



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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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

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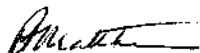
Dear Mr Bevan

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

CONTENTS

CHAPTER ONE	1
Introduction	1
1.1 The previous investigation	1
1.2 The initial articles in 'The Sunday Mail'	3
1.3 The Complaint to the Commission by Blanch	5
1.4 Further initial opinions from Torkington	7
1.5 The gravamen of the allegations	10
1.6 Preliminary Enquiries	11
1.8 The Jurisdiction of the Commission	12
1.9 Standard of Proof	12
1.10 Public Hearings	12
1.11 Appearances	13
1.12 Logistics of the Investigation	13
1.13 The Conduct of the Hearings	13
1.14 A transcript of the Lobegeiger tape	17
CHAPTER TWO	25
The Expert Evidence	25
2.1 The qualifications of the experts	25
2.2 The allegation that the Lobegeiger tape had been recorded by means of a listening device	26
2.2.1 Torkington withdraws the claim that a radio bug had been used	26
2.2.2 Torkington's claim that a central line tap had been used	27
2.2.3 Cole proposes a stereophonic technique had been used	29
2.2.4 O'Malley accepts the explanation of the stereophonic technique	33
2.2.5 Torkington's response to the suggestion of a stereophonic technique	34
2.3 Editing of the Lobegeiger tape prior to the commencement of the conversation	36
2.4 Editing of the Lobegeiger tape after conversations commenced	37
2.5 Who initiated the telephone call?	40
2.6 Other aspects of the expert evidence	40
2.6.1 Connection to Saunders's telephone line	41
2.6.2 Copying the first impression recording	41
2.6.3 Number of tape recorders necessary for the copying process	42

2.6.4	Analysis of the BCI tape recorders still available	42
2.6.5	Analysis of other tape recordings made by the police	42
2.6.6	Analysis of the Cooper tape	43
2.6.7	Transients associated with a pause control ...	43
2.6.8	Torkington's proposition that the dial pulses were recorded by using a PABX	44
2.7	What conclusions could be drawn from the expert evidence	44
CHAPTER THREE		47
A consideration of the other evidence		47
3.1	An assessment of other available evidence	47
3.2	The evidence of Terence James McCormack	48
3.3	The account of Alexander Terrence Cole Butters	49
3.4	The denials of the investigating police	49
3.5	Webb's meeting with Torkington	51
3.6	Webb's report dated 8 August 1983	53
3.7	An assessment of the Police Investigators by the Crown Prosecutors and Saunders's defence lawyer	54
3.8	The previous accounts given by Saunders	54
3.8.1	The Legal Aid material	55
3.8.2	Correspondence to Lobegeiger	57
3.8.3	Evidence given by Saunders at Dodd's trial ...	57
3.8.4	Evidence given by Saunders during my previous investigation	60
3.9	Breen's evidence	64
3.9.1	The significance of Breen's evidence	64
3.9.2	Cross-examination by Breen at the committal hearings	65
3.9.3	Breen's statutory declaration	67
3.10	The opportunity and capacity to edit	69
3.11	Motive to edit the first impression recording	70
3.12	'Clumsy' editing	70
CHAPTER FOUR		73
Conclusions		73
4.1	Evidence which suggested that police had acted improperly	73
4.2	The acceptance of the evidence of Cole and O'Malley in preference to that of Torkington	73
4.3	Saunders's accounts	75
4.4	Conclusions	77
4.5	Answers to the questions posed in the Resolution	79

APPENDICES

- 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 Saunders¹ 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.

¹ 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 Breen², 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

² 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

Lobegeiger to come to the telephone and her statement to Lobegeiger, 'Sorry I didn't ring you this morning I slept in'.

Torkington was of the opinion that a faint click prior to Saunders's words, 'Hi you're busy' was an edit point, that is, immediately prior to the commencement of the third segment. O'Malley stated that from his analysis, he could not identify any edit of a mechanical nature at this point, that is, by use of pause or stop/start buttons or a splice as Torkington had suggested may have been done. Cole on the other hand, originally reported that this faint click may have corresponded with the operation of a pause button. After his meeting with Torkington at the Research Centre at QUT, Cole subjected this transient to far greater analysis. When he came to give evidence before me he was certain that it was the transient caused by the use of the pause of a high quality recorder. He concluded in his addendum report of 27 September 1994 that on further examination of this transient and re-examination of the other edit point he had located nine seconds after the cessation of the dial pulses, that they could have been produced by the same machine. He concluded that as with the other edit point, this one was not produced by operation of a pause mechanism during the original recording because of the lack of acoustically recorded key switch actuation signals. It was produced during the copying phase by the use of a pause mechanism.

Torkington also referred to two other transients which were 'very suggestive' but 'not conclusive of edit points'. They were said to appear during the initial exchange between Saunders and the receptionist, Baker. Cole examined these two suggested edit points and rejected them. O'Malley could not locate them either. Other than the ones to which I have referred in this and the preceding section, no other edit points were suggested by any of the experts. Cole stated that there were no others. O'Malley stated there was no evidence of any others.

It followed from the conclusions reached by Cole that there was no editing to the exchange between the receptionist and Saunders and no editing to the telephone conversation between Saunders and Lobegeiger. There was the sole edit point between the end of the exchange and the commencement of the telephone conversation. Although there was an edit point at this stage, Cole's analysis and that of O'Malley indicated that the exchange between Saunders and the receptionist and the telephone conversation between Saunders and Lobegeiger were from the same original recording; in other words, recorded in the same ambient conditions. Torkington agreed that there was no change of noise at this point. There was no way of telling how much had been deleted at these edit points.

2.5 WHO INITIATED THE TELEPHONE CALL?

In relation to the third segment of the Lobegeiger tape, namely the conversation between Saunders and Lobegeiger, Torkington had originally raised the possibility that the call may have originated from Lobegeiger and not from Saunders as the Crown had asserted in 1982.

In his letter of 16 July 1994, he stated that he had made an aural analysis of the end of the recording. He concluded after his analysis, that it was not possible to say that the call termination signals indicated that Saunders had telephoned Lobegeiger. He added, however, that it was possible that if one of the transients he had heard was the sound of 'a call disconnection' then it was positive evidence that Lobegeiger had telephoned Saunders. He was not able to satisfy himself that the sound was 'a call disconnection' transient.

When Torkington came to give evidence, he conceded that the aural analysis he had conducted was flawed as he had assumed erroneously that the Lobegeiger tape was an original recording. He agreed with the other two experts that there was no 'call disconnection' transient or signal apparent. These matters ruled out the possibility that there could be positive evidence that the call had been originated by Lobegeiger.

Cole and O'Malley had originally given an opinion that the call termination signals indicated that Saunders had instigated the call. However, Torkington explained that their conclusions were reached on the basis of signals one would hear in the present telephone system and not the one used in 1982. He dismissed their positive assertions that Lobegeiger had not made the call, and concluded that there was insufficient information for them to determine one way or the other.

O'Malley accepted that he may have based his opinion on incorrect advice given to him. He was not prepared to disagree with Torkington's assertions on the basis that he believed this was Torkington's expertise and not his. Cole also conceded that he had to change his opinion on the question of the disconnection signals. Cole, however, was still of the view that the call had originated from the female caller (Saunders) as he was of the opinion that the second and third segments were from the same original recording. If the second and third segments were from the same original recording, it was clear from the dialogue in these two segments that Saunders was the caller.

2.6 OTHER ASPECTS OF THE EXPERT EVIDENCE

2.6.1 Connection to Saunders's telephone line

All three experts agreed that the recording of the first impression Lobegeiger tape was made by connection to the Saunders's telephone line (including telephone) rather than Lobegeiger's telephone line (or telephone). In other words, the connection was placed so that out going calls by Saunders or incoming calls to Saunders could be recorded.

2.6.2 Copying the first impression recording

All three experts agreed that the recording on the Lobegeiger tape was a second-generation recording, that is, it was not the first impression recording. O'Malley had expressed this view in his report for my previous investigation. No issue had been made with his expressed view during my previous investigation. O'Malley determined this from the two sets of end of recording transients which appeared after the call had been terminated. The first set of transients was consistent with it having been generated when stopping the recorder which recorded the conversation segments originally and the second set was made in the copying stage when the person who was copying was satisfied that sufficient had been copied. O'Malley explained that this did not necessarily mean that the first impression recording had only been copied once. He stated that it was possible to copy a tape in its entirety from plastic leader to plastic leader. As the plastic leaders do not have any magnetic property, the transients associated with the termination of the recording would not be evident.

Cole who had access to the second tape and conducted far more analysis on the Lobegeiger tape than the other two, descended into more particularity. He concluded that the two sets of end of recording transients were different from each other, that is, they were made by two different tape recorders. On examining the second tape he located several end of recording transients, all of which showed a markedly different characteristic from either of the two end of recording transients on the Lobegeiger tape.

As a result of his extensive analyses, he concluded that there had been a two-step copying process for the Lobegeiger tape. He believed that after the first impression recording had been recorded in the stereophonic process it was copied by a recorder. The high noise level associated with this end of recording transient led Cole to the conclusion that a low quality recorder had been used at this stage. This copying combined the two channel recording into a one-channel recording.

The product of this copying was then played again and an editing process occurred using a high quality recorder. He further concluded that the recorder used on the second tape was not used to make either of the re-records on the Lobegeiger tape although it could have been used for the purpose of playing the tape so another recorder could record from it, or have been used to record the first impression recording.

It followed from these conclusions reached by Cole that the tape recorder used in copying the first impression recording must have been stopped prior to the recording of the first impression's end of recording transients.

Cole explained that the first impression recording may not have been recorded originally on the cassette that he was asked to examine. He stated that the Lobegeiger tape may have been a virgin tape prior to the information he analysed having been recorded on it.

2.6.3 Number of tape recorders necessary for the copying process

Cole finally concluded that from examination of the transients on the Lobegeiger tape and the second tape, the copying procedure to produce the Lobegeiger tape required a total of two recorders, in addition to the recorder which made the first impression recording: a low quality recorder to do the first copy and a high quality recorder to do the editing. This created the two edit transients and the final end of recording transient.

2.6.4 Analysis of the BCI tape recorders still available

Cole was provided with all tape recorders now available that were used in the Bureau of Criminal Investigation in 1982-83. He was furnished with a total of eight recorders. All others had been disposed of over time or could no longer be located. The BCI was where the technician Neideck worked in 1982 and 1983. Of the eight recorders, two were those which Neideck had stated in a report dated 8 June 1984 he had used to copy the Lobegeiger tape on 2 February 1983. This copy (the Mainstone tape) had been made for the purpose of voice comparison tests to be conducted by Professor Mainstone as part of the continuing investigations into Saunders, at that time. Cole examined all eight machines and in his report of 27 September 1994, advised that none of the recorders 'can reasonably be suspected of being used in the recording of the first tape (the Lobegeiger tape)'.

2.6.5 Analysis of other tape recordings made by the police

Cole was also furnished with all other tape recordings which had been tendered before me in my previous investigation and which had been made by police as part of their investigations in 1982, 1983 and 1984 into the activities of Saunders and Dodd. In total there were eight of these tape recordings. The purpose of providing them to Cole was to see whether he could draw any conclusions from these tape recordings which would assist him in determining who or how the Lobegeiger tape was recorded. One of the recordings was the Mainstone tape. Cole concluded that although the signal characteristics noted in relation to the Mainstone tape were consistent with having been made on the recorders nominated by Neideck in his statement of 2 February 1983, it did not have the same end of recording transients as the Lobegeiger tape. That is, the recorders used to copy the Lobegeiger tape to produce the Mainstone tape could not have been used to make the Lobegeiger tape. In relation to the other seven tape recordings, Cole did not find any transients on them which were similar to the Lobegeiger tape. Therefore, the evidence was that none of the machines used to make any of these recordings could be shown to have made the Lobegeiger tape.

2.6.6 Analysis of the Cooper tape

Cole was also given the Cooper tape to see whether it assisted him in drawing any conclusions concerning the Lobegeiger tape. In his report of 27 September 1994, he stated that the tape contained a continuous passage of speech, followed by music. The only distinct transients appeared after the music. These were obscured by the high level music signal making comparison difficult. He concluded that these appeared to be sufficiently different in character from all others to suggest another recorder, not used on any of the other tape recordings furnished to him for analysis.

2.6.7 Transients associated with a pause control

Cole concluded that a pause button from a high quality recorder had been used to edit the Lobegeiger tape at its two points of edit. There was a single transient at these two points.

Torkington testified that he believed the use of the pause would result in two transients. He suggested that one transient would be generated by the erase head and one from the following record head. These, he said, would manifest themselves as two 'bumps' on a wave form analysis. He did, however, offer the possibility that the single transient may have been caused by editing the recording

by splicing at this point. Splicing, he explained, was cutting the recording tape on a 45 degree angle and joining it to another 45 degree cut recording.

O'Malley and Cole both agreed that the use of a pause did not leave two transients. O'Malley explained the process in detail. He stated that what would happen when the pause was engaged was that transients would be left from both the erase head and the record head. However, upon release of the pause and on continuation of the flow of the tape, the erase head transient would be over-written by the new information leaving only the one record transient.

O'Malley and Cole also dismissed the possibility of splicing. O'Malley testified that he had analysed, often on a daily basis, recordings that have been spliced by cutting on a 45 degree angle. He said that an air gap would be present in such an edit. He also said that you would expect to find background noise deviation at such edit points. There is little doubt that Torkington had not the expertise in this area to argue with the conclusions of Cole or O'Malley.

2.6.8 Torkington's proposition that the dial pulses were recorded by using a PABX

Torkington suggested another way to explain how the ring tone appeared before the cessation of the dial pulses. He postulated that the number of the Lobegeiger tape, 5356958, could have been telephoned from a Private Automatic Branch Exchange (PABX) with more than 1,000 and less than 10,000 lines. The PABX would commence to ring 5356 after this was dialled. The extra dialled digits 958 would be ignored by the PABX but these dial pulses would be mixed in with the ring tone generated by the first four digits dialled.

Cole testified that he could not agree with this possibility. He believed that the ring tone on the Lobegeiger tape was at too low a level. This is supported, to some extent, by the fact that Torkington missed the first part of the ring tone. Cole also dismissed it on the basis that he had detected sufficient low frequency energy to suggest that a microphone component in addition to the line signal component for the dial pulses on the Lobegeiger tape.

2.7 WHAT CONCLUSIONS COULD BE DRAWN FROM THE EXPERT EVIDENCE

If Cole and O'Malley were accepted in preference to Torkington when their evidence was in conflict, the following conclusions could be drawn:

- The first impression recording of all three segments had been recorded in the same manner.
- The first impression recording of all three segments had been produced in a stereophonic manner in the same way as the second tape.
- The Lobegeiger tape did not record a first impression recording.
- The first impression was played on an unknown machine and copied by a low quality recorder. The two channels were mixed into one mono channel at this stage.
- The product of this copying was played on an unknown machine and copied on a high quality recorder. During this copying state, the recording was edited at two points by use of the pause button on the high quality recorder.
- The end result was a tape recording containing the following three segments (each continuous):
 - a) The dial pulses and low-level ring indication signal followed by approximately nine seconds of non-speech.
 - b) The exchange between Saunders and the receptionist. This segment included the 19 seconds of non-speech signal before the commencement of the exchange and all but the last fraction of a second of the non-speech signal after the exchange.
 - c) The exchange between Saunders and Lobegeiger, the call termination sequence and two sets of end of recording transients.
- A total of two recorders apart from the original recorder was required in the copying stages. One of these was a high quality recorder and one a low quality recorder.
- There was no way of knowing from the expert evidence how much was cut out at each edit point.

It was not possible to conclude from the expert evidence who had copied the first impression recording and subsequently edited the result.

CHAPTER THREE

A CONSIDERATION OF THE OTHER EVIDENCE

3.1 AN ASSESSMENT OF OTHER AVAILABLE EVIDENCE

When I commenced this investigation, it seemed to me that it would revolve substantially around the expert evidence. As a result, I decided to assess the expert evidence independently of any of the other evidence and then consider how the rest of the evidence sat with the expert evidence. As part of this process, I wished to ensure that the complainant passed on to the Commission all the evidence that he had concerning the matter and in particular, the evidence which led to his first article dated 15 May 1994 headed, 'SAUNDERS' PHONE WAS TAPPED ILLEGALLY'. In that article, the following passage appeared:

I was told last week that a Telecom employee was boasting openly to workmates in 1982-83 that Lorrelle Saunders' telephone conversations were being taped and that the tapes were being given to police.

Within a month, Blanch had made contact with Torkington and the articles reflected his discussions with Torkington. There seems little doubt that the 'Telecom employee' to whom Blanch was crediting this 'boasting' was Torkington.

On 12 September 1994 when I held the directions hearing, I invited Blanch to exhaust his knowledge of the matters he had raised. He advised that he had no further evidence beyond Torkington's sworn affidavit. I took it from this that Blanch had brought to the Commission's attention the very person who was said to be 'boasting openly to workmates in 1982-83 that Lorrelle Saunders' telephone conversations were being taped'.

Support for this conclusion can be found in an article dated 4 September 1994 in 'The Sunday Mail' presumably also written by Blanch. In that article the following paragraphs appeared:

The Sunday Mail learned after Mr Matthews handed down his report that there had been suspicions among Telecom staff that Ms Saunders' telephone was being tapped illegally while she was under investigation.

The name of a former Telecom officer who had voiced such an opinion was supplied to Ken Blanch, who found the retired engineer still living in Brisbane and asked him what had excited his suspicions.

Support for the conclusion can also be found in the evidence of Torkington. In his evidence, he confirmed that Blanch had telephoned him and told him something along the lines that he (Blanch) had been given the name 'Torkington' by a former Telecom employee as a person who knew something about the Lobegeiger tape.

However, when Torkington was asked by Counsel Assisting whether in 1982-83 he had been 'boasting' that Telecom had, in fact, been tapping Saunders's telephone, he was adamant that he had not. He conceded, however, that he had discussed the matter of his analysis of the Lobegeiger tape at the lunch room in the context of lunch time banter. He was then asked what the nature of these discussions were. He replied:

We often throw jokes around at lunch, but the - I think someone said to me, 'Hey, that tape, that came out of a bug didn't it?' And I think I indicated that it might - in my opinion, yes, of course, it came out of a bug. But that was - something along those lines.

Torkington testified that he had no knowledge of any person supposedly boasting about the matter and added that he did not know anyone who knew of a person boasting about the matter.

It followed that Blanch's assertion that 'SAUNDERS' PHONE WAS TAPPED ILLEGALLY' was based purely on what evidence Torkington could give.

3.2 THE EVIDENCE OF TERENCE JAMES MCCORMACK

In 1983 McCormack was the head of the Investigation Section in the Security and Investigation Branch of Telecom based in Brisbane. He had the title of Chief Telecom Investigator. He left Telecom in 1988.

Torkington had given evidence that McCormack had introduced him to Webb on 1 March 1983. According to Torkington, McCormack told him that he would be receiving a copy of a letter requesting that he give assistance to the Queensland Police in the Saunders matter. He was given the telephone number of an Inspector Brian Webb to telephone to arrange for a meeting. According to Torkington, McCormack played no further part in the matter. Torkington stated that if a central line tap had been used, Telecom employees would have been involved and McCormack would have known about it.

McCormack's recollection of events was that he had been approached either personally or by telephone by Webb who requested Telecom's assistance in deciphering 'a called number on a tape'. As a result of this request, he discussed the matter with his superior officer who advised him to have Webb place his request in writing. McCormack then made contact with Torkington and requested that he give assistance to Webb.

McCormack testified that he did not think that he had given Torkington the impression that Telecom had been involved in making the Lobegeiger tape as it had not been. He stated that he had never been involved in arranging for an authorised central line tap to be placed on any telephone and had never been told by any Telecom employee that an unauthorised central line tap had been established. He testified that an unauthorised central line tap had never come to his knowledge and he had never known of a 'quid pro quo' between Queensland Police and Telecom officers whereby an unauthorised interception had been done. He added that he would have expected that he or his superior officer would have been told of any unauthorised tapping if it had occurred.

3.3 THE ACCOUNT OF ALEXANDER TERRENCE COLE BUTTERS

McCormack's superior officer held the position of State Security Officer. In the early 1980's that position was held by Butters. Butters had retired from Telecom and resided in Shepparton, Victoria.

Butters was interviewed over the telephone by a Commission officer. The officer prepared a statement of that interview. It was tendered before me. The officer was told that Butters had been employed by Telecom in its investigation area for some 30 years. Butters told the officer that he was not aware of any telephone interceptions having been authorised or arranged by any Telecom staff in Brisbane. He was of the view that such applications were arranged in Telecom's head office in Melbourne. They were restricted as far as he was aware to matters involving narcotics and national security. Butters told the officer that although the section of which he was in charge was responsible for the investigation of offences committed against Telecom by its employees, he had no knowledge of an illegal telephone interception having been discovered while he was employed as the State Security Officer.

3.4 THE DENIALS OF THE INVESTIGATING POLICE

When Webb and Flanagan gave evidence in my previous investigation, they testified that the Lobegeiger tape had been located at Saunders's premises during

the execution of a search warrant on 8 September 1982. Webb denied tampering with the tape recording. It was never suggested to them by Saunders or her legal representatives that they had tampered with the Lobegeiger tape or that what was tendered at Saunders's committal hearings had not been taken from Saunders's premises. Her legal advisers did not make any such suggestions to Webb when he gave evidence at any of her trials or committal hearings. Flanagan did not give evidence at that time.

Statutory declarations were obtained from Webb and Flanagan for the purposes of this investigation. They were dated 21 October 1994 and 17 October 1994 respectively. The Lobegeiger tape was the central issue discussed in their statutory declarations.

Flanagan declared that he located the Lobegeiger tape in a small tape recorder in the upstairs section of the house. Although he could not remember in which room it had been located, he had a clear recollection of telling Saunders that he was taking possession of it. He said that shortly after, Saunders came up beside him and tried to press the red record button on the recorder, but he pulled it away. Flanagan had given the same account in my previous investigation. Flanagan declared that after they had left Saunders's home, he and the other police involved in the search took the Lobegeiger tape directly to the Internal Investigations office where it was played. It was then placed in the safe at the Internal Investigations Section. He stated that having heard the tape again (it was played to him by officers of the Commission when obtaining the statutory declaration), to the best of his recollection, the conversations and context of the Lobegeiger tape were the same as when he played the tape on the day it was obtained. He added that to the best of his knowledge, the tape had never been tampered with or altered in any way. He could see no reason for any person to do so. Flanagan could not recall where the telephone was at Saunders's premises or whether there were wires attached to it. He did not rule out the possibility that there were some wires there. Flanagan retired from the Police Department prior to the Lobegeiger tape having been tendered at her committal hearings.

Webb declared that he could remember a 'slight scuffle' during the search, although he could not recall in which room. He stated that he saw Flanagan remove the Lobegeiger tape from a tape recorder which Flanagan had in his hands. Webb said that he was handed the Lobegeiger tape. He identified his initials and the date 8/9/82 on the Lobegeiger tape, but could not specifically recall when he marked them on it. He suggested that it was probably back at the Internal Investigations Office. He could not recall seeing a telephone or wires connected to a telephone in Saunders's premises.

Webb declared that the tape had remained in Flanagan's private locked box in the safe at the Internal Investigations office. He stated that to the best of his knowledge, it remained in the safe until the committal hearings continued in

November 1982. There is no evidence to suggest that the tape tendered at Saunders's committal hearings was not that analysed by the three experts in this investigation.

Webb declared that he had no knowledge of a telephone tap on Saunders's telephone. He also stated that he had no knowledge of the Lobegeiger tape having been edited or tampered with at any time after it came into his possession at Saunders's premises.

Webb admitted that it was he who delivered the Lobegeiger tape to the Crown Prosecutor for it to be tendered at Saunders's committal hearings. Flanagan had retired by this time. Webb stated that it was the Crown Prosecutor, John Callanan who determined that the Lobegeiger tape should be tendered at the committal hearings. This was confirmed by the Crown Prosecutor. Webb stated that he had also arranged for a number of copies of the Lobegeiger tape to be made. According to Webb, all of them were made by Neideck. Webb could recall that a copy was played to the Crown Prosecutor and that copies had been made for Saunders's legal representatives. He stated that he did not furnish any copies to Saunders's legal representatives himself. He did not know who did. Webb believed that after the committal hearings had ceased on 22 November 1982 the exhibits, including the Lobegeiger tape, were returned to him for safe custody. He stated that the Lobegeiger tape was returned to the safe at the Internal Investigations Section. Webb confirmed that a copy was produced by Neideck for examination by Professor Mainstone and another copy was available for Torkington to conduct his analysis of the dial pulses.

3.5 WEBB'S MEETING WITH TORKINGTON

Webb confirmed Torkington's name had been furnished to him by 'Telecom Investigations'. Webb stated that he sought out Torkington as a result of a conversation with the Crown Prosecutor.

Callanan, in his statutory declaration, stated that he was reasonably confident that it was a request from him that caused Webb to have the tape recording examined by a Telecom officer. Callanan, after reading extracts of the committal hearings, stated that it seemed to him that the evidence from a Telecom 'expert' was sought, largely because of matters raised by Saunders's defence counsel, Breen, at her committal hearings. If Callanan had directed Webb to obtain this information from a Telecom officer, it explained why Torkington believed that Webb 'was not his own man' as he had stated in his statutory declaration of 1 July 1994.

In Torkington's statutory declaration of 24 June 1994, he had claimed that Webb had told him that the Torkington tape had been made by Saunders 'by holding a

cassette recorder up to the ear piece of a public telephone'. When Torkington gave evidence he qualified this in the following exchange:

Quite clearly Mr Webb - Inspector Webb told you - you recall that - that Saunders had made it by holding a cassette recorder to the ear-piece of a telephone - a public telephone?---Well, yes. Yes.

I mean, did he say he believed that or he said she did it? I mean, I just want to know how certain it was?---No, I wouldn't say it with a great deal of certainty, but that was what I was led to believe, but I don't think it is of great importance that - - -

No, no, I do not either, but I just want to try to sort of see what you say he said, you see?---Mm.

You cannot differentiate whether he said, 'I think this is the way she did it', or, 'She definitely did it that way'?---Oh, well, he wasn't definite, to be honest. It was obviously speculation.

Webb, in his statutory declaration, could not specifically recall saying that Saunders had recorded it in this manner but conceded that he might have said that it was possible that she had recorded it in this manner. In any event, it seems clear that whatever Webb said was speculative and no adverse inference from it could be drawn against Webb.

In Torkington's statutory declaration dated 24 June 1994, he stated that after he had identified the digits reported by the dial pulses, he was shown three telephone numbers that Webb had written in his notebook. According to Torkington's evidence, when he identified one of the numbers written down as the one reflected by the digits dialled, Webb said, 'that's the Southport Police Station'. Later in the statutory declaration and in evidence before me, he acknowledged that his memory might have been faulty and Webb could have said, 'that's the Surfers Paradise Police Station'.

In Webb's statutory declaration, he confirmed that he had nominated the number as having been that of the Surfers Paradise Police Station. He stated that he could recall having said, 'Surfers Paradise Police Station' as this was where Lobbeiger was working at the time and he assumed that the dial pulses on the tape related to the conversation which followed.

Webb's evidence that he did not intend to mislead Torkington is supported by his report of 8 August 1983 where he accurately recorded that the dial pulses did not belong to the Surfers Paradise Police Station. Further reference to this report will be made shortly.

In Webb's statutory declaration, he stated that after he had obtained a statement from Torkington he gave the original to Callanan. This was confirmed by Callanan in his statutory declaration where he stated that he could specifically recall Webb providing him with the statement as it was the first time the name 'Torkington' came to his notice. Callanan added that as a matter of course he would have supplied a copy of the statement to Saunders's defence team. This meant that there was nothing sinister in the fact that neither the original nor a copy of the statement could be located by Commission officers. Neither Webb nor anyone else had attempted to suppress Torkington's opinion.

3.6 WEBB'S REPORT DATED 8 AUGUST 1983

Webb was shown a report dated 8 August 1983 which related to the fitness of Saunders to continue as a member of the Police Department. He acknowledged that he had written the report. This report was tendered at my previous investigation and I had considered it (in relation to other matters in it) at that time.

In that report the following passage appeared:

On the 8th September 1982, when the Search Warrant was executed at Saunders dwelling, a tape-recording was taken possession of by Webb. This tape commences with Saunders dialling a telephone number. Saunders had made this tape herself. Expert evidence from Telecom reveals that the number dialled was the number of the Regional Superintendent's dwelling at Miami. There is a break in this telephone call and then Saunders speaks to the female clerical assistant at Surfers Paradise Police Station and asks for Lobegeiger and tells the girl that the matter is personal. There is then a delay on the tape and this is followed by a conversation between Saunders and Lobegeiger. During this conversation, Saunders refers to incidents which took place the previous afternoon. She also refers to a letter which she alleged had been posted by her at Broadbeach Post Office the previous afternoon.

This tape-recording is very clear and there is no doubt that the voices are those of Saunders, Lobegeiger and the girl at the Police Station.

In Webb's statutory declaration, he explained that the words, 'break' and 'delay' were used by him to refer to periods of silence which appear on the Lobegeiger tape. He stated that the words did not infer any break or edit of the tape in any place.

It is fair to say that Webb's description of the Lobegeiger tape was an accurate account of what could be heard on it. Of course, by the time of this report, Webb had been informed by Torkington that the dial pulses related to Lobegeiger's dwelling at Miami rather than the Surfers Paradise Police Station.

3.7 AN ASSESSMENT OF THE POLICE INVESTIGATORS BY THE CROWN PROSECUTORS AND SAUNDERS'S DEFENCE LAWYER

It is clear on all the evidence that Flanagan had very little to do with the prosecution of Saunders after her second arrest on 9 September 1982. Before he retired in early November 1982, he conducted some minor enquiries and obtained a few statements for the committal proceedings. None of these enquiries seemed to relate to the Lobegeiger tape. From the police perspective, Webb had carriage of the matter.

Callanan, in his statutory declaration, stated that during his involvement of the matter – and that included two committal hearings and two trials – there was nothing to cause him to suspect that the investigating police had acted improperly. Anthony Glynn, who at some stage before the first trial (3 May 1983) had been appointed to lead Callanan at the trials, stated that nothing had occurred to cause him to suspect that the investigating police had acted improperly.

Breen, Saunders's barrister for the second part of the committal hearings which commenced in November 1982, was asked to comment in his statutory declaration on his assessment of Webb's role in the prosecution. He stated as follows:

I have also been asked by Mr Lambrides if I could comment on the reputation of Inspector Webb and on my assessment of his role in this matter. I had known Inspector Webb prior to the Saunders matter developing. From memory he was attached at the earlier time to the Police Station at Dalby, a town in which I did a lot of trial work over my years at the Bar. Inspector Webb did not in any way have an adverse reputation of which I became aware. Certainly, in my dealings with him, which were all in a professional context, there was nothing which alarmed me or alerted me to a need for particular caution. On the contrary, I was always favourably impressed with his conduct and performance in the work context.

3.8 THE PREVIOUS ACCOUNTS GIVEN BY SAUNDERS

Saunders had given a number of differing accounts concerning the Lobegeiger tape and whether it had been 'doctored'. There were references to it in her Legal Aid material, in letters she had written to Lobegeiger after proceedings had been discontinued against her, in evidence at Dodd's trial and in evidence before me. I will now refer to some examples of the differing accounts.

3.8.1 The Legal Aid material

This was material obtained from the Legal Aid Office which had been typed or handwritten by Saunders for her defence. Although some of the material had been prepared for the second part of her committal hearings which commenced in November 1982, the majority was prepared after the committal hearings had terminated. A much fuller description of this material can be found in my earlier report. All the extracts to which I will now refer were written by Saunders after the committal hearings had terminated. A detailed account of the seizure of the tape recording from her home and description of the tape recording can be found on typed notes headed, 'Saunders - (Wednesday 8th Sept 1982)':

I went to rewind the tape and I said, 'That's funny when I went out there wasn't a tape on this'. I saw that the cassette was the one I'd marked AL/LS tape 5.

As I commenced to rewind the tape Flannagan shouted, 'Leave it. Don't touch it. Brian'.

...

This tape was marked for identification and the calls into and out of my house on the morning of the 8th Sept 1982 were on it.

The tape the Police have produced in court is NOT the tape taken from my home on the 8th September 1982. *[Emphasis not added]*

It has been interfered with and the call is not the one between Lobegeiger and I on the morning of the 8th September 1982. There are obvious cuts in the tape and also outside noises such as birds twittering which would be totally impossible to happen on the type of equipment I was using at this time. Recorder was wired into the phone wires.

Further reference to the tape recording can be found at her typed notes headed, 'Page 12 ... Record of Interview ... Colin Stanley Cooper'.

The tape they are producing re phone conv. with Allan and I should be full on one side. Tape has been interfered with and cert. not the conversation we had (I think we should be able to get it out).

Further, at the next page of those notes, the following passage appeared:

In the tape taken by police re phone calls Allan and I ... Des (Breen) picked up the interference on an ordinary home cassette. Also on that tape there are outside noises and recorder was wired into the phones.

A further passage can be found in her typed notes headed, 'Allan Lobbeiger Ex Supt of Police Page 100'. That passage stated:

Only other conversation between Allan and I is the tape they've 'doctored' alleging it to be a call from me to Allan on 8 Sept 1982.

There were some references which asserted that there were other tapes missing. In her typed notes headed, 'Co-accused and Crown Witness' the following passage appeared:

Notes include copies of phone conversations which have mysteriously been wiped off tape in possession of police. 2 other tapes missing.

Another example can be seen in the typed notes headed, 'Crown witness - Susan Gray'

... All phone calls were on tape made to and from our house from Thursday 2nd September 1982 ... all these tapes are missing ... on the tape taken from my bedside tape recorder ... number of calls omit ... only produced a tape that has been interfered with to the court.

A further example can be found at notes headed, 'Saunders (Wednesday 8th Sept 1982)':

The Police then departed and I telephoned my solicitor. I then made a check of the house and I found that all the Tapes that I had in the top drawer of my bedside table were missing.

These were tapes marked for identification as follows:

AL/LS Tape 1)
AL/LS Tape 2)
AL/LS Tape 3)
AL/LS Tape 4)

I was only aware that the Police had taken a tape marked AL/LS Tape 5 and an unmarked cassette.

The tapes that marked were all possible defence evidence.

It can be seen that in 1982-83 when Saunders typed these notes after the committal she was alleging:

- other tapes of telephone conversations with Lobbeiger were missing;
- the conversation between Saunders and Lobbeiger had been altered;

- other conversations with Lobegeiger had been deleted; and
- that bird sounds could not have appeared on the recording as the 'recorder was wired into the phone wires'.

3.8.2 Correspondence to Lobegeiger

Tendered before me during my previous investigation was a number of letters and cards which Saunders had written to Lobegeiger. These had been furnished to the Commission by Lobegeiger's daughter. In one undated letter written in 1985, the following passage appeared:

... an electronics expert (only the day before) has loaned me a tape recorder that operated as soon as a receiver was lifted. I'd forgotten it was on when I talked to you that morning ... and I'd been in a rush to go to the hospital ... I can tell you that the tape produced at court was NOT the one taken from here. It had been interfered with. Des Breen, if you recall, tried like hell at the committal to get that across to you ... it would have been 'out' but you wouldn't agree to any of the suggestions that would have done this. *[Emphasis not added]*

3.8.3 Evidence given by Saunders at Dodd's trial

Saunders gave evidence at Dodd's trial for perjury in February 1985. Although Dodd was on trial for having given false evidence at Saunders's trial in relation to the Dodd tape, she was cross-examined by Dodd's barrister, Gary Forno³ in relation to the Lobegeiger tape. At page 214 of the transcript of evidence of Dodd's trial, the following exchange appeared:

The tape where there are two voices - female voice and a male voice - yours and Mr Lobegeiger's - that was an actual telephone conversation, was it?---The tape was of a telephone conversation.

While the telephone conversation was taking place?---The tape produced to the court was not the conversation; there was an interference with that tape.

Well, perhaps, could you explain that so we will know what we are talking about?---Yes. That tape was to be challenged had it been produced in a superior court. In the Magistrates Court it was the subject of a fair amount of cross-examination by my defence of ex-superintendent Lobegeiger and a very strong challenge was being mounted to the contents of that tape as to the accuracy of the

³ Now His Honour Judge Forno of the District Courts.

words on it. The voices were mine and Lobegeiger's, but it was not the conversation that we had.

Did you tape a telephone conversation with Mr Lobegeiger?---I taped a number of telephone conversations.

And do you say that is a tape of part of a telephone conversation - that it has been interfered with; is that what I -----?---That is correct.

Who did the interfering, do you know?---No, I don't.

But it was a tape that you made and kept in your premises?---It had just been made. The tape recorder was still connected to the phone.

On 7 or 8 September '82, it was taken - was that about the date that a telephone conversation took place?---Yes. The tape was taken by the police in the evening and the phone conversation that had been taped had occurred in the morning or mid-morning, somewhere round there.

When it was taken possession of, were you there? Were you at your house?---Yes, I was.

And had you been there all day?---No, I hadn't.

And when did you next hear it played?---In the Magistrates Court.

And there, for the first time, was it, that you realised that the tape had been interfered with?---That is correct.

And so we know what tape we are talking about, how had it been interfered with? What had been changed or what had been done to it?---There was parts of the conversation missing - the conversation was not in the right context.

Further cross-examination by Forno continued in relation to what Saunders asserted had been edited from the tape recording.

The first thing - it is very hard to recall all that was incorrect because it was fresh in my memory at the time I gave instructions, but the first thing that is incorrect is the amount of dial tones between Brisbane and the Gold Coast. There is one missing from that. It was an STD call.

So, the call you made was an STD call?---That's correct.

And that seems to show a local call; is that what you are saying?---No. It doesn't show either STD or local.

What does it show?---Well, my defence went into it and I can't recall the number down the coast now but it was an 075 number, but the dialling is incorrect to what the number was that was dialled.

Is that all you wish to say at this stage?---Yes. The tape was a direct tape into the telephone and there's bird sounds in the background which would have been impossible to be taped in the way that it was being taped.

Could I just ask a question in regard to that before we go on? Did you have some permit from the relevant Federal Government department for that?---No, I didn't.

So this was a mechanism whereby the actual telephone mechanism was interrupted; is that correct? In other words -----?---The tape recorder worked so that the minute the receiver was taken off the telephone it automatically started recording.

Was it wired into the telephone receiver itself?---No, it wasn't. I'm not too sure how it was done. A friend of mine -----

You have got -----?---at the time all the equipment was taken - I'm not sure by the police or by my solicitors because I had been told to tape anything that I could with Mr Lobbegeiger and that at one stage the tape recorder etcetera was in the possession of the court. It was never tendered.

Just describe to us the mechanism if you could?---I really can't recall now what it was really like. It was just a tape and some wires.

Where did the wires come from?---I don't know.

Out of the interior of the telephone receiver?---No, it wasn't out of the receiver. I really don't know how it was connected.

You cannot recall if it was connected into the body of the telephone itself?---No, I can't.

Why do you say that the bird sounds would be impossible?---Well, just from using it, it didn't pick up any outside sound, it only picked up the phone conversation.

You know, do you not, that unless you have some authorisation it is quite illegal to interfere -----?---With the actual wiring of a telephone?

Yes?---Yes.

Was it done that way?---Well, I don't know how it was done.

Could we proceed, your Honour?

[Tape continued to be played to witness]

[Witness indicates]

There was some conversation before those first few words, from memory. I also recall that we were handed a copy tape or the defence was handed a copy tape, and there was some words on the copy tape that weren't on the original tape, or vice versa - I'm not sure which way around it was now.

The voices in the background?---No, it was the copy tape because my barrister played the copy tape and picked up the difference. There's words - I'm not sure if it was in the background or words spoken by Mr Lobegeiger but there was a definite difference.

There is some additional conversation that you can recall from the phone call itself apart from any copy tape or anything like that; is that what you mean?---Yes.

Can you recall what that was?---No, I don't.

Can you recall what it related to?---No, I can't.

Mr Lobegeiger would have known your voice well enough over the telephone; would he not?---Yes, he did.

Without the need for any identification as to who was calling?---Well, he had mistaken another police woman in the past which had caused quite an embarrassing situation, so he usually used to make sure it was me.

Could that be the conversation relating to that that has been omitted or -----?---
-I can't recall what has been omitted.

Is that all you wish to say?---Yes.

It is clear from this evidence that although Saunders claimed that her recollection was not good, she did not assert that other telephone calls had been omitted from the recording.

3.8.4 Evidence given by Saunders during my previous investigation

When Counsel Assisting examined Saunders during my previous investigation, he was of course well aware that Saunders had made previous comments in various forms that suggested that the Lobegeiger tape had been 'doctored', and other tapes taken. When Saunders gave her evidence before me she did not suggest that the police had been responsible for the other missing tapes. She also stated that she

had no markings on the tapes. She testified that she was 'certainly mindful not to connect anything to the phone and breach Telecom regulations'.

At pages 315 and 316 of the transcript of evidence, the following exchange occurred between Saunders and Counsel Assisting during which the transcript of the Lobegeiger tape was read by Saunders. (The Lobegeiger tape was also played in the hearing room for Saunders's benefit):

Mr Hampson: I would like the witness Sergeant to see a transcript of another telephone call, one with Mr Lobegeiger.

It is exhibit 4, which is part of exhibit 17 - that is the actual tape - and we get the transcript too, but if you can identify the tape first, I think. What we are looking for - I am going to try and sort out all these different tape-recordings now, and there is a tape-recording and a transcript has been made of a tape-recording of a conversation between yourself and Lobegeiger?---That's correct.

Can you remember that one?---Yes, I can.

All right. I will not ask you any questions about it until you actually have the transcript, so that we are sure we are talking about the same one. This tape, as a matter of fact, was one that you made and kept yourself; is that so?---Well, I - until I see it I really can't answer that.

Yes. No. I am just wondering - you cannot remember? You cannot remember a tape?---Oh, there was a tape of a conversation between myself and Alan Lobegeiger - of a phone conversation - taken possession of by virtue of a search warrant.

Right. I think that is the one we are talking about. I have not seen any markings on it, you see, Sergeant. There may be some markings on it which might identify it for you?---No, no. There isn't.

There is nothing on it that you identify, is that right?---That's correct.

Okay?---There was - the tape that was taken from my house on the warrant, Des Breen, when he was appearing for me, and Peter Goodwin, were given a copy tape, and there was discrepancies between the copy tape and the transcript, and I can't recall what they all were, but I can remember Des Breen was quite excited about this piece of information.

Well, we had better, in that case - we had better make certain we get the transcript and perhaps we would even play the tapes?---Yes, but I don't know if that's a copy tape that was given to Des or --

Yes. No, I do not either, no?---No, but there was - - -

All right, now, this is the transcript, anyway, that I have in mind, you see. Read that. That is what I am - that is what I have in mind of a transcript of a tape recording which I understand was taken from you during the search?---Yes, it possible - as far as I know, yes; something similar, anyway.

All right. Well, was there any other one? That is perhaps what I should ask you. I mean, that might not be 100 per cent accurate. You mentioned Mr Breen's excitement at some discrepancies, so we will - - -?---Well, I - - -

- - - take that to mean that there could be some inaccuracies in it?---No, what I'm saying is that there was a difference in the copy tape and the original tape, evidently.

I appreciate that and it may be - - -?---But, I can't - I can't help you any further. I mean, I know there was a phone call. As to what the conversation was, 11 years later, I can't help you.

No, I am not asking you to - - -

The Judge: But did you tape the phone call?---Yes, your Honour.

Yes.

Mr Hampson: What I am asking you, was there only one such tape that you had in your possession which was taken from you during the search?---There was only - - -

Or had you 10 or two or - - -?---Well, there was only one taken during the search, but there were other tapes of conversations with Alan Lobegeiger.

Were there? I see. Now, and - but those other tapes of conversations with Lobegeiger, you kept?---That's correct.

Saunders was then asked a series of questions concerning the transcript.

Now it related - the principle topic seems to be that you ring, is that right, and you get Lobegeiger on the phone? - That's correct.

Who answered the phone, do you remember? - No.

But it was not he, anyway, it was somebody else who answered the phone, but soon he is put on? - That's correct.

At page 2852 of the transcript of evidence, Counsel Assisting again attempted to elicit from Saunders whether she had a complaint about the Lobegeiger tape.

Yes. One of the things that you said possession of which was taken by the police on the search was a tape that you made, you say, on 8 September 1982, of a

phone call made from you to Alan Lobegeiger on that day. Do you remember when we were talking it?---Well, they took a tape of a phone call.

Yes, right.

Now, you assert - and we have had it played here - you have heard it played, in fact, when you were giving evidence before?---That's correct.

Right, okay, that is the one I am talking about?---Okay.

Now, there - there is no note in the diary, that book, volumes 1 or 2, to show that there was such a phone call on 8 September 1992 - 1982?---Probably not.

Okay, good. Now, was there such a phone call. I mean, you have asserted that in some way the police doctored that tape that they took. I just want to be clear what you are saying about it?---No, I haven't - - -

That there was a phone call, that you did record it?---I haven't asserted that police doctored that tape.

Have not you?---No.

No?---What I said was that Mr Breen picked up there was a difference in the copy of a tape he was supplied and - and the original or - or the tape played in the court, anyway.

Well what is - what is the point about that, then?---Well, I don't know.

I mean, are you suggesting that they changed what was on the tape?---No, it wasn't the - it wasn't in - I don't think it was wording. I mean, you'd have to ask Mr Breen, but he was quite excited about the difference in the two tapes, I think.

Well, there were two tapes there at one time, were there?---No. There was the one that was played in court.

Yes?---And Mr Breen was given a copy of it, I assume.

Right?---And there was a difference, I think, in - like, there was something not on the one that he was given, or something like that, and the - the numbers on the tape of the dialling of the phone didn't correspond with an STD call from Brisbane to the Gold Coast, I think it was.

Well, is it - is the - is the significance no more that somebody made a clumsy copy of the tape for him?---Well, I don't know.

Or is there supposed to be - - -?---You'd have to ask Mr Breen.

You have got no idea what it is about?---No.

He said to you that there is some difference, it could be in quality, it could be in content?---That's right.

Between this tape and the one that they actually played for?---Well, a few - a few little differences from what - from what he said to me, from my memory.

It can be seen from her answers to me that Saunders was relying on what her defence counsel Breen had located on the copy of the Lobegeiger tape that was furnished to him by the Crown Prosecutor during her committal hearings.

It is informative to note that reference to the Lobegeiger tape is made when Saunders wrote to the Fitzgerald Commission of Inquiry by letter dated 14 October 1989 addressed to the then senior police officer, Detective Superintendent Jim O'Sullivan⁴. In that letter, the following paragraph appeared:

There has been no investigation of a tape of a telephone conversation taken from my home by the arresting officers. The work copy supplied by police to my solicitors differed from the tape produced to the court. Evidence to this effect was obtained during the committal proceedings.

It is clear from this passage that Saunders described the tape taken from her premises as a tape of a telephone conversation taken from her home. There was no suggestion that several telephone conversations with Lobegeiger were recorded on the tape taken from her home. Once again, as evidence of something untoward she refers to the difference between the copy supplied to her defence barrister and the one tendered in court.

3.9 BREEN'S EVIDENCE

3.9.1 The significance of Breen's evidence

The importance of Breen's evidence cannot be overstated. It was through Breen that Saunders's first instructions after her arrest on 9 September 1982 could be put to witnesses or, alternatively, be the basis of cross-examination of witnesses. Breen's assessment of the Lobegeiger tape was also important in view of Saunders's reliance on his examination of the copy provided to him and his subsequent cross-examination of Lobegeiger. The copy of the tape recording provided to Breen is no longer available. Breen believed it had been returned to his instructing solicitor. It was not located in the Legal Aid material.

⁴ James Patrick O'Sullivan is now the Commissioner of the Police Service.

3.9.2 Cross-examination by Breen at the committal hearings

There is little doubt that in relation to the Lobegeiger tape, Lobegeiger was cross-examined in great detail by Breen at Saunders's committal hearings. It was clear from the cross-examination that Breen was exploring the following areas:

- Whether the dial pulses could have been caused by telephoning the Surfers Paradise Police Station;
- Whether the number indicated by the dial pulses was an STD number;
- Whether STD beeps could be heard;
- Whether bird calls could be heard on the recording;
- Whether the tape recorder had been stopped and started a number of times during the recording, including during the conversation between Saunders and Lobegeiger;
- Whether a complete change of tone of voice or pitch could be heard; and
- Whether there had been 'fiddling' or 'splicing' of the recording.

In relation to these matters, Breen made the following submissions to the Stipendiary Magistrate:

So Lobegeiger at Surfers Paradise Police Station receives a phone call of which that tape purports to be a copy. The Crown must prove it is. They must prove its authenticity. They must prove its providence and its history and these are the features arising from it, that suggest interference. It clearly involves a seven digit number. Telephone number being dialled, the second such number is a small number, one or two or three, something like that. It's certainly not eight or nine, which on the evidence of Mr Lobegeiger is the second digit of the numbers of the Surfers Paradise Police Station. There is a lack of STD bleeps, there are mid sentence changes and background noises. There are mid sentence changes of pitch and there are obvious parts where it's been re-recorded. Such as a passage, I'm only giving this as an example. At that part of the tape which is on ... at the bottom of page two of the transcript, 'at the post office up from the Police Station'. An obvious splicing or dubbing. And there are others. By whom it matters not, because the Crown must prove, before they can get those tapes admitted, the matters to which I have referred.

During the cross-examination of Lobegeiger at the committal hearings, Breen asked to have played in court his copy of the Lobegeiger tape. The transcript

shows that the following exchange took place after a portion of the Lobegéiger tape had been played in court:

Your worship, that ... I didn't hear on that reproduction the words, 'time to go'. But I've been playing a copy of the tape which was given last week to my solicitor in which ... playing a copy of the tape which was given last week to my solicitor and which moved into my possession on Saturday, and those words are certainly on that copy, and whether it's a question of this little machine of mine, for some reason or other reproducing it better or not. I don't know, but in any event, I would ask that this copy be played on this tape, or that the court exhibit be played on this tape cassette.

Bench: Well it's not possible that the words, 'time to go' has been put on to the copy and not ...

Mr Breen: Well then we ...

Bench: ...part of the original.

Mr Breen: ...then we could play the exhibit tape for comparison purposes ...

Bench: I see.

Mr Breen: ...for that reason, yes.

Bench: Well, do you want the technician to play that on this ...

Mr Breen: To play my copy on my cassette.

Bench: On your cassette.

Mr Breen: And then to play the exhibit, if that's not objected to by anybody.

Bench: Well, leave the recording tapes on. I don't know whether this will be able to be transcribed, but ...

Mr Breen: No.

Bench: I'm doubtful about it. This is the copy of that tape that was supplied to Mr Breen.

Mr Breen: By Mr Callanan, and being played on Mr Breen's cassette recorder.

[Tape played in court]

Mr Breen: Could you put the exhibit tape in there and see if those words come out? 'Time to go'. I might have a misleading copy here.

Bench: Where do the words come in?

Mr Breen: Just before the word 'Hello', 'time to go'.

[Exhibit tape played in court]

Bench: Yes, well they certainly don't seem to be on that one, alright, if I could have that back. And would you run the exhibit tape through your machine please?

[Exhibit tape played in court]

It is not clear from the transcript what difference did exist between Breen's copy and the tape which had been tendered (the Lobegeiger tape). It would seem, however, that by the time of the addresses, Breen had accepted that the difference could be explained by the standard of the equipment used to play-back the relative tapes.

In his address, Breen made the following comments:

We don't know what equipment was used to make the tape of the telephone conversation, allegedly between Miss Saunders and Mr Lobegeiger but quite obviously it was equipment far less sophisticated than the reproduction equipment used in this court. Your Worship could listen to it on less sophisticated equipment and funnily enough you hear more of what's in the background. What the sophisticated equipment does is to boost the central conversation but you hear more of what's in the background if you use equipment that is more akin, in terms of technical sophistication, to what was used to make the tape in the first place.

Breen did not cross-examine Webb at any length about the tape. There were no questions asked of Webb which suggested that he had acted improperly concerning the Lobegeiger tape.

3.9.3 Breen's statutory declaration

Breen explained in his statutory declaration that his modus operandi, so far as criminal work was concerned, included that he rarely took other than the most generalised of instructions before or during the course of committal hearings. His approach was concerned 'almost wholly' with extracting the Crown case in such a way that Crown witnesses were fully committed to the detail of their claimed versions of events. He stated that he did not recall the Saunders's committal hearings being an exception. Saunders had previously stated that she had not been asked for specific instructions for the committal hearings.

Breen stated that unlike the Dodd tape which during the weeks spanned by the committal hearings he had referred to an acquaintance of his, Dr Miles Moody⁵, for examination, he did not seek any expert evaluation of the Lobegeiger tape. He believed that the Dodd tape was replete with the suggestion of fraudulent conduct on Dodd's part. Saunders had given him general instructions that no conversation had occurred between Saunders and Dodd of the kind attested to by Dodd.

Breen continued that the Lobegeiger tape on the other hand:

Recorded a female voice that was clearly that of Saunders and a male voice that was clearly that of Lobegeiger. It was not in dispute that there had been contact, including contact by letter, between Saunders and Lobegeiger. This tape, therefore, lacked the sinister quality of the other. Accordingly, I was not self-motivated to seek independent expert valuation of it, nor was I motivated to do so by any information or instructions coming to me through Mr Goodwin (*his instructing Solicitor*) from Ms Saunders. Furthermore, there was nothing on or concerning the copy with which, through Mr Goodwin, I was supplied which prompted him or me to have suspicions as to that copy or as to the circumstances in which it was supplied.

It was clear from Breen's statutory declaration that he had not received general instructions from Saunders during the course of the committal hearings that the Lobegeiger tape was 'doctored' although he had received general instructions from her that the Dodd tape had been fabricated. If he had been given general instructions that the Lobegeiger tape was 'doctored', it seems he would have had it assessed by an expert. It was also clear that his cross-examination of Lobegeiger was designed to 'locking in' Lobegeiger to a version of events⁶ for future cross-examination at Saunders's trial. Notwithstanding the manner of his cross-examination of Lobegeiger and his address to the Stipendiary Magistrate (which it is not suggested were inappropriate) Breen did not consider, at the time, that the Lobegeiger tape had been tampered with by police. When questioned by a Commission officer, he did not even have a memory of it. In relation to the playing of his copy in the court room he could add nothing to the record. This also suggested that at the time the Lobegeiger tape was not a genuine issue. The Crown Prosecutor Callanan in his statutory declaration supports this view. He too had no recollection of the matters raised by Breen concerning the Lobegeiger tape or the copy furnished to Breen. He could not add anything to the record either.

In relation to Breen's cross-examination of Webb, he stated in his statutory declaration:

I can say quite clearly in relation to his conduct in this matter that the way I cross-examined him is in itself an indication that I regarded his role performance

⁵ Now Professor Miles Moody

as nothing more than formal and thorough. Had anything alerted me to the contrary, the style, content and the extent of my cross-examination would reflect it.

3.10 THE OPPORTUNITY AND CAPACITY TO EDIT

There is no doubt that at the time there was adequate and sufficient equipment and expertise in the Police Department to have edited the first impression recording to create the Lobegeiger tape. No great experience was necessary. According to Cole, one high quality and one low quality recorder had been used to copy and edit the first impression recording. Nothing more was required. To my mind, the fact that a low quality recorder had been used was counter-suggestive of a professional job.

There was also more than enough time for a tape to be altered between the date of seizure and the day that the Lobegeiger tape was tendered at the committal hearings.

When Saunders prepared her lengthy statement for my previous investigation, she indicated that she had 'very good stereo systems'. In evidence before me, she indicated what equipment she had to record the second tape (the alleged threatening telephone calls). She testified that she had five or six different tape recorders - three of which were capable of recording telephone conversations. She stated that this was only an estimate and she could have had more. She testified:

I had more stereo and tape gear than you could poke a stick at in my house.

It would seem from this evidence that Saunders too had the equipment to edit from one tape recorder to another and had 'very good' equipment.

The time required to play the first impression and copy it and then play the copy and edit it to result in the Lobegeiger tape would be less than half an hour. There is little doubt that there was sufficient time for Saunders to re-record the first impression recording between the time that she admitted making the recording on the morning of 8 September 1982 and the time of the search of her premises in the afternoon at about 4.00p.m. Gray, who had been with Saunders early on the morning of 8 September 1982, in a statement given to police on the day of the search of Saunders's premises, stated that at about half past nine, Saunders dropped her at the caravan park and told her to ring every hour. Gray stated that she telephoned Saunders at about half past ten at home. In Gray's statement she stated that after going to the bank she returned to Saunders's premises where she saw Saunders. On Gray's account, about an hour later Saunders took her mother to the hospital.

Gray was never seriously challenged about this evidence at the committal hearings or when she gave evidence before me. Saunders did not claim that she could not have made the Lobegeiger tape as she had insufficient time, in her Legal Aid material, in her evidence at Dodd's trial or in her evidence before me during my previous investigation.

3.11 MOTIVE TO EDIT THE FIRST IMPRESSION RECORDING

I have difficulty ascribing to the police a motive to edit the first impression recording. If there were more conversations between Lobegeiger and Saunders recorded then this would have been further evidence relevant to the breach of bail conditions imposed upon Saunders. It was suggested by Torkington that the motive may have been to give the impression that Lobegeiger had been telephoned by Saunders when, in fact, he had telephoned her. This is contrary to the expert evidence of Cole and also contrary to Saunders's own accounts in which since preparing her typed notes for her legal advisers in 1982-83, she acknowledged that she had telephoned Lobegeiger on this occasion. Saunders did not offer any explanation in her Legal Aid material as to why anyone would have wished to 'doctor' the first impression recording. I should add that although Gray had an opportunity to edit the first impression recording, she had no motive whatsoever to do so. There is certainly no evidence to suggest that she did edit it.

3.12 'CLUMSY' EDITING

In Torkington's view, the editing was 'clumsy'. In this context, editing means changes made to an original recording by re-recording and deleting parts from it. There is no doubt that it was 'clumsy' editing. How else can one explain at the beginning of the Lobegeiger tape, the dial pulses relating to Lobegeiger's Miami house and not the Surfers Paradise Police Station. It is editing at its most amateurish. The fact that the first two digits were missing from the beginning of the dial pulse, the lack of call progress and the absence of STD beeps also heavily suggested amateurish editing.

Completely consistent with this clumsiness and Cole's final conclusions is the possibility that the first impression recording was hastily edited to remove insignificant information or periods of non-speech. This would explain why no sophistication had been shown in the editing. When the receptionist Baker provided her sworn statement to the Commission, although she could not recall the conversation, she believed from the manner in which she answered the call that someone else had answered the call first and then transferred it to her. She indicated that she would regularly receive calls for Lobegeiger in this manner. Baker's evidence was consistent with Cole's conclusion that there was no edit point

(as suggested by Torkington) immediately prior to the commencement of the Baker and Saunders exchange. Cole considered that from the first edit point to where Baker commenced with the word, 'Hello' there were 19 seconds of unedited non-speech. This suggested an unknown person answered the telephone and transferred it to Baker. Cole could not determine how much had been deleted at the first edit point but if Baker was correct, the recording of the person who had first answered the telephone had been deleted. The position of the second edit point was also consistent with the deletion of irrelevant material before Lobegeiger answered.

CHAPTER FOUR

CONCLUSIONS

4.1 EVIDENCE WHICH SUGGESTED THAT POLICE HAD ACTED IMPROPERLY

On consideration of all the evidence before me - which included all the material from my previous investigation - there were only two persons who had given evidence or accounts which suggested that the police investigators or those associated with them had acted improperly in relation to the Lobegeiger tape. They were Torkington and Saunders.

In the case of Torkington, his evidence was challenged and contradicted by Cole and O'Malley. In the case of Saunders, she had made reference to 'doctoring' or alteration to the tape seized by police in her Legal Aid material, letters to Lobegeiger and in evidence at Dodd's trial. This was contradicted by her own evidence before me, by the terms of her complaint to the Fitzgerald Commission of Inquiry and by the conduct of her defence barrister at her committal hearings.

The remaining evidence did not suggest police impropriety. Indeed, much of it was exculpatory of them.

4.2 THE ACCEPTANCE OF THE EVIDENCE OF COLE AND O'MALLEY IN PREFERENCE TO THAT OF TORKINGTON

There was much expert evidence upon which all three experts agreed. For example, all agreed that the Lobegeiger tape was not the first impression recording. All agreed that there had been some editing in the Lobegeiger tape. All three agreed that there was no evidence that editing had occurred to the conversation between Saunders and Lobegeiger. In this regard, Torkington had originally suggested and located the multi-metering pulses which confirmed beyond any doubt that this segment of the Lobegeiger tape was complete.

However, there were also areas of disagreement. Although all three experts dismissed the possibility that a radio bug had been used, Torkington maintained the view that a central line tap had been used. Cole and O'Malley rejected this.

Torkington suggested that there were some edit points in the exchange between Saunders and Baker. Cole and O'Malley rejected this.

I had little difficulty in deciding which of the competing views to accept. As Torkington himself suggested, I elected in relation to questions pertaining to tape analysis, to accept the evidence of Cole and O'Malley and reject the evidence of Torkington where there was a conflict.

I must say that quite apart from Torkington's urging in this regard, I found the evidence of Cole most persuasive. His expertise and fluency in the subject of tape analysis was most evident in both his oral evidence and his written reports. Furthermore, at the completion of Cole's evidence, he gave a demonstration in the hearing room of some of his equipment and software. Torkington and O'Malley were present during the demonstration. He demonstrated on his computer and aurally, the difference between signals which were recorded acoustically and those which were recorded by direct connection to the wire. He then demonstrated how they could be combined. He produced the final result in wave form and aurally. For his demonstration, he used extracts from the second tape. A comparison in wave form and aurally was then made between the Lobegeiger tape and the combined or mixed channels of the second tape. This demonstration was most effective and I had little doubt following it that the first impression recording had not been recorded solely by connection to the wire. That is, it could not have been recorded by a radio bug or central line tap. Furthermore, it appeared to me that the mixed channels of the second tape had very similar characteristics to what could be heard on the Lobegeiger tape. In my mind, this demonstration was confirmatory of much of the oral evidence which Cole had previously given.

In accepting Cole, I was also comforted by the fact that not only was he largely supported by O'Malley, but his conclusions sat very well with the non-expert evidence. For example, Cole rejected the possibility that a central line tap had been used. Torkington stated that Telecom would have had to be involved in a central line tap. There was no evidence of Telecom assistance or any evidence of Telecom having turned a blind eye. Butters and McCormack stated that no central line tap had been authorised and knew of no instance where unauthorised tapping had occurred. One would have expected McCormack to know the derivation of the tape as he introduced Torkington to Webb. Butters and McCormack rejected the concept of a 'quid pro quo' existing between police and Telecom (as suggested by Blanch).

In Saunders's Legal Aid material, she recorded that the tape recorder had been 'wired' into the telephone which she stated would have precluded the recording of bird noises. One can understand Saunders's original concerns in this regard. She believed that a 'wire' would not have resulted in the recording of bird sounds. The expert evidence was to the same effect. What could account for the bird sounds was the acoustic microphone in the tape recorder which had not been disengaged.

Another example can be seen in relation to the evidence given by Baker. Cole had concluded that Saunders was on hold for 19 seconds prior to Baker coming to the telephone. Baker stated that someone else had answered the telephone and transferred the call through to her. This would explain why Saunders was on hold prior to Baker coming to the telephone.

The most obvious example of how Cole's conclusions sat well with the facts was Saunders's continual assertion that she had recorded the Lobegeiger tape and Cole's conclusion that the second tape, unquestionably made by Saunders, was made in the same manner.

I must also say that as a matter of logic, Cole's conclusions were more likely than were Torkington's. It was clear on any account of the evidence that the police possessed a tape recording made by Saunders of a telephone conversation between Lobegeiger and her. It was evidence of Saunders's breach of bail conditions and corroborative of the accounts of Cooper and Gray. Cole's conclusions suggested that this recording was the one which appeared on the Lobegeiger tape and tendered by the Crown Prosecutor at her committal hearings. Torkington's conclusion meant a different tape recording was tendered.

If Torkington was correct, then the Crown Prosecutor had been supplied with a copy of a tape recording which had not been made by Saunders and was presumably illegally recorded. This meant that for some unfathomable reason the police replaced admissible, cogent evidence lawfully obtained with a copy of the same recording unlawfully obtained. Logic and commonsense deny this.

Another example of logic and commonsense supporting Cole's conclusions can be seen in relation to the dial pulses. Cole ruled out the mixing of the dial pulses. As a matter of logic, why would the dial pulses have been mixed on to a segment of the tape where there was no speech? Commonsense demands that the mixing of the dial pulses would have been done to eliminate an edit point. Furthermore, why would anyone wish to add to the recording the dial pulses at the beginning and the similar pulse or transient at the end? The only purpose could have been to give the impression that the Lobegeiger tape had been recorded by a listening device. Saunders did not have a motive to do so. The police certainly would not have wished to give this impression. Why mix on the wrong dial pulse? If someone had gone to the trouble of mixing, surely the telephone number would have related to the Surfers Paradise Police Station where the call had obviously been received.

4.3 SAUNDERS'S ACCOUNTS

It is clear from the evidence before me that Saunders first stated that the Lobegeiger tape has been 'doctored' or altered after her committal hearings. The

evidence also suggests that Saunders had ceased to give such an account by the time she had complained to O'Sullivan by letter dated 14 October 1989. In these earlier accounts, it is suggested at times that only the telephone conversation itself had been edited and altered and on other occasions it is suggested that other telephone calls had been deleted as well from the tape recording taken from her home. In these and in later accounts she has not ascribed to the police any motive for deleting or altering the material and nowhere does Saunders describe any version of the telephone conversation between her and Lobegeiger different from that on the tape.

Saunders's assertion in these accounts that the conversation between her and Lobegeiger as it appeared on the Lobegeiger tape was edited is demonstrably wrong. All three experts say there is no evidence of editing in this segment of the tape recording. The presence of the multi-metering pulses in this segment of the tape confirm this.

Saunders gave no general instructions to Breen that motivated him to have the Lobegeiger tape examined. A claim of tampering with the telephone conversation itself or a claim of deletion of other telephone calls would, one expects, have caused Breen to forward his copy of the Lobegeiger tape to an expert as he had done with the Dodd tape. It would have been of great importance at that time to establish that this tape was a fabrication in an attempt to discredit the Crown case generally and particularly to cast doubt on the Dodd tape. As an experienced police officer, Saunders would have been aware of this. At this time of the Committal hearings her recollection of the conversation as it in fact occurred and as the tape portrayed it would have been fresher than it was years later.

When she wrote to O'Sullivan at the time that he was attached to the Fitzgerald Commission of Inquiry and when she gave evidence before me she did not repeat the earlier accounts. On both occasions, Saunders referred only to the differences Breen had apparently found between the copy produced to him and the one tendered in court. There was no positive assertion that other calls had been deleted or the telephone conversation had been altered.

Although all these earlier accounts were not specifically brought to Saunders's attention during my previous investigation by Counsel Assisting, the general import of them was. The need to do so was obviated by her statement that she never had claimed the tape had been 'doctored' by the police. I believe that Saunders, who had for years claimed that the Dodd tape was a fabrication, would have vigorously asserted that the Lobegeiger tape was also a fabrication if indeed that were the case.

4.4 CONCLUSIONS

At the close of the investigation and after consideration of all the material, I am satisfied that:

- a) Saunders herself recorded the telephone conversations as she said in evidence before me during my previous investigation.
- b) There was no radio bug on Saunders's telephone or telephone line. The allegation that there was such a radio bug was the genesis of this investigation because as a corollary to it the theory was advanced that the police had some several months earlier by such a radio bug gleaned information which they were able to pass on to Dodd.
- c) There was no central line tap on Saunders's telephone or telephone line.
- d) There is no evidence to support the statement that rumours of the tapping of Saunders's telephone were circulating within Telecom during 1982. Torkington, who must have been in some way the source of this suggestion denied any such rumour.
- e) On 8 September 1982, police executed a search warrant on Saunders's home and seized, amongst other things, an audio cassette tape. The audio cassette tape was the subject of this investigation. It was tendered at Saunders's committal hearings. Recorded on it were three consecutive segments consisting of:
 - i) Dialling pulses and a low-level ring indication signal. This segment includes a period of non-speech after the termination of the ring indication signal. The dialling pulses identify the telephone number dialled as that of Lobegeiger's home telephone at Miami;
 - ii) An exchange between Saunders and a receptionist at the Surfers Paradise Police Station during which it is confirmed that Saunders wishes to speak to Lobegeiger. This segment includes a period of non-speech prior to the commencement of this exchange and a period of non-speech after the termination of the exchange; and
 - iii) A telephone conversation between Saunders and Lobegeiger during which the delivery of a letter and other matters are discussed. This segment also records the call termination.

- f) The three segments are not the original or first impression recording, that is, they are copies made from an original recording.
- g) Each of the three segments, including the segment which contained the telephone conversation between Saunders and Lobegeiger thought in 1982 to have possible evidentiary value in proceedings against Saunders, is unedited and is a complete record of what would have appeared on the first impression recording. Between the first and second segments there is an edit point, that is, a break in the continuity of the recording. Between the second and third segments there is another edit point. There are no other edit points.
- h) Saunders had recorded the original or first impression recording on a recording device which was in some way attached or wired to her telephone. That particular recording device, in the circumstances it was used, produced a recording in two channels - one which from the telephone recorded electrical material and one which by a microphone in the recording device produced acoustic material.
- i) The audio cassette tape as tendered is consistent with having been produced in the following way. The original or first impression recording was copied by a low quality recorder to another audio tape for editing. 'Editing' in this context means that part of a tape recording has been deleted in the course of a re-recording. Deletion from a tape recording may be effected by engaging the pause button on the re-recording device and at the same time allowing a segment of the tape recording which is being re-recorded to continue running. The copy so made was then re-recorded on a high quality machine back to the original audio cassette tape. During this re-recording the pause button on the high quality recorder was engaged to delete part of the material which had been originally recorded after the termination of the dial pulses and ring signal and before the commencement of the exchange between Saunders and the receptionist. The pause button was then disengaged to re-record that entire exchange. The pause button was then engaged again to delete material which had been originally recorded after that exchange had terminated and before the conversation between Saunders and Lobegeiger had commenced. The pause button was again disengaged to re-record the entire conversation between Saunders and Lobegeiger and the call termination. This was the final product. There is no way of knowing what was deleted at the two edit points. Speech or periods of non-speech may have been deleted; other telephonic signals may have been deleted.
- j) There is no evidence that any person edited, tampered with or in any way altered the audio cassette tape seized from Saunders's home on 8 September 1982 and subsequently tendered at her committal hearings.

4.5 ANSWERS TO THE QUESTIONS POSED IN THE RESOLUTION

1. On all the evidence, I am satisfied that the tape recording tendered in November 1982 at the committal hearings of Lorrelle Anne Saunders was not in any way created by or for then serving police officers;
2. There is insufficient evidence to warrant a report being made pursuant to the provisions of section 33(2)(a), (b) and (g) of the *Criminal Justice Act* in relation to the making of the tape recording; and
3. None of the evidence produced or any of the conclusions reached during this investigation require the conclusions reached in the report of April 1994 to be amended.

APPENDIX 1

RESOLUTION TO CONDUCT AN INVESTIGATION

RESOLUTION BY THE CRIMINAL JUSTICE COMMISSION
TO CONDUCT AN INVESTIGATION AND APPOINT
AN INDEPENDENT PERSON

WHEREAS:

- (a) On the 28th day of June 1984 the Commission received a letter from Ken Blanch, journalist with The Sunday Mail attaching a statutory declaration dated 24 June 1994 by electrical engineer and former Telecom employee, Rodney Mervyn Torkington.
- (b) Rodney Mervyn Torkington in his statutory declaration states inter alia that:
- (i) on 2 March 1983 he was asked by Inspector Webb to listen to the initial part of a tape recording purporting to be a telephone conversation between Lorrelle Anne Saunders and Alan Lobegeiger and provide a statement identifying the telephone number indicated by dial pulses which appeared on the tape recording before the commencement of the telephone conversation;
 - (ii) in his opinion the dial pulses could not have been recorded as claimed to him at the time by Inspector Webb, namely by holding a cassette recorder up to the earpiece of a public telephone;
 - (iii) in his opinion the dial pulses which appeared on the tape recording, in his experience, could only be reproduced with that quality of sound if they were either:
 - taken directly from the telephone line by wire connecting physically to the line;
 - transmitted by a radio link ('bug') on the telephone line;
 - connected to a central tap of the line; or
 - recorded on an answering machine;
 - (iv) the number indicated by the dial pulses was 5356958;
 - (v) the initial digits dialled had not been recorded as the plastic lead tape had probably not been taken up;
 - (vi) Inspector Webb identified the number as either the Surfers Paradise or Southport Police Station.
- (c) Rodney Mervyn Torkington in further statutory declarations dated 1 July 1994, 4

July 1994 and 6 July 1994 and in a letter dated 16 July 1994 states inter alia that after hearing the tape recording up to the end of the conversation he is of the opinion that:

- (i) the conversation recorded on the tape recording has been edited on to the telephone dial pulses;
 - (ii) the conversation recorded has been edited;
 - (ii) the conversation was recorded by means of a "radio bug" in the female caller's telephone.
- (d) 075-356958 was the telephone number to the residence of Alan Lobegeiger at Miami in 1982. Evidence is to the effect that the telephone number had no connection with the Surfers Paradise or Southport Police Stations.
- (c) The tape recording had been tendered in evidence at the committal hearings of Lorrelle Anne Saunders in November 1982. Evidence had been given by Inspector Brian Webb that the tape recording had been taken by him from the premises of Lorrelle Anne Saunders on 8 September 1982 during the execution of a search warrant. From the dialogue on the tape recording it would appear to have been a recording of a telephone call made by Lorrelle Anne Saunders to Alan Lobegeiger at his place of work.
- (f) Alan Lobegeiger testified at the committal hearings of Lorrelle Anne Saunders that he received a telephone call at the Surfers Paradise Police Station on 8 September 1982 from Lorrelle Anne Saunders. To the best of his recollection the tape recording present in court reflected the conversation which took place.
- (g) As at 8 September 1982 Lorrelle Anne Saunders was on bail and subject to the condition that she refrain from making contact with Alan Lobegeiger.
- (h) Lorrelle Anne Saunders stated in evidence before the Commission on 12 May 1993 or 24 August 1993 that:
- (i) a tape recording of a telephone conversation between her and Alan Lobegeiger had been taken from her premises;
 - (ii) she had recorded that telephone conversation shortly before her arrest on 9 September 1982;
 - (iii) at the time of recording that telephone conversation she was on bail and subject to the condition that she refrain from making contact with Alan Lobegeiger;
 - (iv) she had not taped any telephone conversations by connecting anything to the telephone;

- (v) the transcript of the telephone conversation tendered at her committal hearings and before the Commission was as far as she knew a transcript of the tape recording of the telephone conversation taken from her premises or something similar.
- (i) Sergeant Troy O'Malley (then Senior Constable) of the Queensland Police Service Signal Processing Laboratory analysed the tape recording in June 1993 during the original investigation by the Commission into the Saunders allegations. At that time he reported inter alia that:
 - (i) the tape recording was made using an acoustic device external to the telephone or wires;
 - (ii) there was no technical evidence of editing to the conversation segment;
 - (iii) there were no transient signatures or background noise deviants consistent with any alteration to pre-recorded information on the tape;
 - (iv) the tape recording did not contain a first generation recording.
- (j) Sergeant Troy O'Malley again recently analysed the tape and reported inter alia that in his opinion:
 - (i) he was still of the view that there was no technical evidence of editing to the conversation;
 - (ii) he was still of the view that the telephone conversation had been recorded using an acoustic device external to the telephone or wires;
 - (iii) he was still of the view that the tape recording did not contain a first generation recording;
 - (iv) there was no evidence of the dial pulses or the conversation having been transmitted by radio signal;
 - (v) the recording of the dial pulses had been mixed, by use of a mixer, with the recording of the subsequent conversation.
- (k) The tape recording has been recently analysed by David Cole from the Signal Processing Research Centre at QUT. David Cole states inter alia that in his opinion:
 - (i) the dial pulses would not have been recorded by means of holding a microphone attached to a tape deck held up to the receiver of the telephone;
 - (ii) the recording of the telephone dial pulses have been mixed, by use of a mixer, with the recording of the subsequent telephone conversation;

- (iii) the recording of the telephone conversation was consistent with a microphone held up to the receiver of a telephone;
- (iv) level variations eliminate the possibility that the tape was recorded by direct electrical connection to a telephone line such as by use of a telephone tap or bug;
- (v) there was no technical evidence to suggest editing of the conversation;
- (vi) there was no indication that radio transmission was used for any part of the recording.

THE COMMISSION HAS RESOLVED in the discharge of its functions under Section 29(3)(d)(i) of the *Criminal Justice Act 1989* (the Act) to investigate cases of alleged or suspected misconduct by members of the Police Service:

- to investigate whether the tape recording as tendered in November 1982 at the committal of Lorrelle Anne Saunders was in any way created by or for then serving police officers and if so, who was involved and in what way were they involved;
- to determine whether there is sufficient evidence to warrant a report being made pursuant to the provisions of Section 33(2)(a), (b) or (g) of the Act in relation to the making of the tape recording; and
- to consider whether any evidence produced during the said investigation would require amendment to the conclusions reached in the report of April 1994 on the investigation into the allegations of Lorrelle Anne Saunders concerning the circumstances surrounding her being charged with criminal offences in 1982 and related matters.

AND FURTHER THE COMMISSION HAS RESOLVED to engage the services of an independent qualified person pursuant to Section 66 of the Act.

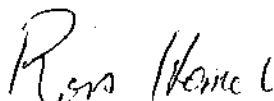
AND FURTHER THE COMMISSION HAS RESOLVED that as The Honourable Ronald Henry Matthews QC is already seized of extensive knowledge of the circumstances surrounding the charges against Lorrelle Anne Saunders in 1982 in light of his previous investigation and report he be appointed:

- to investigate whether the tape recording as tendered in November 1982 at the committal of Lorrelle Anne Saunders was in any way created by or for then serving police officers and if so, who was involved and in what way were they involved;
- to determine whether there is sufficient evidence to warrant a report being made pursuant to the provisions of Section 33(2)(a), (b) or (g) of the Act in relation to the making of the tape recording;

- to consider whether any evidence produced during the said investigation would require amendment to the conclusions reached in the report of April 1994 on the investigation into the allegations of Lorrelle Anne Saunders concerning the circumstances surrounding her being charged with criminal offences in 1982 and related matters;
- to hold public or private hearings, as may be meet; and
- to make recommendations and report thereon to enable the Commission, the Commissioners and the officers of the Commission to discharge the functions and responsibilities imposed by the Act.

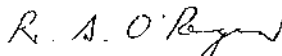
AND FURTHER THE COMMISSION HAS RESOLVED to engage the services of C E K Hampson QC to assist The Honourable Ronald Henry Matthews QC.

DATED at BRISBANE this 26 day of August 1994.



Professor R Homel
Commissioner

Mr R Bleakley
Commissioner



Mr R S O'Regan QC
Chairperson



Mr L Wyvill QC
Commissioner



Mr B French
Commissioner

APPENDIX 2

CHRONOLOGY OF SIGNIFICANT EVENTS

APPENDIX 2

CHRONOLOGY OF SIGNIFICANT DATES

DATE	EVENT
29.4.82	<p>Saunders is arrested and charged with three offences:</p> <ol style="list-style-type: none"> 1 Stealing firearms - (Charge 1); 2 Attempting to procure the theft of a payroll - (Charge 2); and 3 Attempting to procure Dodd to conspire with another to murder Lobegeiger - (Charge 3). <p>Saunders is kept in custody overnight in the watchhouse.</p>
30.4.82	Saunders is granted bail by the Magistrates Court. The conditions of bail require that Saunders refrain from making contact with Coomer, Dodd and Lobegeiger.
9.8.82	Committal hearings against Saunders on all three charges commence.
12.8.82	Saunders's committal hearings are adjourned.
7.9.82	Cooper is apprehended near Lobegeiger's home at Miami.
8.9.92	<p>At 4.25a.m. Webb and Flanagan interview Cooper.</p> <p>Sometime in the morning, Saunders telephones Lobegeiger and tape records the conversation.</p> <p>At approximately 4.00p.m., a search is conducted by Webb on Saunders's home. Located there are a taped telephone conversation between Lobegeiger and Saunders and a tape recording of Saunders describing Cooper's supposed presence at Gatton in February 1982.</p> <p>Webb and Flanagan interview Gray.</p>
9.9.82	Saunders and Cooper are arrested and charged with conspiring with Coomer to pervert the course of justice in respect of Charge 3 above (Charge 4). The Crown case is that Cooper was to lie about the two visits by Saunders to Lobegeiger in February 1982. Coomer is alleged to have been assisting in getting the false story straight. Bail is refused for Saunders.
8.11.82	Committal hearings on the first three charges against Saunders are resumed. Saunders is represented by Breen.
10.11.82	The Lobegeiger tape is tendered at the Committal hearings.

DATE	EVENT
15.11.82	Committal hearings on the first three charges conclude (other than submissions) and are adjourned.
16.11.82	Committal hearings against Saunders, Cooper and Coomer commence on Charge 4. Saunders is represented by Breen.
19.11.82	Committal hearings concerning Charge 4 conclude and are adjourned to 22.11.82.
22.11.82	Saunders is committed for trial on all four charges.
1.3.83	McCormack asks Torkington to telephone Webb to arrange a meeting.
2.3.83	Torkington meets Webb and Neideck and analyses dial pulses.
2.3.83	Neideck copies the Lobegeiger tape for Professor Mainstone.
3.5.83	Saunders's trial on charge 1 and charge 2 commences in the Brisbane District Court. The Lobegeiger tape is not tendered.
24.5.83	Saunders is acquitted on both charges.
2.8.83	<p>Saunders's Supreme Court trial commences before Shepherdson J on charges of:</p> <ol style="list-style-type: none"> 1 Attempting to procure Dodd to kill Lobegeiger; and 2 Attempting to procure Cooper to commit perjury. <p>The Lobegeiger tape is not tendered.</p>
3.8.83	After legal argument, the second count relating to Cooper is severed from the indictment.
8.8.83	The Crown concedes to the Court that the Dodd tape was a fabrication and after legal argument, Shepherdson J directs a verdict of 'not guilty'.
28.11.83	Counsel for Saunders make a submission to the Solicitor General that no further proceedings be taken.
23.1.84	A nolle prosequi is entered on the final charge.
11.1.85	Dodd's trial commences on three charges of perjury. Saunders gives evidence.
14.10.89	Saunders addresses a letter to Detective Superintendent Jim O'Sullivan at the Fitzgerald Commission of Inquiry complaining about the copy of the Lobegeiger tape which had been supplied to her defence lawyers.

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(ii)

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
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(iii)

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<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
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(vii)

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