



CRIMINAL JUSTICE  
COMMISSION

**A REPORT INTO  
ALLEGATIONS THAT THE  
PRIVATE TELEPHONE OF  
LORRELLE ANNE SAUNDERS  
WAS "BUGGED" IN 1982 BY  
PERSONS UNKNOWN, AND  
RELATED MATTERS**

DECEMBER 1994

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**Mr Ken Davies MLA**  
Chairman  
Parliamentary Criminal Justice Committee  
Parliament House  
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BRISBANE QLD 4000

Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on an investigation conducted by the Honourable R H Matthews QC into allegations that the private telephone of Lorrelle Anne Saunders was "bugged" in 1982 by persons unknown, and related matters.

Yours faithfully

**R S O'REGAN QC**  
Chairman

December 1994

Mr D J Bevan  
Acting Director  
Official Misconduct Division  
Criminal Justice Commission  
557 Coronation Drive  
TOOWONG QLD 4066


Dear Mr Bevan

I refer to a resolution of the Commission dated 26 August 1994, resolving to conduct an investigation into allegations that the private telephone of Lorrelle Anne Saunders was "bugged" in 1982 by persons unknown, and related matters, and further resolving to engage me to conduct such an investigation.

I enclose my report of the investigation in order that, in the discharge of your responsibilities under section 33 of the *Criminal Justice Act 1989*, you may report to the Chairman.

I have written to the Chairman advising that I have furnished my report to you.

Yours sincerely



R H MATTHEWS

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- Appendix 1 - Resolution to conduct an investigation**
- Appendix 2 - Chronology of Significant Events**





# CHAPTER ONE

## INTRODUCTION

### 1.1 THE PREVIOUS INVESTIGATION

On 8 April 1994, I furnished to the Director of the Official Misconduct Division, the report on my investigation into the allegations of Lorrelle Anne Saunders concerning the circumstances surrounding her being charged with criminal offences in 1982, and related matters. That report was adopted by the Commission and furnished to the Minister for Justice and Attorney-General and Minister for the Arts, the Speaker of the Legislative Assembly and the Chairperson of the Parliamentary Criminal Justice Committee (PCJC) in accordance with section 26 of the *Criminal Justice Act 1989* (hereinafter referred to as the Act).

In that report, I concluded that a tape recording (hereinafter referred to as 'the Dodd tape') purporting to be of a conversation between Saunders<sup>1</sup> and Douglas Mervyn Dodd on 19 March 1982 was fabricated and used in evidence against Saunders in relation to the following three charges:

- Stealing firearms the property of Roy Alfred Coomer;
- Attempting to procure the theft of a payroll; and
- Attempting to procure Dodd to conspire with another to murder Allan Lobegeiger.

I concluded that the tape recording was fabricated by Dodd and two female associates. I also concluded that no other evidence was fabricated and used against Saunders. In all the evidence before me, I was satisfied that neither the investigating police officers, Brian Patrick Webb and Thomas Terrence Flanagan, nor any other person conspired with Dodd and his female associates to fabricate the evidence. I was also satisfied that, on all the evidence, no police officer or other person improperly influenced or attempted to improperly influence witnesses to be called by the prosecution at Saunders's committal hearings or trials.

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<sup>1</sup> In the interests of economy and consistency, surnames are used without the customary 'Ms' or equivalents. No discourtesy is intended.

In relation to the first two charges referred above, Saunders was acquitted by a jury. In relation to the third charge to which I have referred, a Supreme Court Judge directed a verdict of not guilty.

A fourth charge brought against Saunders of conspiring with Colin Stanley Cooper and Coomer to pervert the course of justice was discontinued when a nolle prosequi was entered on 23 January 1984 after extensive submissions had been made by Counsel for Saunders to the Solicitor-General requesting that no further proceedings be taken against her. This fourth charge against Saunders arose from events which occurred after she had been arrested, charged and released on bail on the first three charges and prior to the search of Saunders's home on 8 September 1982. The conditions of bail imposed on Saunders required that 'she refrain from making contact with' Lobegeiger, Dodd and Coomer. As a result of Cooper having been located at Lobegeiger's premises at Miami on 7 September 1982, he was interrogated by police and made a number of allegations against Saunders. One of these was that he and an associate of his, Susan Gray, had delivered for Saunders a letter written by Saunders to Lobegeiger. Another allegation was that Saunders had asked Cooper to give false evidence at her trial and for that purpose had made up a false account for Cooper to learn. On the basis of his allegations, police executed a search warrant on Saunders's premises on 8 September 1982 and located, amongst other things, two audio tape recordings. One was a tape recording of Saunders being heard playing the part of Cooper and reciting an account of the alleged events at Gatton in February 1982 which was to be adopted by Cooper as his when he came to give evidence (hereinafter referred to as 'the Cooper tape'). The other recording seized from her premises purported to be of a telephone conversation between Lobegeiger and Saunders (hereinafter referred to as 'the Lobegeiger tape'). It is this tape recording which is the subject of this investigation.

In relation to the Lobegeiger tape, I made the following conclusions in my previous report:

1. The cassette tape was located by Flanagan and Webb when they executed the search warrant on Saunders's premises on 8 September 1982.
2. The cassette tape recorded a telephone conversation made by Saunders to Lobegeiger in which the delivery of a personal letter written by Saunders whilst on bail and other matters were discussed. There was no doubt the voices were of Saunders and Lobegeiger. Saunders admitted this during her evidence.
3. The cassette tape was tendered at Saunders's committal hearing as evidence of contact between her and Lobegeiger whilst on bail, thereby corroborating the account given to Webb and Flanagan by Cooper and Gray.

4. The telephone conversation had no apparent editing.
5. The telephone conversation had been recorded by Saunders. This conclusion was reached after Saunders had given evidence before me that she had recorded the particular conversation or something similar. She stated that eleven years on she could not specifically remember the conversation.

In her Legal Aid material prepared in 1982-83 for the benefit of her defence lawyers and in the transcript of her evidence at Dodd's trial for perjury, Saunders claimed that although she had recorded the telephone conversation with a tape recorder connected to her telephone, the recording of the telephone conversation presented at her committal hearings had been 'doctored'. Also, at her committal proceedings, the integrity of the Lobegeiger tape was the subject of cross-examination by her defence counsel. There were further similar claims made by Saunders in some correspondence she had written to Lobegeiger after the final charge against her had been discontinued. In view of this material, Counsel Assisting in the previous investigation specifically asked Saunders whether she was asserting that the Lobegeiger tape had been 'doctored' by police. Saunders denied that she had ever asserted that police 'doctored' the tape recording. She did, however, say that her defence counsel, Desmond Patrick Breen<sup>2</sup>, during her committal hearings had picked up a difference between the copy of the tape supplied to him and the original tape played in the court. Out of an abundance of caution, the Lobegeiger tape was furnished to Senior Constable Troy Shan O'Malley of the Electronic Recording Laboratory for his expert opinion. He was of the opinion that there was no evidence that the telephone conversation had been edited. He also concluded that the recording had been made with an acoustic device, (similar to a microphone held to the receiver of the telephone) and it was not the first impression recording of the telephone conversation. That is, what was recorded on the Lobegeiger tape was a copy of the first impression recording or a second generation recording. No issue was taken by Saunders or her legal advisers with this opinion at any time during the previous investigation.

## 1.2 THE INITIAL ARTICLES IN 'THE SUNDAY MAIL'

On 15 May 1994, after my initial report had been published, an article headed, 'SAUNDERS' PHONE WAS TAPPED ILLEGALLY' appeared in 'The Sunday Mail'. The article was credited to Ken Blanch. It asserted that Saunders's home telephone number had been 'tapped illegally while she was under investigation for

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<sup>2</sup> Now a Deputy President of the Administrative Appeals Tribunal.

involvement in crimes in the early 1980's'. Blanch claimed that he had been told the previous week that a Telecom employee had been boasting openly to workmates in 1982-83 that Saunders's telephone conversations were being taped, and that the tapes were being given to police. According to Blanch's information, a considerable number of Telecom technical people would have been aware that the tapping had been taking place. The article reported that, at that time, it was 'highly illegal' to tap telephones and that permission to tap telephone conversations could only be given by the Federal Attorney-General. Such permission was said to be limited to matters involving national security and could not be given for criminal investigations. There is no doubt that the provisions of the *Telecommunications (Interceptions) Act 1979 (Commonwealth)* at that time would have meant that if Saunders's telephone had been tapped, it would have been done illegally.

The article concluded that the information received by Blanch opened up the possibility that the knowledge of Saunders's private affairs, which Dodd had in order to include reference to in the Dodd tape, could have been supplied to him from conversations overheard and taped on Saunders's telephone. The article asserted that this would have been contrary to my findings in the previous report that the source of Dodd's knowledge could only have been Saunders.

On 12 June 1994, an article headed, 'PHONE EXPERT RAISES TAP PLOT' appeared in 'The Sunday Mail'. It was also written by Blanch. The article stated that a former senior telephone engineer had said that he believed that a tape handed to him by police for analysis during the investigation into Saunders (in 1982) could have been made by tapping her telephone. The telephone engineer was reported as having said that he did not think the tape was made in the way police described to him when they asked him to identify the number called. According to the article, he was told by the police that it had been made at a public telephone booth. The article did not identify the tape any further.

The following Sunday, 19 June 1994, a further article by Blanch appeared in 'The Sunday Mail'. It was headed, 'UNDERCOVER COP IS SUSPECT'. The article named deceased Detective Sergeant John Neideck as possibly having been involved in the tapping of Saunders's telephone in the early 1980's. The article reported that a former senior Telecom officer's work diary for the period disclosed that Neideck was the police officer who, on 2 March 1983, had handed him a tape of an alleged telephone conversation between Saunders and Lobegeiger. The article continued that Neideck was an undercover surveillance officer with the Bureau of Criminal Intelligence. He was said to have had the technical skills that would have enabled him to tap or 'bug' telephones. Of course, the fact that Neideck was deceased precluded the possibility of any defamation action being taken by him against the newspaper if he had not been improperly involved.

Blanch reported that the former Telecom officer believed that police had misled him deliberately on three points – the way in which the tape was made, the way in which it came into their possession, and the identity of the owner of the telephone number he had determined from the dialling information on the tape. The former Telecom officer was reported as having said that the dialling clicks, which identify the number called, would not have been audible through the receiver of a public telephone. He was also said to have suspected that the recording was made by a crude tap on a private telephone. He was further said to have been told by the police that they had found the tape amongst her things. He was said to have also been told by the police that the number that he had determined from the dialling clicks was that of either the Southport or Surfers Paradise Police Station. The article reported that checks conducted by the newspaper established that the telephone number, 5356958, which the former Telecom engineer had identified and recorded in his 1983 diary, was listed to Lobegeiger's home and not to any Police Station.

The article concluded that as Lobegeiger had testified at Saunders's committal proceedings that the telephone call recorded on the Lobegeiger tape had not been made to his home number, then it appeared to rule out the possibility that the tape handed to the former Telecom officer was the Lobegeiger tape.

During the week following the appearance of this article, Blanch telephoned the Commission's media officer and asked whether the Commission considered disclosures about the tape of any interest or significance and whether it would investigate them. On 23 June 1994, the Commission responded in writing to Blanch requesting him to forward to the Commission any material which he believed could be evidence of official misconduct.

Before a response from Blanch was received by the Commission, on 26 June 1994 a further article appeared in 'The Sunday Mail'. In the article, Blanch reported that a statutory declaration had been obtained from the former Telecom officer who was of the opinion that the tape provided to him by Neideck could only have been made by a listening device or a telephone answering machine. Blanch concluded that this 'third tape' or 'mystery tape' did not appear to have been produced in evidence at any 'open court hearing' involving Saunders.

### **1.3 THE COMPLAINT TO THE COMMISSION BY BLANCH**

On 28 June 1994, Blanch under cover of a letter addressed to the Chairperson of the Commission, faxed to the Commission a copy of a statutory declaration dated 24 June 1994 of a former Telecom engineer, Rodney Mervyn Torkington. This material was forwarded to the Complaints Section of the Commission where it was registered as a complaint.

The statutory declaration described in greater detail the matters raised by Blanch in his articles. Torkington had declared that on 1 March 1983 he was contacted by another Telecom employee, Terry McCormack, who was known to Torkington as a member of the Security and Investigation Section of Telecom. McCormack advised him that he would soon be receiving a letter requesting him to conduct some analysis for the trial of Lorrelle Saunders. He was asked by McCormack to telephone Inspector Brian Webb on a telephone number which he recorded in his diary. A copy of the relevant pages of his diary was annexed to the statutory declaration.

According to Torkington's statutory declaration, he shortly afterwards telephoned Webb who told him that he had a cassette recording of a telephone call and he wished to determine the number which had been dialled in making that call. Arrangements were made for Webb to attend at his office the next day.

The following day, Webb attended and introduced himself and his 'technician' John Neideck. Torkington was told by Webb that he had a cassette which he had found amongst Saunders's possessions. According to Torkington, he was told by Webb that Saunders had made the recording by holding a cassette recorder up to the ear piece of a public telephone. Torkington took Webb and Neideck to the laboratory and equipment was set up to analyse the dialling information. The equipment necessary was an oscillograph which reproduces electrical signals as a chart. The electrical impulses which are created upon dialling are reproduced on the chart as highs and lows. From the pattern formed, the individual numbers can be identified. Neideck produced a cassette player and it was connected to the oscillograph. Webb then used words to the effect that he had recently been informed that every time a cassette was played, its quality was degraded. A copy was, therefore, produced by Neideck and given to Torkington. The copy was played by Torkington. Torkington heard the clicks which indicated the dial pulses and the beginning of the ring tone. He heard nothing further and assumed that the copy contained nothing further. Torkington declared that he was astounded that the dial pulses were so loud and clear as this was inconsistent with what he knew to expect from holding a hand held recorder next to the ear piece of a public telephone. As far as his recollection went, there were no background noises such as road noise. In his experience, such clear signals could only have been reproduced if they were recorded in one of the following ways:

- Taken directly from the telephone line by wire connected physically to the line. This would include a direct connection to the wires in the body of the caller's telephone;
- Transmitted by a radio link ('bug') on the telephone line. Access to the telephone subscriber's telephone or to the line between the telephone and the roadside pillar is required for this;

- Connected to a central tap of the line (at a telephone exchange); or
- Recorded on an answering machine.

On analysis of the number, it was clear that the telephone number dialled was 5356958. Torkington was immediately aware that this seven digit number was not a Brisbane number as a 535 prefix was not in use in Brisbane. He suggested to Webb that what had probably happened was that the first two numbers of an STD code had not been recorded. Torkington formed the view that the tape recorder had been switched on without taking up the plastic lead tape, and accordingly, the initial digits had not been recorded.

According to Torkington's statutory declaration, Webb showed him his notebook, which contained three sets of telephone numbers. Torkington was unable to recall what they were. Webb asked him whether the number could have been one of those recorded in Webb's notebook. When Torkington identified one of them, he believes Webb then indicated that it was the number to the Southport Police Station. Torkington stated that Webb may have said Surfers Paradise Police Station but, in any event, he was sure he said the words, 'police station'.

According to Torkington, Webb then indicated to him that for the evidence of the analysis to be acceptable in court, the original would need to be analysed. Torkington then handed the copy to Neideck who produced what he took to be the original. That tape was then played and identical signals to the copy were produced. The statutory declaration described that on the playing of the purported original, it was allowed to continue past the dialling signal and ringing tone. Torkington heard some words spoken by a voice which seemed to be that of a mature female. He believed the words to be, 'Is Alan Lobegeiger there, please'. The tape was then switched off. The words were not recorded in his diary.

A handwritten statement was prepared by Torkington and handed to Webb. The following day, Webb returned with a typed copy of the statement which he signed. He was given a copy of it. He retained a copy of the statement until approximately 1986. Neither the original nor a copy of the statement was located during the extensive searches for documentation conducted in this or my previous investigation.

#### **1.4 FURTHER INITIAL OPINIONS FROM TORKINGTON**

Upon receipt of the complaint by Blanch, the Commission considered it necessary to conduct some preliminary enquiries in order to determine whether the matters required detailed investigation. On 1 July 1994, Commission staff interviewed Torkington. He was played the beginning of the Lobegeiger tape and the cassette

was shown to him. A further statutory declaration was obtained from him. On close examination of the cassette, he recognised his initials on one side. On the other side were the initials of Webb and the date '8.9.82' which was the date the police had searched Saunders's home. He concluded that the tape he had analysed in March 1983 for Webb was the Lobegeiger tape. In his statutory declaration, he listed the reasons for this conclusion. They were:

- His initials appeared on the Lobegeiger tape. He had only analysed one tape for the Queensland Police Department;
- The description of the cassette that he had recorded in his diary in March 1983 which was 'C-60 cassette. Green'. He had recorded the colour green in his diary as he considered it to be an unusual colour for a cassette. The Lobegeiger tape was a C-60 green cassette.
- The telephone number that he identified and recorded in his diary when he analysed the cassette in March 1983 was the same as the telephone number he identified on the Lobegeiger tape;
- Two digits were missing from the cassette he analysed in March 1983. The Lobegeiger tape had the first two digits missing; and
- In the spoken words in the cassette that he analysed in 1983, he recalled that the name before the word 'Lobegeiger' was partly inaudible. The Lobegeiger tape had the same characteristic.

After hearing the original of the Lobegeiger tape again, Torkington confirmed his view that it had been recorded by one of the means that he had described in his statutory declaration dated 24 June 1994. He, however, added that of these four options, the least likely was the possibility that it had been recorded by means of a central line tap.

Torkington explained in his statutory declaration that although he had misgivings when he originally analysed the Lobegeiger tape in March 1983, he did not take the matter up with Webb, Neideck, any other police officer or any Telecom staff member.

Therefore, as a result of this interview, it became clear that the conclusion reached by Blanch in his article of 26 June 1994 was erroneous. There was no 'mystery tape' or 'third tape' as he postulated. Torkington had analysed the Lobegeiger tape in March 1983 and his observations and opinions related to it.

During the interview with Torkington on 1 July 1994, he requested the Commission supply him with a copy of the Lobegeiger tape in order to conduct further analysis. He was furnished with a copy of the entire tape by the



Commission shortly after this request. On 4 July 1994, after considering the copy, Torkington furnished a further statutory declaration to the Commission. He formed the view that:

- The dial pulses and the progression of the call prior to the conversation segment were from a different source from the subsequent conversation although there was no obvious edit point prior to the commencement of the conversation segment;
- Prior to the word, 'Hello', which is the first word of the conversation segment, there should have appeared five pips of STD tone;
- There had been some editing after the dial pulses and before the conversation segment because the background noise on the first part of the tape was clear whereas in the background of the conversation segment, there was background noise and radio frequency interference; and
- Although he had no scientific basis to support it, there had been editing in the conversation segment because of the lack of progression in the conversation.

Torkington concluded that the conversation segment of the tape was recorded by a radio transmitter connected to the female caller's telephone. He asserted that a 'radio bug' had been used to transmit the conversation to a receiver and tape recorder.

On 6 July 1994, Torkington made a fourth statutory declaration. In this statutory declaration, Torkington referred to two more 'aberrations' on the Lobegeiger tape. He stated that the time span between the end of the dial pulses and the beginning of the ring tone was only 0.28 seconds. He believed in 1982 there should have been something like 2.8 seconds gap between them.

The other aberration related to the timing of the STD meter pulses, commonly known as multi-metering pulses (to be distinguished from the five pips of STD tone identifying the call as an STD one). These multi-metering pulses were low frequency pulses sent back from the first Trunk Exchange in the connection to the originating caller's exchange. They are used by Telecom to calculate the duration of STD calls. He stated that these should have appeared every 45 seconds. He stated that he could detect a meter pulse after the first word, 'Hello'. He detected a second one 35 seconds later and a third, 18 seconds later. After the third pulse, he concluded that the rest were where one would expect to have found them, except where heavy noise had probably obscured them.

In a letter dated 16 July 1994, Torkington advised the Commission that he had located the pulses which had been partially obscured by heavy noise. He stated

that his opinion that the conversation segment of the Lobegeiger tape had been recorded by a 'radio bug' was confirmed by 35 'bursts of heavy noise' during the conversation segment. He claimed that from his experience, these bursts were the sound of radio frequency interference generated by an electric arc. He postulated that a thermostatically controlled room heater would give out the same interference. He also raised the possibility, without forming a definite conclusion, that the call disconnection signals may have been consistent with the call having originated from Lobegeiger rather than Saunders as had been asserted by the Crown when the Lobegeiger tape was tendered at Saunders's committal proceedings in 1982.

## **1.5 THE GRAVAMEN OF THE ALLEGATIONS**

It was apparent from these further opinions from Torkington that in relation to the Lobegeiger tape, it was alleged that:

- It had been recorded by means of a radio bug and, therefore, illegally recorded;
- There had been editing to the conversation segment;
- The dialling information at the beginning of the tape had come from a different source to that of the conversation segment and, therefore, editing had occurred prior to the conversation segment; and
- The call may have been made by Lobegeiger to Saunders, rather than by Saunders to Lobegeiger.

At its highest, the evidence was consistent with someone having used a listening device to monitor Saunders's home telephone, or alternatively, it may have been consistent with someone having edited a tape recording seized from Saunders's home. It was possible that this 'someone' could have been a police officer. Therefore, the evidence may have affected the conclusions I reached concerning the investigating police in my previous report. To have suggested, as did Blanch in his article of 15 May 1994, that it opened up the possibility that the knowledge of Saunders's private affairs, which Dodd had, could have been supplied to him from conversations overheard and taped on Saunders's telephone was far-fetched in the extreme. The initial dealings between Dodd and Saunders had occurred over six months before the date of the telephone conversation between Lobegeiger and Saunders, and prior to her coming to the attention of the investigating police. In my previous exhaustive investigation, there had not been a scintilla of evidence to support or even suggest the possibility raised by Blanch. Indeed, the evidence was overwhelming that it did not occur in this fashion. For the purpose of this investigation, there is no need to repeat that evidence. It is fully canvassed in my previous report. That is not to say that I had a closed mind on the remote

possibility suggested by Blanch; however, as the evidence progressed in this investigation, the possibility became more and more remote and eventually disappeared.

## **1.6 PRELIMINARY ENQUIRIES**

As Saunders had given evidence during my previous investigation that she had herself tape recorded the conversation recorded on the Lobegeiger tape or something similar – she could not be more specific eleven years on, and in view of O'Malley's expert opinion given to that investigation that the Lobegeiger tape had been acoustically recorded and the conversation segment had not been edited, the Commission considered it necessary to seek further expert opinion before determining whether to conduct a detailed investigation of the complaint.

The Commission requested O'Malley reconsider his original advice in light of Torkington's opinions and conclusions. It also sought the advice of David Cole of the QUT Signal Processing Research Centre. Reports dated 15 July 1994 and 10 August 1994 were received from O'Malley and Cole respectively. Both formed the view that the conversation segment of the Lobegeiger tape had acoustic characteristics inconsistent with a radio bug or other listening device. However, they were of the view that the dialling pulses could not have been recorded acoustically. They concluded that the dialling pulses had been mixed with the recording of the subsequent conversation segment. The basis for this conclusion was the clean signals of the dialling pulses and the fact that prior to the completion of the dial pulses, the ring tone commenced. If the ring tone was a result of the dialling which caused the dialling pulses, the ring tone would have appeared after the dialling pulses. Neither could find any evidence of editing to the conversation segment.

## **1.7 THE COMMISSION RESOLVES TO CONDUCT A DETAILED INVESTIGATION**

On consideration of the opinions of Torkington, Cole and O'Malley and the relevant evidence from my previous report, the Commission considered it desirable to conduct a more detailed investigation into the matter. On 26 August 1994, the Commission formally resolved to investigate whether the Lobegeiger tape had, in any way, been created by or for then-serving police officers and if so, who was involved and in what way.

The Commission also resolved to appoint me to conduct the investigation and to consider whether any evidence produced during the investigation would require amendment to the conclusions reached in my previous report. Critical to the

decision to appoint me was the fact that I was already seized of extensive knowledge of the circumstances surrounding the matter in light of my previous investigation. To have appointed someone other than myself to determine whether my findings relating to police should be altered, may have necessitated the new appointee to conduct an inquiry de novo. No doubt the Commission did not wish to repeat the expenditure of the half million dollars it incurred during my previous investigation. A copy of the Commission's resolution is Appendix I to this report. A chronology of significant dates incorporating relevant events referred to in my previous investigation is Appendix II to this report.

## **1.8 THE JURISDICTION OF THE COMMISSION**

The Commission had jurisdiction to conduct the investigation by virtue of the provisions of sub-section 29(3)(d)(i) of the Act. It provides that it is the function of the Official Misconduct Division to investigate cases of alleged or suspected misconduct by members of the Queensland Police Service.

## **1.9 STANDARD OF PROOF**

The very nature of an inquiry under the Act (including, in particular, the fact that the Commission is not bound by the rules of evidence applicable to proceedings in a court) raises the question of the degree of satisfaction which should be attained before considering a finding adverse to any person in the course of an investigation such as this. The Act is silent on the standard of proof required; however after consideration of the authorities, I considered that the appropriate standard of proof was the civil standard which varies according to the gravity of the finding to be made. This standard is often called the *Briginshaw* principle or the standard of 'reasonable satisfaction' and in applying it, I adopt the statement of Sir Owen Dixon in *Briginshaw v Briginshaw* (1938) C.L.R. 336 at pp. 361-362 where he stated:

'Reasonable satisfaction' is not a state of mind that is attained or established independently of the nature and consequence on the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences following from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect references.

## **1.10 PUBLIC HEARINGS**

The provisions of section 90(1) of the Act require a hearing of the Commission to be open to the public unless the Commission orders that it be closed. Subsection (2) provides that the Commission may order that the hearing be closed to the public only if the Commission considers an open hearing would be unfair to a person or contrary to the public interest. After seeking submissions from the relevant parties, I determined that the hearing of evidence would be open to the public. There were no submissions made that the hearings should be closed to the public.

The initial reports of the three experts were tendered at a brief hearing on 13 September 1994. The public hearing of oral evidence commenced on 19 September 1994 and continued until 22 September 1994. The public hearings were adjourned to 28 September 1994 on which date documentary evidence only was received. Documentary evidence was also tendered on 14 December 1994.

## **1.11 APPEARANCES**

C E K Hampson QC was appointed Senior Counsel Assisting by the resolution of the Commission dated 26 August 1994. Stephen Lambrides was Junior Counsel Assisting. Richard Carew, Solicitor from the firm Carew and Company, appeared for Saunders. Michael Quinn, Solicitor from the firm Gilshenan and Luton appeared initially for Webb and Flanagan.

## **1.12 LOGISTICS OF THE INVESTIGATION**

The only persons to give evidence were the three expert witnesses and Terrence James McCormack who had referred Webb to Torkington in March 1983. Statements in the form of statutory declarations or sworn pursuant to the *Oaths Act 1867* were obtained from 8 other persons. A number of other reports and memoranda were also tendered as evidence before me. I also had access to all the material which was before me during my previous investigation. Also available for examination were all the tape recorders still available which had been in use in the Bureau of Criminal Investigation in 1982-83.

## **1.13 THE CONDUCT OF THE HEARINGS**

On 12 September 1994, I held a directions hearing in closed session to discuss matters which would ordinarily in court be dealt with in chambers. These matters were of a procedural nature designed to expedite and facilitate hearings into the matter. At that time, Carew made an application to me seeking to have me disqualify myself from conducting the investigation. He submitted on two basis

that I should do so. He also submitted, seemingly on the same bases, that Counsel Assisting me, who were the same counsel as in my previous investigation, and those Commission investigators who were involved in my previous investigation, be disqualified from the current investigation. The bases were that I had already acted unfairly towards Saunders and, in any event, there would be a perception that I could not approach the new investigation with an unbiased mind. Foremost in Carew's submissions was the fact that my previous report undoubtedly contained findings contrary to Saunders's interest. Some of these findings reflected my poor opinion of her credibility. I ruled against Carew.

His submissions seemed to be based on the belief that the new evidence required fresh findings concerning Saunders. This was not the case. Torkington's claims did not involve the suggestion that Saunders had done anything wrong or anything inconsistent with her previous evidence before me concerning the Lobegeiger tape. As I have previously stated, at its highest, the evidence was consistent with someone having used a listening device to monitor Saunders's telephone, or alternatively, it may have been consistent with someone having edited a tape recording seized from Saunders's home during the search of 8 September 1982. As it was possible that the 'someone' could have been a police officer, including the investigating police Webb and Flanagan, it may have affected my previous findings in relation to them.

It should be stressed that previously I was, and again I am, engaged in an investigative capacity and not in a judicial or even quasi-judicial one. The great majority of legal authority to which I was referred related to the question of bias or perceived bias in judicial or quasi-judicial proceedings.

Finally, I considered that to refuse to carry on with the investigation would have been a rather shabby way of avoiding my responsibilities, particularly as I can say with some certainty that knowledge gleaned by me from my previous investigation was a prerequisite to answering one of the questions resolved by the Commission for me to consider. The question to which I refer is the one which addressed whether any evidence produced during this investigation required amendment to the conclusions reached in my previous report.

When I delivered my ruling on the submission made by Carew, he indicated that his client wished to challenge the ruling, presumably in the Supreme Court. I advised him that unless the Commission was served with the appropriate process I would proceed on 19 September 1994 to hear oral evidence. I advised all present I would make a public statement the following day.

On the morning of 13 September 1994, in a brief public statement I explained what had occurred in closed session the previous day. I indicated that the public hearing of oral evidence would commence on 19 September 1994 unless, by that time, Carew had instigated proceedings elsewhere. Although Carew was not present in

the hearing room during this public statement, he, shortly after the hearing had been adjourned, was seen outside the hearing room distributing to members of the press copies of a letter addressed to me from Carew and Company. The original of the letter had been delivered to me as I was going to the hearing room to commence the morning's proceedings and I did not have an opportunity to read it, let alone have time to make a response to it. In the letter he threatened to take proceedings in the Supreme Court unless I discontinued the investigation.

Prior to 19 September 1994, similar demands in writing were made by Carew to me and the Commission stipulating deadlines for a response to his letters. On the morning of 19 September 1994, no process had been served on me or the Commission. On that day, I received a further letter requesting an adjournment of the matter and advising of his unavailability. He did not, in any way, give reasons for his unavailability. In those circumstances, I determined that I would proceed to hear the oral evidence of the witnesses as I had indicated to Carew seven days before. Critical to my decision to proceed as previously advised, was the undue delays involved in my previous investigation. I did not want drawn out or protracted proceedings. The reasons for the delays associated with my previous investigation are fully canvassed in my report to that investigation. I do not see any point in repeating them here.

Therefore, on the morning of 19 September 1994, the experts commenced to give their oral evidence. As Saunders was not present and not represented, I made arrangements for the transcript of the proceedings and copies of relevant exhibits to be forwarded to the offices of Carew and Company. I also placed on the record that I would afford him the opportunity, if he wished to cross-examine the witnesses who had given evidence and to make submissions about further witnesses to be called.

At the completion of the oral evidence on 22 September 1994, the hearings were adjourned to the morning of 28 September 1994 in order to give Carew the opportunity to make any submissions he wished concerning the examination of witnesses. Forwarded to Carew were the transcript, exhibits and further statements which had been obtained by Commission investigators to that time. By letter dated 23 September 1994 to Carew and Company from Counsel Assisting, Carew was advised that I was prepared to hear any submissions regarding the future conduct of the investigation on 28 September 1994.

On the afternoon of 27 September 1994, a letter from Carew was faxed to me at 5.10p.m. I received this the following morning. It advised that on 28 September 1994, proceedings would be filed in the Supreme Court seeking to restrain me from continuing with the investigation. It also advised that Carew would be unavailable to appear before me on the morning of 28 September 1994. It further advised that Carew had instructions that his client did not wish to make any

submissions regarding the future conduct of the investigation, at least until the Supreme Court action had been resolved.

The following morning, Carew did not appear at the hearings at which time only a number of exhibits were tendered. Approximately 15 minutes before the commencement of the hearings, the Commission was served with a writ of summons issued out of the Supreme Court and a Notice of Motion returnable on 13 October 1994 in the Supreme Court. The writ sought declarations that:

- My previous investigation did not afford Saunders natural justice and was conducted in breach of the Act;
- My previous report did not afford Saunders natural justice and was in breach of the Act;
- The resolution of the Commission dated 26 August 1994, was invalid as it was in breach of the rules of natural justice; and
- No person involved in my previous investigation should be involved, in any manner whatsoever, in this investigation.

It also sought to restrain me and the Commission from continuing with the investigation, the subject of the resolution of the Commission dated 26 August 1994. The Notice of Motion was, in effect, an application for an interlocutory injunction restraining me from proceeding with the investigation pending trial of the matter.

In Saunders's affidavit in support of her application, she advised that she had instructed her solicitor to write to the Commission requesting that they undertake not to seek costs against her in the event that her application to the Supreme Court was unsuccessful. The affidavit continued that if the Commission did not agree to do so, she could not afford to take the risk of losing her house to pay the Commission's costs, and she would reluctantly have to discontinue the proceedings.

This paragraph of her affidavit meant that although I had been served with process there was no certainty that it would proceed. I adjourned the proceedings after the tendering of the further statements to a date to be fixed to allow, once again, Carew to make submissions on the further conduct of the investigation if the Supreme Court action was discontinued.

Submissions were made to the Commission and the PCJC for the Commission to waive its legal entitlement to costs. Although I was not privy to their considerations, I am aware that the Chairman and all the part-time Commissioners considered the matter and determined not to waive its right to seek costs. Carew and Company was advised accordingly. By letter dated 5 October 1994 from



Carew and Company, the Commission was advised that in light of the Commission's attitude, the proceedings in the Supreme Court would be discontinued.

The investigation continued and further statements were obtained from Commission officers. Those were sent to Carew and Company under letter dated 14 November 1994.

By letter dated 2 December 1994, Counsel Assisting once again invited Carew and Company to make submissions on the further conduct of the investigation. Carew and Company, by letter delivered on 9 December 1994, did not accept this invitation but indicated that it proposed to make a further submission to the PCJC.

On 14 December 1994 a final hearing was held at which the documents obtained in the course of the investigation that had not previously been tendered were formally tendered. They had been available to me for several weeks prior to that day. These documents had been previously furnished to Carew and Company by letter dated 14 November 1994.

## **1.14 A TRANSCRIPT OF THE LOBEGEIGER TAPE**

An understanding of the evidence relating to the Lobegeiger tape, and particularly the significance of the expert evidence, is facilitated by reference to a transcript of it. I will set out below a transcript of the tape indicating, where appropriate, significant events discussed by the experts. There was no doubt the voices were those of Saunders, Lobegeiger and a receptionist named Debbra Kay Baker. Although Baker could not remember the telephone call she identified her voice and that of Lobegeiger. Saunders identified her voice and that of Lobegeiger during my previous investigation.

### **TRANSCRIPT OF TELEPHONE CONVERSATION**

LS	=	Lorrelle Saunders
AL	=	Allan Lobegeiger
DB	=	Debbra Baker

*Tape commences to run over plastic leader*

*Dial pulses indicating the digits 5356958*

*Ring Tone (commences prior to completion of dial pulses)*

*Edit point - 9 seconds after cessation of dial pulses - Cole*

*Long silence during which bird calls can be heard*

*Edit point suggested by Torkington*

DB: Hello

*Edit point suggested by Torkington*

*First multi-metering pulse erroneously said to be by Torkington*

LS: Yes

*Edit point suggested by Torkington*

DB: Do you want Mr Lobegeiger do you

LS: Yes thanks

DB: He's just on the other phone at the moment would you like to wait for a minute

LS: Yes thanks

DB: Who's calling

LS: Oh it's personal thanks

*Long pause during which DB can be heard to say in the background:*

There's a lady on the telephone wants you

*Multi-metering pulse*

*Edit point - Torkington and Cole*

LS: Hi you're busy

AL: Beg your pardon

LS: Are you busy

AL: Yep

LS: Sorry I didn't ring you this morning I slept in

*Multi-metering pulse*

AL: Oh yeah

LS: Did you read the letter

AL: You what

LS: Did you read the letter

AL: No

LS: Why not

AL: Haven't got it

LS: Why

AL: I don't know

LS: What happened to it. Allan

AL: I don't know

LS: Did you hand it in.

AL: I haven't seen it

LS: You told me you had it last night

AL: I didn't I said how would you get it to me

LS: You said you had it and

.....

LS: You've handed it in haven't you

AL: No I have not

LS: Oh come on. What's the matter. You told me you had it

AL: I did not tell you that. You didn't tell me you were here

*Multi-metering pulse*

LS: I told you I posted it down there. What's going on

AL: I don't know you would .... only one

LS: Oh Christ I came down and posted the letter so you'd get it because you said you'd read it

AL: Did I

LS: Yes you know you did

AL: No I didn't say anything about it

LS: You promised me you'd read it

AL: I did not promise you

LS: Come on

AL: Anyway

LS: And and then you go off your head at me last night

AL: Anyway

LS: Anyway nothing. Why haven't you read it. Oh come on. It meant so much to me

AL: Yeah

LS: Look I've got hospital all afternoon with mum alright

AL: Yeah

*Multi-metering pulse*

LS: You don't care do you

AL: It's not a matter of don't care at all. It's just that I don't know why you insist on doing what you're doing

LS: I'm not doing anything. Do you want me to tell you what was in it

AL: No

LS: Did you hand it to the Department

AL: No

LS: Well what did you do with it

AL: I don't know what

LS: It would have been delivered yesterday

AL: How

LS: Because when I talked to you yesterday morning I went straight down and posted it

AL: Where

LS: Broadbeach. At the post office up from the Police Station

*Multi-metering pulse*

AL: That's the story

LS: Well it's the truth

AL: Is it

LS: Yeah

AL: Anyway

LS: Oh come on. What's going what are you on about. All I'm trying to do is sort my life out with you

AL: Yeah

LS: And you go off at me. Have we got a chance or not. For what for what I want from life

AL: Anyway we've got

LS: Can we talk

AL: No

LS: Why please

*Multi-metering pulse*

LS: Look it took me about five hours to put down what I wanted to say to you

AL: Anyway

LS: Did you get over your little hassle last night

AL: Well you'd know

LS: I wouldn't know

AL: .....

LS: No

AL: Wouldn't even know who it was

LS: I said I wouldn't know what happened. I don't know what you are on about

AL: Wouldn't even know who it was involved. Why should I

AL: .....

LS: Well you accused me of it

AL: Anyway

*Multi-metering pulse*

LS: Allan, I

AL: It's a waste of time

LS: Alright. Listen can we discuss us

AL: .....

LS: Can't you see that why I'm so uptight

AL: Yeah alright

LS: Please

AL: Okay I've got to go

LS: Oh talk to me

AL: I'd better go

LS: Can I can I call you back

AL: See what happens

LS: What time

AL: I don't know

LS: Are you angry at are you angry at me

AL: You what

LS: Are you wild with me

AL: You what

LS: Are you mad at me

AL: ..... anyway I'm off okay

*Multi-metering pulse*

LS: Yeah okay

[Lobegeiger hangs up]

LS: Bye bye

[Saunders hangs up]





# CHAPTER TWO

## THE EXPERT EVIDENCE

### 2.1 THE QUALIFICATIONS OF THE EXPERTS

Torkington had been employed by Telecom from 1955 until 1991. He had received the degree of Bachelor of Engineering (Electrical) in 1960 and was a certified practicing engineer. His duties at Telecom included the design and development of telephone equipment. This required an expertise in signalling, which included the analysis and recording of dial pulses. In 1983, he was the Supervising Engineer, Equipment Design and Development for Telecom Australia based in Brisbane.

Therefore, Torkington had unquestionable qualifications in relation to telephone systems; but he had no experience in analysing tapes. Although he had had experience as a radio technical producer and had produced tapes for broadcasting, he had never previously analysed a taped telephone call.

O'Malley testified that since December 1989, he had been employed as a recording analyst in the Police Service's Electronic Recording Laboratories. He had received from QUT a certificate in Forensic Tape Recording and Enhancement Techniques after a 12 month course. Prior to this employment with the Police Service, he had been employed in the television industry as a recording technician. He is currently in his final year of a three year electrical engineering course at the South Brisbane Technical College. He testified that he had analysed over 2000 tapes of which 12 were detailed analyses, and had given evidence in the Magistrates, District and Supreme Courts in relation to these analyses. During his day-to-day work, he explained that he had encountered hundreds of recordings made by miniature transmitter or transmission systems; that is he had had extensive exposure to radio 'bugs'. He conceded that telephone systems and their characteristics such as multi-metering pulses fell outside his expertise.

Cole testified that he was a full-time research student at QUT. His present research involved speech enhancement and speech analysis using computer equipment. He held a degree of Bachelor of Engineering - Electrical Engineering with Honours - from QUT. He also was a Master of Philosophy in Computer Speech and Language Processing from Cambridge University. His experience in tape enhancement and analysis was restricted primarily to the last three years, in

which time he had performed 10 to 15 tape enhancement jobs and three tape analysis jobs in conjunction with Professor Miles Moody who is the Head of School at the QUT School of Electrical Engineering. From 1980 to 1993, he had worked as an engineer for Telecom Australia. For the majority of this period of employment, he had worked as a transmission system designer or consultant, with particular experience in radio, cable and optical fibre transmission system design and installation. This had been conducted in both the inter-exchange and customer networks. Although he had extensive experience with telephone systems, he had considerably less expertise than Torkington in this regard.

O'Malley and Torkington conceded that Cole had access to more sophisticated equipment with which to analyse tape recordings than they did. In this regard, Torkington also conceded that O'Malley had more sophisticated equipment than he had when he conducted his analysis.

Torkington, in a frank and honest exchange with Counsel Assisting, also conceded that O'Malley and Cole had far more experience in tape analysis than he did. He concluded this aspect of his evidence before me by making the following observation:

... if the other witnesses are in conflict with me, and - then I think you have to give more weight to their opinion than to mine -

He was, no doubt, greatly influenced by his observations and the discussions which he had with Cole at the Research Centre at which Cole worked. This took place on 16 September 1994, three days before Torkington gave evidence before me. A meeting had been arranged by Counsel Assisting for Cole and Torkington to discuss their differing views.

## **2.2 THE ALLEGATION THAT THE LOBEGEIGER TAPE HAD BEEN RECORDED BY MEANS OF A LISTENING DEVICE**

### **2.2.1 Torkington withdraws the claim that a radio bug had been used**

After the Commission had resolved to conduct a detailed investigation and prior to the commencement of the hearing of oral evidence, Torkington abandoned his assertion that the Lobegeiger tape had been recorded by means of a radio bug. In his statutory declaration of 1 July 1994, Torkington had stated that there were four options which could have produced the clear signals of the dial pulses. They were:

- By wire connected directly to the line;

- Transmitted by a radio bug on the line;
- A central line tap; or
- Recorded on an answering machine.

He stated that he favoured strongly the radio bug option and listed as least likely, the central line tap. After hearing a copy of the entire Lobegeiger tape he confirmed in his statutory declaration dated 4 July 1994, this view and concluded that the conversation segment had been recorded in the same manner albeit at a different time.

### **2.2.2 Torkington's claim that a central line tap had been used**

The view that the Lobegeiger tape had been recorded using a radio bug prevailed until by letter dated 18 September 1994, Torkington advised the Commission that he had obtained access to an oscillograph instrument which placed him 'in a better position to give an opinion on the recording'. It was also two days after his meeting with Cole at the QUT Research Centre. He now stated that he believed a central line tap had been used. At this stage, it is necessary to more fully explain the term. From a technical view point, the only authority which could make a centralised tap was Telecom. It involved the running of a pair of wires on the main distribution frame forming a connection to the individual person's telephone line. This would physically have to occur in the telephone subscriber's local exchange, where access was strictly limited to Telecom employees. A tape recorder could be connected to the wires directly or, alternatively, the signals could be taken by wire through a buffer amplifier to any other location where the tape recorder was situated.

For the purpose of explaining his new position, Torkington notionally broke the Lobegeiger tape into three segments. These were:

- The dialling pulses and the near silence until the first word is spoken;
- The conversation between the receptionist and the female caller (who were unquestionably Debbra Kay Baker and Saunders respectively) and the brief period of relative silence thereafter; and
- The conversation between Saunders and Allan (this is unquestionably Lobegeiger) and the following termination sequence of the call.

In relation to the first segment he now stated that the dialling pulses were 'crisp and uniform' which ruled out the use of a radio bug. He was of the view that the radio bug would lose power each time the rotary dial was pulled off its normal position and probably 'mutilate the dialling information'.

In relation to the second segment, he concluded that there was insufficient information for him to draw a conclusion. Although because of the clarity of one of the multi-metering pulses in the relatively silent period where Saunders appears to be waiting for Lobegeiger, he was of the view that it could only have been recorded off the telephone line itself in one of three manners - radio bug, answering machine or central line tap.

His view concerning the third segment was that it had not been recorded by a radio bug, but by means of a central line tap. The 'heavy bursts of noise' (hereinafter referred to as 'audio pops') which he had asserted in his statutory declaration of 16 July 1994, were the sound of radio frequency interference generated by an electric arc he now considered to be unconnected to mains electricity frequency and probably not radio frequency interference. He concluded that because these audio pops would have been deafening if they were on the telephone line, as the callers did not refer to them or alter the cadence of their voices or repeat words, they were introduced onto the recording at some later stage. He postulated that the more likely point was between the first amplifier after the tapping of the line (the buffer amplifier) and the tape recorder. A less likely scenario suggested by him was that the audio pops were introduced in a copying phase.

He stated that for a radio bug to have been the source of the recording on the third segment, he would have to propose faultless radio transmission and that the tape recorder was generating the audio pops internally, possibly due to a faulty automatic gain control. He concluded that this now seemed unlikely.

He stated that to propose that the third segment was made by an answering machine, it would have to be of the type which started and stopped when the handset was lifted and restored. The reason he gave for this conclusion was that he believed the 0.5 second gap between the transients indicating the termination of the call (when Saunders hung up her telephone) and the transients which showed the stopping of a tape recorder precluded a manual switch-off. He was of the view that 'lightning reflexes' would have been necessary for it to have been switched off manually. He added that again, one would have to propose a source of the audio pops within the answering machine, which he concluded was unlikely.

His letter then stated that he considered the central line tap as the only other option.

When Torkington gave evidence before me he stated that he did not believe the first segment had been recorded by means of a central line tap. He explained that

it would have been easy to record the first segment by merely connecting a pair of wires directly to the body of the telephone or the telephone line. However, he did not eliminate the use of a central line tap as an option. He maintained his view in relation to the manner in which the second and third segments were recorded. He stated that there was nothing in these segments which would 'counter-indicate a centralised line tap'.

Torkington was not only of the view that Saunders's telephone had been the subject of a central line tap, he was also of the view that his had. He testified that on 4 July 1994, at approximately 9.30 in the morning, his home telephone went dead or 'open-circuit'. As this event would normally only be associated with cable-jointing activity, he drove along the cable route looking for cable-jointers and cable activity, but no cable-jointers were apparent. He telephoned Telecom on his mobile telephone to report that his home telephone was faulty. Within an hour the service was back to normal. He testified that at 8.30 that evening the same thing occurred. Within an hour, the service was back to normal. Torkington was of the view that no cable-jointers or linesman would be working at that hour. He suspected that what had occurred was that someone had gone to his exchange, located the wires that pertained to his service and placed two intercept wires on them. He believed the central line tap was still in use when he gave his evidence before me.

When asked for a motive for the central line tap, he referred to the fact that extracts from his diary had been published in 'The Sunday Mail' in the articles written by Blanch. In his diary, there was a reference to an ex-Telecom Security and Investigation Section employee, Terry McCormack. Torkington testified that because of this reference, this would make Telecom 'curious as to what was going on, so I would say that they - it would be natural for them to then tap my line'. He told Counsel Assisting that the 'them' was Telecom Security and Investigation Section.

### **2.2.3 Cole proposes a stereophonic technique had been used**

When Cole originally examined and analysed the Lobegeiger tape, he stated in his first report that the dial pulses in the first segment were recorded using some form of direct connection to the telephone line (including the body of the telephone). In the call termination sequence, Cole detected as the final transient on the female caller's (Saunders's) end, a very clean signal, quite similar to the dialling pulses at the start of the tape. This suggested to him it had been recorded in a similar fashion to that of the dialling pulses.

He concluded that the dial pulses and the call termination sequence transient had been separately obtained and mixed with the rest of the recording to produce the

Lobegeiger tape. In other words, someone had seemingly been attempting to give the impression that the conversation on the Lobegeiger tape had been recorded by a listening device rather than acoustically by a microphone. He originally formed the view that in this mixing process, the dial pulses had been 'superimposed' over the ring tone. He had found (as had O'Malley) that the first part of the ring tone appeared before the cessation of the dial pulses. The telephone system in 1982 was set up so that the ring tone could not commence until after the dial pulses had ceased.

The rest of the recording, he stated, had characteristics of an acoustic recording made by means of an external microphone and recorder. He referred to bird chirps and other environmental background noises such as breathing during conversation pauses. He explained that there appeared to be amplification of these noises during conversation pauses due to automatic gain control in the recording equipment. This was consistent with an external microphone and recorder. He also relied upon the dynamic range of the far end speech (that of Baker and that of Lobegeiger) to conclude that an acoustic device had to have been used. A further factor which Cole regarded as significant in determining that an acoustical recording of the second and third segments had taken place, was the fact that the level of Saunders's voice fluctuated little, but Lobegeiger's varied from 10 to 15 decibels.

Cole was certain that the Lobegeiger tape was not the first impression recording.

After Cole had given his first report and before he gave evidence, he was given a further tape recording to analyse. For the purposes of this report, I will refer to this cassette tape in the same terms as used by Cole in his reports as 'the second tape'. This was a tape recording, admitted by Saunders in evidence before me in my previous investigation to have been recorded by her, of a number of alleged threatening telephone calls made to her. This was (as were all other tape recordings tendered in evidence before me during my previous investigation) forwarded to Cole by Counsel Assisting in the remote chance that it may provide some assistance as to how the Lobegeiger tape was recorded. It proved to be of paramount importance to Cole in his final assessment of the Lobegeiger tape. The brand of this second tape was identical to that of the Lobegeiger tape, namely, a C-60 green Astor compact cassette.

Cole testified that the second tape had a 'pronounced stereophonic effect'. He described a relatively high level signal comprising the near end speech (that of Saunders) on the right channel. He described a lower level signal comprising speech from both ends (at comparable levels) and clean line signals (such as ring signals and line disconnection transients) on the left channel. This he explained was as a result of the use of a tape recorder which had both an internal microphone and a jack for an external microphone. He suggested that due to improper connection of a direct line connection from the telephone to the tape recorder, the internal microphone of the tape recorder was not disconnected on the right channel

as it should have been. He also suggested that it may also have been the result of a monophonic plug having been used to plug into the stereophonic socket of the tape recorder. The result was that the right channel recorded the local speech (Saunders's voice) at a high level, via the internal microphone of the tape recorder. The left channel recorded the direct line to the telephone including the clean line signals.

Cole was of the view that a similar recording procedure 'perfectly explained the anomalies' associated with the Lobegeiger tape. The only additional procedure necessary was a copying procedure in which the two stereophonic channels were summed into a monophonic signal. Cole stated that in some equipment, this occurred as a matter of course. In other words, the result of copying a tape in this fashion had all the characteristics of an acoustic recording superimposed over all the characteristics of a direct connection recording.

The conclusion reached by Cole, if accepted, put to rest the possibility of any listening device having been used to record the Lobegeiger tape. This would eliminate the possibility of anyone having illegally 'bugged' Saunders's telephone to record the Lobegeiger tape.

After Cole had analysed the second tape, he reassessed the first segment of the Lobegeiger tape to see whether it fitted the stereophonic technique of recording. He located an edit point nine seconds after cessation of the dial pulses. Analysis of both temporal characteristics and frequency content of the tape up to this edit point suggested to him that not only was there direct line connection as he originally believed, but also an acoustically recorded component. That is, he detected a component that suggested a microphone had also been used. He explained that transients attributable to microphone wind or breath noise were 'clearly discernible' by waveform inspection over the entire section. Frequency analysis showed him significant content below 100 Hertz and as high as 7000 Hertz. These figures were, in his view, well outside the bounds expected for a telephonic signal and clearly indicated recording by a microphone. Cole went on to state that a female sigh was discernible at low level in this segment. He considered it had aurally similar characteristics to the near end female speaker (Saunders) heard on the remainder of the recording. He also located an apparent bird call just prior to the edit point. He was of the opinion that these signals were further indication of an acoustical coupling (microphone input) component.

He concluded that these observations with the previously noted similarities in level and characteristics between the dial pulses and the later call termination transient 'strongly suggested' a recording method for the dial pulses and first nine seconds thereafter, identical to the remainder of the recording. The only proviso he made to this conclusion was that he had not detected aurally the sound of the telephone dial rotation as distinct from the dial pulses generated by it. He suggested that this may have been because of a combination of a quiet dial, acoustical isolation

between telephone and microphone, possible low microphone input amplification at the time due to preceding high input and psycho-acoustical masking effects of the high level dial pulses during aural evaluation. He also postulated the use of a push-button telephone which had been introduced by Telecom in the late 1970's. If such a telephone had been used, the pressing of the dialling buttons would be less evident acoustically and possibly imperceptible. He also suggested that the number dialled might even have been entered completely before commencement of the recording.

In relation to his original conclusion that the dial pulses had been mixed with the rest of the recording, he opined that mixing was now contra-indicated by the similarity of the dial pulses to the call termination transient or pulse. Also contra-indicative was his conclusion that the first portion of the first segment, that is the dial pulses and the following nine seconds, strongly suggested a recording method identical to the remainder of the recording. Also contra-indicative of mixing having occurred was the fact that there was no logical reason to mix the dial pulses onto the initial part of the recording and then edit nine seconds later. If the dial pulses were a mix then as a matter of logic, it would have been more sensible to mix them into the beginning of the non-speech segment which appeared before the first words spoken, thereby eliminating the first edit point.

Cole testified that if he was correct in his conclusion that the dial pulses had been recorded in the stereophonic manner which he had described, then the ring tone where it commenced prior to the cessation of the dial pulses 'must be cross-talk' from another customer line.

In examination of Cole by Torkington, it was put to Cole that in 1982 if the ring tone had been cross-talk then within three to five seconds of the cessation of the dial pulses there should have been call progress (ring tone, congestion tone or busy tone) that related to the dial pulses. There were none of these in the nine seconds between the cessation of the dial pulses and the edit point which Cole had found. Cole agreed that nine seconds appeared to be an inordinately long time for correct operation of the network although he admitted that he did not have sufficient knowledge of the time specifications to comment conclusively on the matter.

After Cole had finished giving oral evidence, he forwarded to Counsel Assisting, an addendum report dated 27 September 1994. In it he stated that he had received advice from Greg Dunn, Principal Engineer, Operations Switching Support Branch (Brisbane office), Telecom, on the matter of the nine second post dial delay (lack of call progress). He stated that Dunn had advised him that:

In 1982 a typical delay between dialling and further call progress indication would be from 5 to 10 seconds (in most cases, at the shorter end of the scale). Telecom's target for maximum post-dial delay was 15 seconds at that time. The opinion he



expressed to me was that 9 seconds would be longer than typical, but quite a realistic figure.

## **2.2.4 O'Malley accepts the explanation of the stereophonic technique**

O'Malley, who had direct extensive experience with working on hundreds of recordings made by miniature transmitters or other transmission systems, stated that the Lobegeiger tape had none of the characteristics of those recordings. He too was of the view originally that the dial pulses in the first segment had been recorded by electrical connection to the wire and mixed to the remainder of the recording. He had not located the call termination sequence transient found by Cole as he had never seen one before.

Like Cole, O'Malley was of the view that in relation to the second and third segments, there were acoustic characteristics which precluded a direct line to the body of the telephone or telephone answering machine, central line tap or a radio bug. He explained that these parts of the recording had a dynamic range or amplitude far in excess of what one would expect to find in conversation recorded by any of these means. He added that the fullness of the sounds indicated to him that the recording had been made some distance from the mouth of the speaker as opposed to the closeness of sound associated with a telephone receiver at a person's mouth. The presence of bird chirps in the first segment were, in his opinion, also consistent with an acoustic device such as a microphone. He did not believe that a telephone receiver would be sufficiently sensitive to pick up the bird sounds and other environment sounds in order for them to be on the wire to be recorded from the wire.

Although O'Malley did not analyse the second tape, he had an opportunity prior to concluding his evidence, to read Cole's report concerning his conclusion that the Lobegeiger tape had been recorded in the stereophonic method. O'Malley stated that the conclusions were 'quite feasible'. He testified that it explained the features that he had been 'battling over'. He believed that the conclusion explained the difference in levels between the near end caller and the far end caller. He stated that the summing of the two stereophonic channels would explain the high level of the near end caller and the clarity of the dial pulses and the call termination transient or pulse which Cole had located.

He concluded, by testifying, that in his mind the only grey areas in the conclusion reached by Cole was that one had to assume cross-talk and explain the lack of call progress after the dial pulses. He accepted that cross-talk was a possibility and believed that the call progress could have been edited out, although he could find no evidence of an edit point in the first segment. Of course, Cole had found one, nine

seconds after the cessation of the dial pulses. This meant that if the advice from the Principal Engineer, Operations Switching Support Branch was correct, then the edit point may have eliminated the call progress.

## **2.2.5 Torkington's response to the suggestion of a stereophonic technique**

Torkington did not analyse the second tape. He was, however, provided with a copy of Cole's report which permitted him to examine Cole about it when Cole gave evidence. Also, Counsel Assisting put to Torkington when he was giving evidence, the final conclusions reached by Cole concerning the suggestion of a stereophonic technique. Torkington conceded that the technique described by Cole could occur and was feasible. He stated that he had reservations about that technique as it applied to the Lobegeiger tape. He preferred to remain with his central line tap proposition. To his mind it did not explain the audio pops which he believed were in the buffer amplifier used in the central line tap and it did not explain what he called the 'lightning reflex' problem.

Cole analysed the audio pops in great detail and dismissed the possibility they were generated in a buffer amplifier. He located 36 of them. The first he found was coincident with the first utterance of the near end speaker which was unquestionably Saunders. He stated that comparison of the diagrams of the transients associated with the audio pops showed that they were remarkable for their similarity. Their spectral or frequency content showed that they were very similar to a square pulse of six milliseconds width with frequencies below 30 Hertz filtered out. He concluded that this could 'certainly be attributed to a hard limiting in an electronic circuit'.

Further evidence for his conclusion was that he noted that 34 of the 36 pops appeared during Saunders's speech activity, and were associated with high energy events - either voiced sounds such as vowels or the release portion of plosives such as consonant sounds. The other two, he stated, displayed onset transients very similar to the plosive onsets, and postulated as the cause short term speech events such as tongue clicks or lip smacks which had been masked by interference. He continued that also evident after the pops, both orally and by inspecting waveforms, was the action of an AGC circuit and/or amplifier saturation characteristic. These were seen as a drop in signal level immediately after each transient, as the circuit amplification was reduced due to the higher level of input or a saturation condition. He believed that these audio pops were consistent with their having been introduced in the process of copying the stereophonic recording and combining the two channels into mono.

Torkington conceded that the explanation for the audio pops could be some internal fault in a recorder which caused it to generate its own instability at some point past the microphone. O'Malley was of this view. If this was the case, then the audio pops were not inconsistent with the stereophonic technique postulated by Cole.

In relation to the 'lightning reflex' problem, Torkington had postulated that as there were end of recording transients (caused by a stop button on a recorder), a mere 0.5 seconds after Saunders had terminated the telephone call by hanging up, one had to assume lightning reflexes to justify a conclusion that manual intervention had caused the machine to stop. As Torkington was not prepared to assume lightning reflexes he concluded the stopping of the recorder was electronically initiated, that is, occurred automatically when Saunders hung up. This view was premised on the end of recording transients 0.5 seconds after hang up having been produced by the original recorder used to record the telephone conversation.

He suggested three alternatives which could have resulted in electronic initiation. One of these was that a radio bug lost power and ceased to transmit carrier waves. The radio bug receiver having sensed this, turned off the recorder. The suggestion was, in effect, abandoned when Torkington rejected the radio bug option. The other two suggestions were an answering machine with an automatic stop and start and a centralised line tapping receiver.

O'Malley's response to Torkington's 'lightning reflex' problem was simple. He pointed out that as the female (Saunders) was the one who had terminated the call, she knew in advance or could anticipate when the recorder could be turned off. I cannot understand why a simultaneous manual switching off or even one which occurred prior to hanging up could not have taken place. In any event, Cole had concluded that these end of recording transients were not the original ones but ones which had been introduced at the copying stage.

The other reservations concerning the stereophonic technique which Torkington had were those expressed by O'Malley concerning the cross-talk and the lack of call progress after the dial pulses. Torkington had stated that a three to five second call progress was normal. Cole had received advice from the Principal Engineer, Operations Switching Support Branch that nine seconds was 'a quite realistic figure'. If this were so, then this reservation had no substance. In relation to the cross-talk, Torkington was of the view that to him, the ring tone was too loud to be cross-talk. He conceded that this was 'a very qualitative' opinion. Relevant in this context, was the fact that Torkington did not detect audibly the first ring tone where it appeared prior to the cessation of the dial pulses and further that Torkington agreed the cross-talk might only manifest itself for a very brief period such as for the duration of one or two words.

## 2.3 EDITING OF THE LOBEGEIGER TAPE PRIOR TO THE COMMENCEMENT OF THE CONVERSATION

All three experts agreed that some form of editing had taken place prior to the commencement of conversation, that is, in the first segment. O'Malley originally believed that the editing had taken the form of mixing the dial pulses onto the rest of the recording as he believed the dial pulses had been recorded from a source different to the rest of the tape and he could find no edit points such as a stop or pause in the first segment. He reassessed this view in light of the stereophonic technique postulated by Cole. He concluded that if it could be shown that there had been an edit somewhere shortly after the dial pulses which would explain the absence of call progress and cross-talk had occurred with another line, then the dial pulses could be explained other than by mixing. Cole indeed found an edit point nine seconds after the dial pulses ceased.

Torkington originally formed the view that although he could not find an edit point prior to the commencement of the conversation, there must be editing at some point to explain the absence of five STD pips and other call signals prior to the first word of the conversation. He also believed that there had to be some editing to explain the difference in background noise between the first segment and the second and third segments. Prior to Torkington giving evidence, he gained access to an oscillograph and charted what he believed might have been a transient of an edit point. The charts were tendered before me. Torkington referred to a big 'bump' just prior to the word, 'Hello' which is the first spoken word. He testified that the 'bump' was 'very suggestive' of an edit point.

When Cole originally examined the Lobegeiger tape he was unable to find any evidence of an edit point in the first segment with the exception of what he originally believed to be mixing of the dial pulses. Upon analysing the second tape, he detected the use of the stereophonic technique which ruled out the need for mixing. On closer analysis of the first segment of the tape, he located a point nine seconds after cessation of the dial pulses which had similar characteristics to the operation of a pause mechanism of a high quality recorder. He stated that this edit point was not produced during the original recording but in the copying phase. He stated that it was audibly imperceptible and easily missed visually in a recording of the length of the Lobegeiger tape. Cole examined on his equipment the 'bump' which Torkington located prior to the first word, 'Hello'. Cole rejected it as an edit point. It did not have the transients one would expect from an edit point.

## 2.4 EDITING OF THE LOBEGEIGER TAPE AFTER CONVERSATIONS COMMENCED

In Torkington's statutory declaration of 6 July 1994, he raised for the first time the important matter of multi-metering pulses which are used by Telecom to calculate the duration of STD calls and consequently their cost. Torkington testified that his sources in Telecom advised him that in 1982, the caller would have been charged 12 cents per 45 seconds. He described multi-metering pulses as low frequency pulses sent back from the first Trunk exchange in the connection to the originating caller's exchange (terminal exchange), over the speech path. He stated that the first multi-metering pulse would occur after the called party answers. The next multi-metering pulse is not sent since it is not in synchronism with the start of the call. This avoids the caller being overcharged. As a result, the next multi-metering pulse sent to the terminal exchange will be sent at a minimum of 45 seconds after the first and at a maximum 90 seconds after the first. After this, one would expect a multi-metering pulse every 45 seconds. This meant that the only time you would expect not to have a multi-metering pulse after a period of 45 seconds was after the initial one. You may have to wait up to 90 seconds for it. He said that there were audible multi-metering pulses on the Lobegeiger tape. That proved to be the case. Their presence was like a clock ticking in the background and afforded great assistance in determining the question of possible editing.

Torkington set out where they could be heard on a transcript of the Lobegeiger tape. (See transcript in the introduction to the report for their position). The first he asserted could be heard after the first spoken word, 'Hello'. He later conceded that he was incorrect in this regard. I will return to this aspect shortly. What he believed to be the first multi-metering pulse he took to be his zero point. He then logged the time of occurrence and successive difference for the rest of them. I will now set out the log of these pulses that he tabulated:

	<u>Time of Occurrence (secs)</u>	<u>S u c c e s s i v e</u> <u>Difference</u>
1st	0	
2nd	35	35
3rd	53	18
4th	98	45
5th	143	45
6th	188	45
7th	234	46
8th	279	45
9th	324	45

The call terminated at 328 seconds. Torkington concluded from this that between the first and second multi-metering pulse, 10 seconds or 10 seconds plus multiples of 45 seconds had been deleted. Between the second and third pulse, 27 seconds had been deleted or 27 seconds plus multiples of 45 seconds.

O'Malley and Cole were originally asked to confirm the presence of these multi-metering pulses. They both went to what Torkington had indicated was the first multi-metering pulse at point zero. They looked to see what transient was at this position in order to determine, as it were, the identity of one of the multi-metering pulses. They then endeavoured to find that transient repeated at 45 second intervals throughout the recording. They could not locate a repetition of this transient anywhere on the recording. It should be noted that Torkington's times of occurrence for the multi-metering pulses were not precise. O'Malley and Torkington differed by 8.5 seconds as to what they considered to be the length of the recording. O'Malley explained that this was a significant difference when attempting to locate a single transient on wave form analysis data sheets. He stated that such data sheets would extend in excess of a kilometre for the six minute Lobegeiger tape. He gave as an example that when laying out the word, 'Yes', it would extend over some metres in wave form analysis data sheets.

When Cole and Torkington met at the Research Centre at the QUT, Cole was able to locate all the multi-metering pulses identified by Torkington other than the first. After a demonstration in the hearing room by Cole on his equipment, Torkington advised Counsel Assisting that he (Torkington) was in error with what he believed was the first multi-metering pulse.

This meant that there was no significance in the time difference between what Torkington had believed to be the first multi-metering pulse and the second. There was no doubt, however, that there had been some deletion between the second and third multi-metering pulses; that is, the first two multi-metering pulses on the recording. The second multi-metering pulse occurred during a long pause where Saunders is apparently waiting for Lobegeiger to come to the telephone and prior to the commencement of the conversation between Saunders and Lobegeiger. That is just before the commencement of the third segment. The third multi-metering pulse occurred very early in the conversation between Saunders and Lobegeiger. (See the transcript in the introduction of this report for the position of these multi-metering pulses vis a vis the conversational segments).

After this third multi-metering pulse, there was no evidence of editing according to Torkington as the multi-metering pulses appeared where they should have been, after every 45 seconds.

The location of the second and third multi-metering pulses meant that there had to be at least one edit point between the time Saunders was apparently waiting for