgusted with myself.

20 Because even if it's untrue as you say it is that you intended to pay someone in the prosecution process the money you were seeking to get from Mr O'Rourke, the alternative is that you were seeking to defraud him?---
20 Well, the, the alternative is that I wanted money off him, yeah, that's correct, sir, I'm horrified at that. It's like it's another person, I don't know how to explain that, it's like it's another person saying that.

The next call's exhibit 37 but it's perhaps unnecessary to play it. Might Mr Hart be shown the hard copy please?

THE COMMISSIONER: Yes, certainly.

30 MR STAEHLI: This is another call with Mr O'Rourke it seems in which, on 1 September, that is about three weeks after the previous call, in which he tells you about his son, Evan, apparently having been to court and having been, his matter having been relisted?---Yes, sir.

You heard Mr O'Rourke refers to coal, coal putting down for Tuesday, he says it towards the start of the call. Do you see that?---Yes, sir.

You knew that he was referring to Col McDermid, is that right?---Oh, he would have, sir, I assume that, yes, yes.

40 Well, you knew Col McDermid, didn't you?---Yes, I did.

That is outside the court process, you've drunk with him?---Yes, I have.

At Boyles at Sutherland?---Yes, sir.

On numerous occasions?---Yes.

And was he a friend of yours?---Yes, sir.

And there's a reference to what had happened in the court proceedings, then on the second page about two thirds of the way down, Mr O'Rourke asks you whether or not you had any luck. "Did you, okay now listen, the last thing is, did you have any luck 'cause I had a beer with Col?" Mr Hart says, "Mate", that is you say, sorry, "Mate, mate, I only got back from overseas last week, I just haven't had a chance to talk to anybody." Do you see that passage?---Yes, sir.

10 When you said, "I just haven't had a chance to talk to anybody, you were intending Mr O'Rourke to think that there was a prospect that you would talk to someone in the prosecution process about doing something in relation to the charges. Is that right?---Yes, sir, I think I was going to make representations to have the speeding tape dropped out of the fact sheet but I was unsuccessful.

Well, are you saying that you did do that, made those representations?---I, I can recall on the day of the hearing I did. I hadn't done anything at that stage, sir.

20 And by representations you mean saying to the prosecutor, "Will you put a line through that in facts." Is that what you mean?---Basically, sir.

All right. Then in the next call, Exhibit 38, could we adopt the same process, Commissioner, and show Mr Hart the transcript - - -

THE COMMISSIONER: Yes.

30 MR STAEHLI: - - - of a call on the next day, the 2nd of September at 14.25?---Sir, if I – may I say in relation to Mr McDermid, I never spoke to Mr McDermid about this.

All right.

THE COMMISSIONER: Is this 38? Yes, he's got that.

MR STAEHLI: Did you ever prevail on the court staff at Sutherland to move matters in which you were involved from one magistrate to another? ---Oh that, no, 'cause you can't do that, sir.

40 What, you can't do that properly or you can't do it at all?---Well, you go – the system at Sutherland is that you go before a registrar. You can go and look on the court to find out who are doing represented pleas, it could be court 2 or court 3 or whatever and then you get funnelled in by them. You just get funnelled into whoever's doing the – sorry, the represented pleas.

And have you ever attempted to have a matter taken from one magistrate's list put in another magistrate's list by speaking to court staff?---Oh, I may have, sir.

And by speaking to court staff I mean by prevailing on them consistent with or because you had a friendship or an association with such court staff?---I may have, sir.

10 Is that a description of your relationship with Mr McDermid, that you have an association with him which could be described as a friendship?---I have, I have a friendship with him, yes, sir.

All right. What about with any other court staff at Sutherland during this period, 2008, 2009?---I would know most of them by their first name I would assume.

20 All right. And did you know the person that's been referred to in the proceedings as Kerry at Sutherland?---I'm sorry, sir, I – what page is that, sir?

It's not on the transcript?---Oh yes, I do know Kerry.

All right. And who is she?---Kerry O'Rourke is married to Neil O'Rourke's brother's son.

And have you had an association with her outside the court precincts, that is, have you seen her on social occasions?---Only at court functions or send-offs.

30 Court functions or what?---Or send-offs.

Send-offs. Right?---I may have seen her at a funeral once or twice but I don't mix socially with her.

All right?---I knew her when she was – 25 years ago when she was a young trainee at the courthouse, from memory at Kogarah.

All right?---But I've known her a long time.

40 When you were a police prosecutor?---Yes, sir.

When you were a police prosecutor, just since that's come up, whereabouts did you work?---The old 302 Castlereagh Street which is now the Downing Centre, Newtown, Redfern, Kogarah Sutherland and some country relieving, in the main, because I lived in the Sutherland Shire.

Right. And for how long were you a prosecutor?---About five years, I think or thereabouts.

Then in that exhibit which has been shown to you, the transcripts part of Exhibit 38, in the second page there's a reference to changing the facts a bit in two different places, the third line about halfway down the page. Do you see that?---Yes.

10 What's that a reference to?---That would be the – I can recall at around about this time Neil came to my house on a Saturday or Sunday, Saturday, I think it was, and we had the CCTV broken down into individual
10 photographs which showed – it was equivocal really, I thought, in relation to the spitting but the way I looked at it, if you're intoxicated and you swing your face around some spittle comes out of your mouth well, it's reckless and you're probably guilty of assault anyway in the reckless nature of it and I didn't consider that and that was my advice to Evan that we would be successful on a hearing.

20 Had Mr O'Rourke ever given you money consistent with your request for show money?---Neil gave me 1,000 and I think he gave me – he asked me at the end of it, "How much do I owe you?" and I said, "Well, all up it's two grand and he gave me two lots of 500, I think so all up it was about 2,000.

30 All right. Did you intend him to think that 1,000 of that was money which you had applied or were going to apply in favour of some person involved in the prosecution process?---From that original phone call it appears that way, sir, but I, I can't remember that phone call. I'm horrified at saying that. But all up I charged Neil two grand like I generally do with clients anyway and – because I can't remember saying that I can assume I didn't raise it again 'cause I just can't remember it. But the inference – the – I certainly would have spoken to the prosecutor on the day to try to say well,
30 it's like if – often people punch somebody in a fight and then the allegation is that they kicked them and more often than not the client will say, "Well, you know, I punched him but I never kicked him," so you would go, I would go to the prosecutor and say, "Well, will you wear a common assault or assault occasioning with punching 'cause he just, he just will not accept the kicking," and they would go to the alleged victim and say well, "How about we cop a plea to that?" and if the victim says yes, well, okay, we cop a plea to that. That's how the system works.

40 THE COMMISSIONER: All right. Just listen to the question, Mr Hart and just answer the question?---I'm sorry, sir.

MR STAEHLI: Yes, the original question was, did you intend Mr O'Rourke to believe that part of the money he paid you was to go to someone involved in the prosecution process?---I don't know what I intended sir but it may – it looks like that but I can't remember saying the original conversation but I, I've – I would change, try to change the facts on behalf of my clients regularly.

Then would you look at the transcript in Exhibit 39, please, which is of a call on the 8th of October, 2008 at 13.11?---Yes, sir.

This was a lengthy call when played, it still is, but I don't want to ask you about a lot of the material in it having regard to your answers so far, but at page, the bottom of page 5 - - -?---Yes, sir.

- - - you mention Kerry. You say, "Yeah, now Kerry's up there tomorrow." Do you see that?---Yes, sir.

10

And Mr O'Rourke says, "Yeah," and then over the page there is a little portion missing but it says, "So whoever the best magistrate is, I'll get him all right." Do you see that?---Yes, sir.

And can I suggest, well, can I ask you whether or not you were intending Mr O'Rourke to believe or accept that because Kerry was there on that day in question that she would have some influence over the magistrate that you would get?---I won't no, no, sir. If - there would be - if it was - - -

20

I'm just asking you about what you intended Mr O'Rourke to believe firstly since I suggest to you you would not have mentioned her name in that context otherwise?---I don't know how I know even if Kerry was doing the call over, I don't know that but I must have known.

Well, you might have lied to him about that as well, might you?---Well, I may have, sir, I - - -

But I suggest to you that's, that's what it appears that are doing?---It appears that, sir.

30

You were intending him to believe that you have, you and Kelly have an association which would permit you to select the appropriate magistrate to hear Evan O'Rourke's matter? That's what it, what the inference is, isn't it?---I have to accept that. But it's not the case.

Not the case, in fact - - -?---No, sir.

Then could I turn to Mr Donohue's matter, one which started in Milton and ended up Sutherland via Wagga?---Yes, sir.

40

And I ask you to listen to a call which was played this morning, Exhibit 79.

THE COMMISSIONER: 79.

MR STAEHLI: 10 November at 16.29. Would you listen to this call please, Mr Hart.

TELEPHONE INTERCEPT PLAYED

[2.41pm]

MR STAEHLI: And in that call on the first page, Mr Hart, you referred to your old mate, a prosecutor who had been transferred from Yass. Did you hear that?--- I heard that.

Was it true that you had a mate who'd been transferred from Yass to down there?---I don't think so, sir.

10

Well, is it possible that you did have such a friend but you've forgotten now?---I, I, there was a, I don't think so, sir.

All right. So the alternative proposition is that you were lying to Mr Donohue?---I, I assume so. I, can say that when I heard that this morning I just have no recollection of that, at all. I just don't, I accept I said all that.

When you said down there, presumably that was a reference to Milton was it?---I must've been, sir.

20

Milton being a place that you went to relatively frequently?---No, not really, apart from a couple of times a year, that's all.

Ulladulla, a place you went to frequently?---For court?

No, otherwise?---I went down there, my wife's sister lives there.

Right.---I suppose been on holidays down there and - - -

30 And you have a property yourself on the south coast don't you?---That's at Jervis Bay.

Jervis Bay. All right. So did you know as at November, 2008, that a prosecutor had been transferred from Yass, who was in that area?---I don't think so, sir.

You don't think so?---I don't think there's, I can't remember who, who was at Nowra. That's on the Nowra, sir, but I can't remember that.

40 Later in the call on page, the bottom of page 2 and the top of page 3, you told Mr O'Rourke that you thought you could fix it.---Mr Donohue.

And that he might need some show money and you link that with the - - -?--
-I've ..(not transcribable), sir.

- - - appointment of the prosecutor that you say was intended to convince Mr Donohue that you could influence the prosecution process. Is that right?---That's correct.

Which you say was untrue?---Yes, sir.

And by that means you sought to obtain in this call \$5,000 for that purpose in addition to \$1,000 for you, so you said?---So, I said, sir.

Did you ever get an amount from Mr O'Rourke in the vicinity of \$5,000 or \$6,000?---Are you talking about Mr Donohue, sir or - - -

10 Mr Donohue, I'm sorry.---No, no, sir. I can't remember that conversation and I, I don't remember talking to Chris Donohue about that. I just don't. And I certainly never got \$5,000. He paid me \$1,000 first when we went down and another \$1,000 later on at some stage.

All right. So you can remember that?---I assume that.

And are you saying you don't remember this call at all?---Not, not at all. I'm not saying I didn't say it, I obviously did say it.

20 Then can I ask you about a call in the matter of Mr Bleckman?---Yes, sir.

I've played this one before.

THE COMMISSIONER: Exhibit?

MR STAEHLI: It hasn't been tendered.

THE COMMISSIONER: It hasn't been tendered. It'll be 81.

30

**#EXHIBIT 81 - TELEPHONE INTERCEPT G00240_00_00 ON
3/03/2009 AT 14:09:30 (GRAHAM TO HART)**

MR STAEHLI: It's the call on 3 March, 2009 at 14.09. I'll get you to listen to this call, which you would not have heard before, Mr Hart, please.

40

TELEPHONE INTERCEPT PLAYED [2.50pm]

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

And do you accept, having regard to the mention of Benjamin Bleckman that it was a call with his mother about his court case?---Yes.

In it on the third page of the transcript, there's a reference to getting the matter away from Bankstown. Did you hear that?---Yes.

And Mrs Graham told you that, in response to your question, that her son lived at Revesby. Did you hear that?---Yeah.

And you told her did you not that her address could be used?---I said that.

10 I'm sorry?---Yes, sir.

You told her that disclosing that that was a letter which you could use in order to have the matter transferred from Bankstown to Sutherland?---I said that.

And that do you recall is something that you actually did, you went to Bankstown Court - - -?---Yes.

- - - and had the matter transferred to Sutherland?---Yeah.

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

Did you have to tell the magistrate or registrar at Sutherland that Mr Bleckman lived at Sutherland in order to achieve that?---Bankstown.

Bankstown, I'm sorry?---I would have said that.

30 All right. Thank you. And towards the end of the call you told Mrs Graham that you didn't want to talk on the phone. Did you hear that?---Yes, I said that.

You told he that didn't you because you wanted to imply that there were things which you could cause to be done for her son which shouldn't be said in public. Is that right?---That's their inference, sir.

Thank you.

40 THE COMMISSIONER: That'll be exhibit 81 if I haven't already given it one.

MR STAEHLI: Thank you. Then can I just go back, Commissioner, there's something which I omitted to do in relation to questions of which Crown Prosecutor in Wagga, Mr Hart believed he had the conversation with in relation to Mr Kelly's ongoing matter and then in doing so, might I refer to evidence given by Mr Hart in a, in this place on another date?

THE COMMISSIONER: What, do you want his suppression order lifted?

MR STAEHLI: Yes, please.

THE COMMISSIONER: What's the date?

MR STAEHLI: Excuse me for a moment.

THE COMMISSIONER: (not transcribable) the pages.

MR STAEHLI: Yes, it's 1 June 2009 and the pages are 166 to 168.

10

THE COMMISSIONER: All right. The compulsory examination on 1 June 2009, pages 166 to 168 are no longer subject to the suppression order.

MR STAEHLI: I'm sorry, Commissioner, I've misread my little digit there, 116 to 118, that's slightly different to what I'd said, I'm sorry.

20

THE COMMISSIONER: Yes, they are. All right. Of course it follows that if anybody who is, if, you'll be asked questions about this, Mr Hart. If you think that more of it has to be made public in order to understand your answers, just let me know?---Certainly, sir.

And that applies too, to you, Mr Walsh, if you want to have a look at this document.

MR STAEHLI: I'm sorry, might I add, and I apologise for the confusion on my notes, Commissioner, 119 as well.

THE COMMISSIONER: 116 to 119.

30

MR STAEHLI: Yes, thank you. I'll stop there. Mr Hart, when you were asked questions in that private session about conversations with someone at the DPP or a Crown about this investigation - - -?---Yes, sir.

40

- - - following the conversation with Tina Hall, you said this, page 117, line 42, "I spoke to one of the Crowns", and Commissioner I'll read this correcting some misspellings, "I spoke to one of the Crowns. I can't, my best recollection is it was Max Pincott but it could have been Gary Corr but I'm pretty sure it was Max, Max, Mr Pincott who I've known for many years." Then he went on to talk about how long he had known Mr Corr and Mrs Maxwell. And then at the bottom of page 118, he said this on the same topic, "I spoke to as I believed to be Max Pincott about other matters and the Kelly trial was mentioned and I asked the Crown, 'There's another matter coming up, what's going on with that?' and I'm 99 per cent positive it was Max but it could have been Gary but I don't think so.' And Max Pincott said to me, 'We're not going to bat on with it, we wouldn't get past first base', which I agreed with him." And then you repeated that further down and you went on to describe further, this in relation to the conversation, "I spoke to a Crown Prosecutor who told me that they weren't

going to bat on with?” Question, “Was that speaking to him on behalf of Kelly?” Answer, “Indirectly, it was. It was a conversation between two counsel who were friends about another matter which was coming up, who I can’t recall, another matter I had in the list, it might have been a trial at Griffith. Mr Pincott does Griffith. And it was mentioned in conversation about the previous trial with the group sex thing, and I said, ‘There’s another matter coming up’, and he said words to the effect of, ‘I’m not going to, to BAR’, I’ve been going to say, ‘I’m not going to bat on with it. I’m not going to BAR – it’s not going to go ahead’, words to that effect, and I told Kelly that we’re not going to bat on with it.”

Now, do you remember giving that evidence back in June?
---Oh, not really. I accept I said there.

There, although the vehemence might not line up with the statistical possibility, but you said you were ninety nine per cent positive it was Max, that is Mr Pincott, but it could’ve been Gary, but I don’t think so.--- Yes, sir.

So it would seem. the preponderance of your, so far as your memory was operating at that time was that it was Mr Pincott rather than Mr Corr with whom you had such a conversation?---It was, sir. I, it was when I saw the transcripts, I just assumed it must’ve been Gary. That was in my memory bank that it was Mr Pincott.

Right. All right. So is the, the versed position or the better position so far as the truth of what your recollection is, is that you don’t really know which of them it was ..(not transcribable)..between the two of them?---Oh, yes, sir.

That’s the fact is it?---Yeah, I can’t remember who it was.

All right. Thank you. Now, Commissioner, but for some loose ends relating to matters that I’ve dealt with, the other topic which I wish to explore with Mr Hart is the question of the alleged inflation of the costs issue.

THE COMMISSIONER: Just before you move to that, what are the, where would I find the rules governing applications for change of venue in the magistrates courts?

MR STAEHLI: You won’t find them anywhere. All there is so far as my researchers have revealed, Commissioner, is Section 30 of the Criminal Procedure Act, which - - -

THE COMMISSIONER: What’s that say?

MR STAEHLI: Not very much. It leaves us the criteria as being expediency. And there appears to be no relevant rule, as least so far as it might apply to criminal matters in the local court.

THE COMMISSIONER: Do the magistrates themselves have general policies about this or - - -

MR STAEHLI: There might be a general policy, but it's not a - - -

THE COMMISSIONER: Made known to the practitioners.

MR MCILWAIN: Perhaps I can assist.

10

THE COMMISSIONER: Yes.

MR MCILWAIN: There is, there are a number of practice notes issued in the local court which ..(not transcribable).. the local courts website. I don't know off the top of my head whether there's one relating to this subject. Perhaps not.

THE COMMISSIONER: There is not?

20 MR STAEHLI: Well, not that I've been able to find anyway.

MR MCILWAIN: There should be.

MR STAEHLI: Well, there isn't. It would seem though that the practice is that as can be seen, I suppose, assuming that there's compliance WITNESS: the practice in these matters, that provided there's some nexus - - -

THE COMMISSIONER: Between where he lives.

30 MR STAEHLI: - - - between where he lives or may be I don't think residence is necessarily critical, it would seem, in relation to matters. For example, although Mr Hart, in so far as he might've said things to magistrates usually when relying on the whereabouts of the defendant ..(not transcribable).. residence, I think on other occasions, it might be provided that the person who happened to be in that place at the relevant time that there was no reason why a matter could not be proceeded with, at least on a sentence matter, on a plead guilty, since - - -

40 THE COMMISSIONER: I just wonder about this. I mean, I appreciate that almost all the cases, the ones that have been before me here in this inquiry have been, not, not that they are living there, but they're saying they're living, or it's been said they're living there.

MR STAEHLI: Yes.

THE COMMISSIONER: But what if a lawyer said to someone, you better move in with your mother at Engadine for the next two months, and he goes to court and he says I want this moved, and I'll do that because I think,

Sutherland's a better court from your point of view then, is there anything wrong with that, if he does move? And then an application is made on the basis that he's living at Engadine.

MR STAEHLI: It's a continuum of impropriety in relation to things which are artificially structured to cause a particular result to happen, that's close to not being improper.

THE COMMISSIONER: Yes. Anyway, all right.

10

MR STAEHLI: I was going to mention, I intended to move on to the costs issue. I'd prefer for various reasons, including the presence of Mr Paul, tomorrow, to leave that until tomorrow in Mr Hart's case, if I may?

THE COMMISSIONER: Yes. Mr Hart's finished, there's no more witnesses today. Is that right?

MR STAEHLI: That's right. And there's Mr Paul tomorrow, the completion of Mr Hart and the only other witness, who is - - -

20

THE COMMISSIONER: That's this other person you mentioned is - - -

MR STAEHLI: Yes. It's Mr Turner. I think that's all at the moment? Yes.

THE COMMISSIONER: I think we can conveniently say this will finish tomorrow morning?

MR STAEHLI: Not necessarily in the morning, but should finish tomorrow.

30

THE COMMISSIONER: Should I start early? Because tomorrow's the last day I can do this.

MR STAEHLI: Yes. Yes, yes, if we could start at 9.30, that would be good.

THE COMMISSIONER: Do you mind if we start at 9.30?

MR WALSH: Commissioner, I have a ..(not transcribable).bring this up. I have a professional difficulty tomorrow and can't be here because I'm part heard in a difficult matter before Mr Helpburn at the Downing Centre Local Court. I've indicated to Mr Staehli that I don't propose to cross examine Mr Paul. I've been put on notice that the other witness he's proposed to be calling, I've indicated that I don't propose to cross examine that witness.

40

THE COMMISSIONER: All right.

MR WALSH: So, I think that - - -

THE COMMISSIONER: Are there any questions you want to ask Mr Hart arising out of the evidence he's given here today, so you can deal with that?

MR WALSH: I can, but after I do that there is a, there's another issue that I put Mr Staehli on notice about in relation to the costs in criminal cases act, but I might do that, if I just ask Mr Hart some questions - - -

THE COMMISSIONER: Yes, please do.

10

MR WALSH: And I'd like to raise one, Mr Hart, what I want to take you to firstly is just some subjective issues. You gave evidence and have mentioned on a number of occasions that you regarded yourself as an alcoholic. Right?---Yes, sir.

Has that been all of your professional life or how long do you say you've had that belief?---I started drinking when I was about 17 or 18 and I've been a steady drinker, that's thirty five years ago.

20 All right.---But it's been, as long as I've been practicing, when I was in the police force I was a heavy drinker.

How long were you in the police force for?---It wasn't that long.

Throughout the hearing you refer to this problem with alcohol, the extent and the nature of the consumption of alcohol, would you comment on that in relation to how many drinks would you have on a, and whether it was on a daily basis or once a week?---For many years I've drunk on a daily basis. I wouldn't feel normal unless I had six or eight to ten beers.

30

Every day?---Every day of the week.

Did you ever drink during the day as opposed to another time, like after court or in the afternoon?---If I finished court early, I'd go straight to the pub ..(not transcribable)..

During this timeframe up to about February of this year if I can - - -?---Sir.

40 ..(not transcribable).. I'll come to that, did you have any, did you experience any symptomatology or problems in relation to, associated with drinking and talking about memory and things of that nature? The way you function?---In the last, in '07 and certainly in '08, my, I thought my condition deteriorated dramatically to the point where I don't know why my family stuck with me. I don't know why my wife stuck with me. I was drinking far to excess during the day or straight after work. I finished at 4.00, I'd have ten beers before I went home and then I'd tell lies about how much I'd been drinking. And I'd go out, if there was a six pack in the fridge I wouldn't open it because I couldn't just drink six. And I'd always drink

what was in the fridge. And I'd hang the washing out and sneak down and have a beer. Looking back now, it's demeaning, but that's what I did. And I'd hide alcohol and Judith would find stubbie bottles everywhere and I'd lie about it.

10 Over that period, I just want to ask a general question, did you try and get some medical help or get some treatment in respect of your dependency?--- I've had, I've tried counselling, years ago, five, six, maybe ten years ago. I went to a psychologist for a while and, but I was just telling lies to them about my alcohol consumption. Last year, I remember my son caught me sneaking out having a beer when I was hanging the washing out. I was talking to the fridge. My wife would say, she'd catch me in the kitchen talking to somebody, you know, what am I doing. I'd wake up of a morning and say, I can't do this any more, and I would.

Now, I don't want to go into the details but over the last decade, as it were, you've come before the Disciplinary Tribunal - - -?---I have.

20 - - - the Administrative Decisions Tribunal and the Legal Services Tribunal as it was known - - -?---Yes, sir.

- - - on a number of occasions?---Yes, sir.

Now, in February of this year were you referred by your legal representative to Dr Roberts as a consultant psychiatrist?---I was.

From about February have you consumed any alcohol?---I haven't drunk any alcohol since February the 28th this year at all.

30 And you have been undergoing Uri analysis since then - - -?---Yes.

- - - in respect of evidence in detecting - - -?---Alcohol.

40 - - - alcohol. And you've found the assistance, do I take it, of Dr Roberts finally has in effect assisted your insight in relation to your behaviour?---It certainly has. Partly I'm still coming to grips with it. I was forced to go to Alcoholics Anonymous and I - it greatly assisted me. I still go. There are people there who are, surprisingly enough, just like me. Exactly like me. They tell the same stories about their life like me. I thought that the day I gave up the grog I'd be right, just like that. It doesn't work like that. I - and I'm still coming to grips with that. I'm - it's really hard to accept that you are powerless over alcohol. It is.

Now, I just want to move on to another topic. Did you ever pay moneys to any public official?---No, I didn't.

Did you ever have an intention of paying moneys to any public official? ---No, I did not.

You've conceded quite clearly in answers to Mr Staehli that you've made representations to a number of your clients, that is members of the public - - -?---Yes, sir.

- - - in order to, in one respect, obtain moneys from them - - -?---Yes, sir.

- - - but at the same time making representations that those moneys would be paid to third parties - - -?---Yes, sir.

10

- - - the appearance of being moneys being paid to public officials. Do you concede that?---Correct.

All right. Now, have you taken the opportunity in recent times to consider, based upon those concessions, the acceptance of those probabilities, why you were doing or making those representations repeatedly to clients and members of the public to whom you had a position of trust?---Well, I've said earlier, sir, in relation to Neil O'Rourke I can't remember that. I mean, you can't get much lower than that. Bunging it on a friend, telling lies to
20 him to get some money. I would, I look at it as, as I said, it's just like another person saying that. I don't know why. It's madness for me in my position. Like the Bleckman, I don't even know those people. Why would I do that? I just, I cannot understand why I did that. I can only assume it's self aggrandising, I'm trying to make myself out to be better than I am, I'm really well-connected, aren't I smart. I'm not.

Was your intention just one of greed, to get money from people, for instance, one gentleman you wanted \$5,000 which dealing with that gentleman, that was a large amount, a large sum of money - - -?---It is a
30 large sum.

- - - to ask from him on account of counsel's fees. Do you agree with that? ---Yes, it is, sir.

Well, part of the rationale was to make representations to members of the public, being your clients, to get money from them?---I have to accept that, sir.

Do you accept this, that in making the representations that you did as a
40 member of the bar that you created the clear impression that you were obtaining benefit not only to yourself but also by representing to the clients that you could influence judicial outcomes as it were?---I was, sir. I have to accept that. I was.

And it's completely and utterly inconsistent with your responsibilities as an officer of the court, isn't it?---It is.

And it would bring into complete disrepute not only your duties to the court and to the law and to your client but also the wider criminal justice system?
---That's correct.

10 Because members of the public become embroiled in your behaviour in the representations as to the bribing or influencing of judicial outcomes?---I apologise to them. I should never have said any of that but I did and I can't use alcohol as an excuse 'cause there's no excuse for it. I apologise to the Bar, I apologise to fellow legal practitioners and I apologise to the Bar Association.

Well, do you realise that the learned Commissioner has touched upon the issue of culpability. I don't want to - - -?---Yes, sir.

- - - deal with that in that particular way but so far as the people that you made the representations to, would you accept that they were by and large everyday run of the mill members of our community? I don't mean any disrespect in categorising them like that?---Yes, I do.

20 All walks of life?---Yes, sir.

All in need of legal assistance?---Yes, sir.

And were placed in difficult positions by you because of your representations and your conduct?---I accept that.

Did you intend to inveigle them in corrupt conduct as it were, Mr Hart?
---No, I, I don't believe I did, sir.

30 In criminal conduct?---I didn't intend that.

You accept though that your conduct and representations had that real effect?---Yes, sir.

And exposed them to possible criminal sanctions?---Yes, I do. I do and I apologise.

40 How do you feel about that?---I'm, I, I feel terrible about it. I apologise to them and I apologise to their families and their friends. I apologise to my own family, my own friends. They've been marvellously supportive of me and I just can't understand why I did that, Commissioner, I just can't. I cannot. If I could explain it I would. I just can't.

Nothing further, Commissioner.

THE COMMISSIONER: Yes. You may step down for the moment, Mr Hart.

THE COMMISSIONER: Is there anything else you want to - - -

MR WALSH: There's just one matter if I could leave to raise it. Commissioner, I suppose – I don't know whether this is fortuitous, but before I learnt that Mr Hart had an interest in this matter, which was I think
10 last Friday afternoon a week ago, I had cause to make a submission to the Criminal Law Committee of the Law Society of New South Wales about the Cost in Criminal Cases Act.

THE COMMISSIONER: Oh, yes.

MR WALSH: And I received a reply from the President of the Law Society on the 20th of August, 2009 which annexes a note or a letter from the Honourable Laurie Glanfield, the Director General of the Department of Justice and Attorney General. I've given a copy to counsel assisting. I
20 think, could I hand that up?

THE COMMISSIONER: Yes.

MR WALSH: One of the matters that may – well, it seems to me that may have arisen in the context of this inquiry, sir, is this. One of the practical issues that's arisen is the rather ill-defined nature, if I could put it that way, of – and I don't mean any criticism by this, I'm speaking frankly about this, about the issue of the payment of costs, the entitlement to costs pursuant to this legislation or in this particular area of the law. It seems to me that this
30 issue may have significance or relevance to this inquiry on the basis of potential – the way it could impact upon the potentiality for corrupt conduct. In other words, it's in my respectful submission there may be an important need to address this particular area of the law to make it more defined and well-known to not only the community but to the legal profession so as the circumstances which in part have arisen here may possibly be addressed or removed. Now, I haven't – there is not annexed to this document my submissions but it arose in a context where I was the recipient of a certificate, or my client was, and it took 14 months to process it et cetera but in my submissions I addressed concerns that I had as an experienced legal
40 practitioner about some of the issues that have been articulated here and your Honour has, Commissioner, has commented upon and I think Mr Staehli's spoken to me about it. There's been some discussion about this whole area so I don't know whether it's of any help and what steps could be taken to assist you in relation to that area but I think it may be an area of some, some interest to some of the issues that have arisen here.

THE COMMISSIONER: Yes, yes, indeed, I think that's very useful, thank you very much. I don't suppose you've got a response yet from, or the Law Society hasn't got a response from that.

MR WALSH: Well, I think that, what I propose to do is to forward to Mr Staehli the submission that I made and it may well be that both Mr Glanfield and the Law Society may wish to or it may be of some assistance for them to put forward (not transcribable) because - - -

10 THE COMMISSIONER: (not transcribable) Most likely there could be, you see, because part of what has to happen in these public inquiries are recommendations to try and make sure these things don't happen again.

MR WALSH: Yes, that's where I'm coming from.

THE COMMISSIONER: And I see, it seems on the face of it to be a very sensible suggestion about cost assessors, for example.

20 MR WALSH: Well, I should stress the fact that I am a cost assessor myself, but I just made that - - -

THE COMMISSIONER: Well, perhaps, I'll withdraw that remark.

MR WALSH: I should have made that, but maybe that's one approach but for instance the approach that, to quantum and all these issues that need to be brought into the modern age as it were.

THE COMMISSIONER: Yes.

30 MR WALSH: Because with respect the approach is to rely on 1991 authorities of Long, et cetera in the Supreme Court and I just think in practical terms some of the problems - - -

THE COMMISSIONER: One would have thought it would be of great assistance to the Attorney General's Department to have that input.

MR WALSH: Well, that's what I agitated in my submissions. I'm happy to send the submissions in that I did make.

40 THE COMMISSIONER: Yes, well, thank you very much.

MR WALSH: It might be helpful to get the Attorney's view and also the Law Society's view.

THE COMMISSIONER: Yes, well, of course our practice here is that these recommendations first of all get floated past the bodies to whom they're directed, but it sounds to me it would be very good if you'd do that.

MR WALSH: Well, it might be helpful to.

THE COMMISSIONER: Yes, it would be.

MR WALSH: If I could have leave to at least maybe approach the Criminal Law Committee or the president.

10 THE COMMISSIONER: I'll mark this particular two documents, I'll just mark it exhibit 82 and I'll just put beside it C-P. I'll know what that means, it means corruption prevention.

**#EXHIBIT 82CP - LAW SOCIETY LETTERS DATED 20/08/2009
PAYMENT OF COSTS (COSTS IN CRIMINAL CASES ACT)**

20 MR STAEHLI: I note, can I just interrupt, there have been from time to time officers of the Attorney General's Department here in the hearing room. I spoke to one of them earlier today who is a senior adviser in the department and they're aware of the issue and there are some things happening, so we'll provide a climate in which they could engage with the Commission.

THE COMMISSIONER: Yes, well, it's the time to do it, I suppose, if it needs to be done. Yes, did you want to say something, Mr McIlwaine?

30 McILWAINE: This is on a separate issue and I'd like to just while Mr Walsh is here because it impacts upon his client, I had some discussions earlier today with Mr Staehli. It's in relation to the cross-examination of Mr Hart on behalf of Mr Kelly.

THE COMMISSIONER: Yes.

McILWAINE: It is a little bit unclear what Mr Hart's position's going to be about Mr Kelly's evidence, whether he accepts it in full or not but it doesn't
- - -

40 THE COMMISSIONER: Well, he's heard a lot, oh he may not have heard it. Has he read, had the transcript?

McILWAINE: Well, he's had access to the transcript. He certainly is aware of Mr Kelly's version and I'll explore it at some stage but it doesn't appear to challenge it, substantive at perhaps in part. If he does challenge it, I would need to cross-examine him on issues as to credit. However, it's my observation - - -

THE COMMISSIONER: You must apply to do that, you mean?

McILWAINE: Sorry?

THE COMMISSIONER: You mean you might apply to do that, yes.

10 McILWAINE: It is, however, in my observation and perception perhaps that counsel assisting (not transcribable) put questions to Mr Hart, has in effect been accepting Mr Kelly's version as being the truthful version. If that was in fact the case, the Commission's version, view of the matter, I wouldn't want to cross-examine him on that issue and it would avoid the necessity of that to have to take place and I wouldn't want to waste the Commission's time.

THE COMMISSIONER: So what are you asking advice about?

20 McILWAINE: What I'm asking is some, well placed on the record that, seeking perhaps an indication as the preliminary view of the Commission is that Mr Kelly's evidence, certainly on the question about the payment of the monies for the purpose of it was just a bribe, it was a truthful version of events and no submissions can be made.

THE COMMISSIONER: Yes. Well, my recollection is, but I'm not going to be confined to this until I, my recollection is that he has not inculpated Hart in that, Paul in that.

30 MR WALSH: That's how he, specifically exculpated him, I think to be fair, Commissioner.

THE COMMISSIONER: Yes, yes. So - - -

McILWAINE: So as you say not inculpated.

MR WALSH: Not inculpated.

THE COMMISSIONER: Has not inculpated.

40 MR WALSH: Mr Paul.

McILWAINE: Yes, that certainly is the evidence, Commissioner.

THE COMMISSIONER: So what's the question?

McILWAINE: Well, I don't want to spend, I suppose I'm seeking an indication of counsel assisting on the record if it's appropriate - - -

THE COMMISSIONER: What he's going to submit?

McILWAINE: As to whether Mr Kelly's evidence on that - - -

THE COMMISSIONER: Well, you can do that. I suppose you've got to understand that he will ultimately be making a submission to the Commission.

McILWAINE: Certainly.

10 THE COMMISSIONER: Which the Commission may or not accept.

McILWAINE: Certainly. I just don't want my client to be prejudiced by the fact that I haven't cross-examined Mr Hart as to credit if some submission's going to be made of Mr Hart's evidence - - -

THE COMMISSIONER: Well, you may have to make up your mind about that tomorrow, Mr McIlwaine. I can't, I don't think it's appropriate in cases like this to start giving off the cuff - - -

20 McILWAINE: Certainly, I appreciate that. I'll just flag it.

THE COMMISSIONER: All right.

MR WALSH: Can I just, maybe it falls to me on that issue. My recollection is that Mr Hart conceded to Mr Staehli if I could put it this way, not necessarily the probability but certainly the possibility that the words that are used that it came back clearly was said to Mr Kelly and inferred that - - -

30 THE COMMISSIONER: He did.

MR WALSH: You know, so I mean with the greatest respect to my friend I appreciate the position that he's in, I'm happy for him to cross-examine Mr Hart now about that but I mean I don't think I'll be heard to the contrary, Commissioner (not transcribable)

THE COMMISSIONER: But I mean I've, for reasons which I think are self evident, I cannot be giving little interim, even on this time.

40 MR WALSH: You can't, absolutely. But I just thought to assist my friend I could.

THE COMMISSIONER: All right.

MR WALSH: There's one other matter, could I tender a report from a consultancy (not transcribable) dated 12 April 2009 relating to Mr Hart, Dr John Albert Roberts, it relates to his - - -

THE COMMISSIONER: Yes, well, I'll mark that exhibit 83, and then I'll put 83(h) so I'll know when I get in, that's an exhibit Mr Hart wants to - - -

MR WALSH: Thank you.

**#EXHIBIT 83H - REPORT OF JOHN ROBERTS DATED 12/04/2009
REGARDING JOHN HART**

10

THE COMMISSIONER: All right. I'll read this in due course. Yes?

McILWAINE: Is that it for today, mate?

MR WALSH: Yes.

20 THE COMMISSIONER: Yes. Is there anything else before I adjourn for, and I'll adjourn until 9.30 tomorrow morning and Mr Walsh, you, I presume Mr Paul will be here. How long are you going to be with Mr Paul?

MR STAEHLI: Not all that long.

THE COMMISSIONER: Okay.

MR STAEHLI: So I'll be confident that we'll finish tomorrow.

30 McILWAINE: Yeah, I suppose, it's (not transcribable) the Commissioner and Mr Kelly has been stood down but not excused, I suppose that that would have to be considered. Well, he's not here is he?

THE COMMISSIONER: It depends on what your penetrating cross-examination might reveal, Mr McIlwaine.

McILWAINE: I don't know if there's too much more.

40 THE COMMISSIONER: Anyway, I mean I can't see this as such a big issue myself but however I'm not going to - - -

MR STAEHLI: I mean it seems, if I can just telegraph where I'm going in this regard accepting your obvious right to disagree with my submissions. Mr Kelly's given a version of events. Mr Hart hasn't, hasn't contradicted it, he hasn't accepted it but he hasn't contradicted it.

THE COMMISSIONER: No.

MR STAEHLI: So it would appear that the appropriate finding is to accept Mr Kelly by and large subject to matters of detail.

THE COMMISSIONER: Well, you've said that. So you won't be here at all tomorrow?

MR WALSH: Well, I may be, I know it's an unfortunate position but I'll try and get back or get (not transcribable) and I'll liaise with you.

10 THE COMMISSIONER: All right, anyway, what you have done at all events is re-examine Mr Hart as to the - - -

MR WALSH: I'm finished with him. Thank you, Commissioner.

THE COMMISSIONER: All right. 9.30 tomorrow morning.

AT 3.29PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.29pm]

20