

POLICE INTEGRITY COMMISSION

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TRANSCRIPT OF PROCEEDINGS

Hearing: Operation Pegasus and Operation Luno
Before Commissioner Pritchard

Held at Level 3, St James Centre,
Elizabeth Street, Sydney

On Friday, 16 May 2008 at 10am

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< 1> THE COMMISSIONER: I announced on Wednesday of this week
< 2> at the commencement of this hearing that it would be
< 3> conducted in two parts reflecting the two investigations
< 4> the Commission has been conducting for which this hearing
< 5> is being held.
< 6>
< 7> Today, the Commission will commence to examine
< 8> witnesses and take evidence relating to the second part of
< 9> the hearing relating to Operation Luno.
<10>
<11> Pursuant to section 32(3) of the Police Integrity
<12> Commission Act, the general scope and purpose for this part
<13> of the hearing is as follows: whether any current or
<14> former police officer or any other person has engaged in
<15> serious police misconduct or other criminal activity in
<16> connection with the breath-testing of Adam James Clunes at
<17> Orange on 21 December 2007.
<18>
<19> Pursuant to section 12 of the PIC Act, Mr David
<20> Staehli SC has been appointed to assist in relation to this
<21> hearing. Mr Staehli has previously opened in relation to
<22> this part of the hearing.
<23>
<24> Are there any applications for authority to appear?
<25>
<26> MR MADDEN: Madden, solicitor. I seek your authority to
<27> appear for Mr Colin Clunes.
<28>
<29> THE COMMISSIONER: Thank you, Mr Madden. That authority
<30> is granted to you.
<31>
<32> MR OATES: Oates, solicitor, if you please. I seek your
<33> authorise to appear for Mr Christie.
<34>
<35> THE COMMISSIONER: Thank you, Mr Oates. That authority is
<36> granted.
<37>
<38> MR OATES: Commissioner, I have a difficulty this morning.
<39> The ICAC is conducting hearings. I have a client there.
<40> If it would not be too much of an inconvenience if I could
<41> be excused from the Bar table. My business partner
<42> Ms Smith will be here to represent the interests of
<43> Mr Christie.
<44>
<45> THE COMMISSIONER: That's fine, Mr Oates. Thank you for
<46> that. Mr Willis?
<47>

.16/5/08 (3)

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< 1> MR WILLIS: Commissioner, I seek your authority to appear
< 2> for Donna Donelly.
< 3>
< 4> THE COMMISSIONER: Thank you, Mr Willis. That authority
< 5> is granted.
< 6>
< 7> MR WILLIS: Thank you.
< 8>
< 9> MS DAVID: David, counsel. I seek leave appear for
<10> Jeremy Commins and Steven Hall.
<11>
<12> THE COMMISSIONER: Thank you, Ms David. That authority
<13> is granted in relation to both Mr Hall and Mr Commins.
<14>
<15> MS DAVID: Thank you, Commissioner.
<16>
<17> MS BOURKE: Good morning, Commissioner. My name is
<18> Ms Bourke, solicitor, I seek your authorisation to appear
<19> for Adam Clunes.
<20>
<21> THE COMMISSIONER: Thank, Ms Bourke. That authority is
<22> granted.
<23>
<24> MR TAYLOR: Taylor, solicitor. I seek your authority to
<25> appear on behalf of Constable Lanser.
<26>
<27> THE COMMISSIONER: Thank you, Mr Taylor. That authority
<28> is granted.
<29>
<30> MR TAYLOR: Thank you, Commissioner.
<31>
<32> THE COMMISSIONER: All right.
<33>
<34> MR STAEHLI: We understand that Mr Murray appears for
<35> Mr Benson, or would seek leave to appear, but it was not
<36> anticipated, and it is still not, that Mr Benson would be
<37> called in the first few witnesses and so presumably the
<38> matter can proceed.
<39>
<40> THE COMMISSIONER: All right.
<41>
<42> MR STAEHLI: Nor is it expected that the evidence would
<43> touch on Mr Benson until later in the day.
<44>
<45> THE COMMISSIONER: Is Mr Benson here?
<46>
<47> MR STAEHLI: I don't know.

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Transcript produced by Merrill Legal Solutions

< 1>
< 2> THE COMMISSIONER: We don't know where Mr Murray is. You
< 3> don't know where Mr Murray is, do you, Mr Benson?
< 4>
< 5> MR BENSON: At the Downing Centre, apparently.
< 6>
< 7> THE COMMISSIONER: Thank you, Mr Benson. We can deal with
< 8> that if any issues arise.
< 9>
<10> MR STAEHLI: The only other thing I might mention, having
<11> heard Mr Willis seek leave to appear for Ms Donnelly, is
<12> that, as you're aware, Commissioner, it is not proposed
<13> that Ms Donnelly would be called today and it is unlikely,
<14> in my view, although I suppose it could happen, that her
<15> name would even be mentioned in the evidence today, so I am
<16> not sure about the necessity for my friend to be here. No
<17> doubt it is a matter for him, but I just thought I would
<18> mention that.
<19>
<20> THE COMMISSIONER: You have heard that, Mr Willis. It is
<21> a matter for you.
<22>
<23> MR WILLIS: I take that on board, Mr Commissioner.
<24>
<25> THE COMMISSIONER: Mr Staehli?
<26>
<27> MR STAEHLI: Commissioner, I appreciate what you have
<28> already mentioned, which was that I did open in this
<29> respect on Wednesday. Might I ask through you whether or
<30> not particularly those legal representatives who have not
<31> participated in the preceding days have caught up with what
<32> was said about this matter? The transcript is available on
<33> the Commission's website, I understand, but it might
<34> otherwise be appropriate for them to, say, receive a copy
<35> of my opening --
<36>
<37> THE COMMISSIONER: Yes, definitely.
<38>
<39> MR STAEHLI: -- at some stage, if they're not aware of the
<40> brief outline that I gave on the previous occasion.
<41>
<42> THE COMMISSIONER: I think that can be arranged,
<43> Mr Staehli, at some stage. The transcript is available on
<44> the Commission's website as well, so it is accessible
<45> there, but we can arrange for a copy maybe to be extracted
<46> to Ms David and Ms Bourke and Mr Taylor, who weren't here
<47> at the beginning on Wednesday. Perhaps we could do that

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Transcript produced by Merrill Legal Solutions

< 1> before the mid-morning break.
< 2>
< 3> MR STAEHLI: Thank you, Commissioner. I would propose
< 4> that we commence the witnesses who are to be called today
< 5> with Adam Clunes, if he is here.
< 6>
< 7> THE COMMISSIONER: Just stand there for the moment.
< 8> Mr Clunes, this is not a court but, nonetheless, they're
< 9> solemn proceedings, which simply means giving your evidence
<10> on oath or affirmation. It is whatever you're comfortable
<11> with.
<12>
<13> MR CLUNES: The affirmation will be all right.
<14>
<15> <ADAM JAMES CLUNES, affirmed: [10.11am]
<16>
<17> THE COMMISSIONER: Q. Just take a seat there for the
<18> moment, thanks, Mr Clunes. Mr Clunes, the microphone in
<19> front of you is really only for recording, not amplifying,
<20> your voice, so you just have to make sure you don't move
<21> too far away from it.
<22> A. Righto.
<23>
<24> Q. Would you tell the Commission your full name, please?
<25> A. Adam James Clunes.
<26>
<27> Q. Spelt C-L-U-N-E-S?
<28> A. Yes.
<29>
<30> THE COMMISSIONER: Thanks for the moment, Mr Clunes.
<31> Ms Bourke, have you had a chance to have a conversation
<32> with Mr Clunes about sections 40 and 41?
<33>
<34> MS BOURKE: Yes. He seeks to give his evidence - I'm
<35> sorry --
<36>
<37> THE COMMISSIONER: Under the declaration.
<38>
<39> MS BOURKE: Under the declaration.
<40>
<41> THE COMMISSIONER: Thank you, Ms Bourke.
<42>
<43> Q. Mr Clunes, before the hearing proceeds any further,
<44> there is a number of matters that I want to bring to your
<45> attention, so I just want to you listen carefully to what
<46> I'm about to say to you.
<47>

.16/5/08 (3)

P-161

A J CLUNES

Transcript produced by Merrill Legal Solutions

< 1> You have to understand that you must answer all
< 2> questions that are asked of you here unless I tell that you
< 3> do not have to answer. You should also understand that you
< 4> are entitled to object to giving an answer. If you do
< 5> object, you have to, nonetheless, give the answer, but the
< 6> answer you give is not admissible in evidence against you
< 7> in any civil or criminal proceedings, but there are some
< 8> exceptions to that: firstly, a prosecution for giving
< 9> false or misleading evidence at a hearing of the Commission
<10> that you knew to be false or misleading in a material
<11> particular; secondly, a prosecution for an offence which
<12> you may have committed or you may commit under the
<13> legislation governing this Commission; and, thirdly,
<14> proceedings for contempt of the Commission under that
<15> legislation.

<16>
<17> To avoid the need for you to object to answering each
<18> question when it is asked of you, I'm able to make a
<19> declaration that all the answers you give shall be regarded
<20> as having been given on objection, and Ms Bourke has
<21> indicated that she seeks that declaration on your behalf.
<22> Do you understand what I've just said to you then?
<23> A. Not really.

<24>
<25> THE COMMISSIONER: All right. Look, I'll make a
<26> declaration pursuant to section 41 of the PIC Act that all
<27> answers given by this witness will be regarded as having
<28> been given on objection by the witness.

<29>
<30> Ms Bourke, I take it, as you said, there was some
<31> conversation between yourself and Mr Clunes about the
<32> matters that I've just gone through?

<33>
<34> MS BOURKE: Yes. He wishes to make the entirety of his
<35> evidence under objection.

<36>
<37> THE COMMISSIONER: Thank you, Ms Bourke.

<38>
<39> Q. Mr Clunes, Mr Staehli is the gentleman in the middle
<40> of the table facing you. He's going to ask you some
<41> questions. I might chime in during that process as well
<42> and, at the end of that, Ms Bourke will have an
<43> opportunity, as well as the other representatives here, to

<44> ask you questions as well. Just keep your voice up and, as
<45> I said, don't move too far away from that microphone.

<46> Okay.

<47> A. Yes.

.16/5/08 (3)

P-162 A J CLUNES

Transcript produced by Merrill Legal Solutions

< 1>
< 2> <EXAMINATION BY MR STAEHLI:
< 3>
< 4> MR STAEHLI: Q. Mr Clunes, as you probably know, you're
< 5> here to answer some questions about what happened on
< 6> 21 December 2008 when you were stopped by police at
< 7> Orange and breath-tested.
< 8> A. Yeah.
< 9>
<10> Q. What's your memory like of those events on 21 December
<11> last year?
<12> A. They're pretty good, I think, yeah.
<13>
<14> Q. The critical component of those events is ultimately
<15> what happened in the breath analysis room back at Orange
<16> police station some time after you'd been stopped by
<17> police.
<18> A. Yeah.
<19>
<20> Q. Do you appreciate that?
<21> A. Yeah.
<22>
<23> Q. Since it happened, you've been asked questions by
<24> investigators from the Police Integrity Commission about
<25> those things; do you remember?
<26> A. Yes, I have.
<27>
<28> Q. Did you tell them the truth?
<29> A. No, I didn't.
<30>
<31> Q. Is it the case that on that night back at the police
<32> station when you were in the room with the breath analysis
<33> machine with another police officer you did not breathe
<34> into the tube attached to the machine? Is that right?
<35> A. No, I didn't.
<36>
<37> Q. Did the police officer who was there breathe into the
<38> machine?
<39> A. Yes, he did.
<40>
<41> Q. Do you know who that police officer was?
<42> A. Oh, yeah, I know his first name, yeah.
<43>
<44> Q. Was it Mark?
<45> A. Yes, it was.
<46>
<47> Q. Prior to seeing him at the police station that night,

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> had you met him before?
< 2> A. Oh, I don't remember meeting him, no.
< 3>
< 4> Q. Can we just backtrack a little bit. Sometime around
< 5> 3am on that morning, you were at or near the Standard Hotel
< 6> in Orange with some friends; is that right?
< 7> A. Yes, I was, yes.
< 8>
< 9> Q. One of the friends, a young woman, had a motor
<10> vehicle --
<11> A. Yes, she did.
<12>
<13> Q. -- near the hotel; is that right?
<14> A. Yes, that's correct.
<15>
<16> Q. And you and her and another male friend left the
<17> vicinity of the hotel at about 3am to go to her motor
<18> vehicle to drive off somewhere; is that right?
<19> A. Yes, that's correct.
<20>
<21> Q. As at the time you left the hotel to go to that motor
<22> vehicle, say in the preceding hour, what had you had to
<23> drink in the way of alcohol?
<24> A. Oh, I only had - oh, in the last hour, probably none.
<25> I probably had a sip of something, but that's about it.
<26>
<27> Q. In the preceding hour, that is, before, from say 2am
<28> to 3am, where had you actually been?
<29> A. I wasn't at the Standard. I remember walking down to
<30> the Royal and I was talking to a few of the mates I knew
<31> down there out the front and I got a feed and went back up
<32> to the Standard because they went up there.
<33>
<34> Q. Because some friends were at the Standard?
<35> A. Oh, they were at the Standard, yeah.
<36>
<37> Q. By that, do you mean the friends who you had gone to
<38> see at the Royal? They'd moved from the Royal Hotel to the
<39> Standard Hotel; is that right?
<40> A. Yes, that's correct.
<41>
<42> Q. And in between you being at those two hotels on that
<43> morning, you had gone somewhere else to get something to
<44> eat?
<45> A. Yeah, just up the road.
<46>
<47> Q. Where to?

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. It would have been to the pie shop near the Royal,
< 2> just down the road from the Royal.
< 3>
< 4> Q. And that's opened at 2am in the morning, is it?
< 5> A. Yeah.
< 6>
< 7> Q. Can we just backtrack a bit further?
< 8> A. Sure.
< 9>
<10> Q. This was a night where, obviously, you'd been in
<11> Orange with friends for the purposes of presumably having a
<12> good time and having a few drinks, basically; is that
<13> right?
<14> A. Yeah.
<15>
<16> Q. What time had you started drinking?
<17> A. Started drinking?
<18>
<19> Q. Mmm.
<20> A. It probably wasn't until 8.30, 9 o'clock, if not
<21> later.
<22>
<23> Q. Did you start that drinking at hotels or did you have
<24> any drinks with friends somewhere else?
<25> A. No, I had a couple of drinks at a friend's house.
<26>
<27> Q. What had you drunk there, what sort of alcohol?
<28> A. That was a bit of punch and a rum or two.
<29>
<30> Q. So you had, what, possibly a couple of rums; is that
<31> what you're saying?
<32> A. Yeah, probably one - I don't remember having two rums,
<33> but there was punch there.
<34>
<35> Q. Do you know what was in the punch?
<36> A. No, not exactly.
<37>
<38> Q. But you believed it to be alcoholic?
<39> A. Yeah, there would have been alcohol in it.
<40>
<41> Q. And then what? When you say you had a rum as well, do
<42> you mean a rum and coke or just a straight rum?
<43> A. No, a rum and coke mixed.
<44>
<45> Q. Pre-mixed out of a can?
<46> A. Not pre-mixed.
<47>

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Not pre-mixed?
< 2> A. No, just the --
< 3>
< 4> Q. Underproof Bundy or something and coke; is that what
< 5> you --
< 6> A. Yeah, Bundaberg Rum.
< 7>
< 8> Q. That was, what, from about 8.30 for a short period?
< 9> A. Yeah.
<10>
<11> Q. And that was at a friend's place in Orange city
<12> itself?
<13> A. Yeah, in Orange itself, yeah.
<14>
<15> Q. And what happened then? Did you and some of your
<16> friends go to a hotel?
<17> A. Yeah, we did go to a hotel after that.
<18>
<19> Q. Which hotel?
<20> A. We went to the Hotel Orange.
<21>
<22> Q. For how long were you there, about?
<23> A. Oh, an hour, hour and a half.
<24>
<25> Q. And did you have some drinks there?
<26> A. I had one middy of Bundaberg Rum on tap.
<27>
<28> Q. Right.
<29> A. That was when I first got there.
<30>
<31> Q. Right.
<32> A. Yeah, and I didn't have anything else to drink there.
<33>
<34> Q. Did you say a middy of Bundaberg Rum on tap?
<35> A. Yeah.
<36>
<37> Q. It comes out of a tap at the hotel, does it?
<38> A. Yeah, it comes out of the tap at the hotel.
<39>
<40> Q. Pre-mixed, do you mean?
<41> A. Yeah - well, it's pre-mixed and it comes out of a keg,
<42> I believe.
<43>
<44> Q. Is that all you had at that hotel?
<45> A. Yeah, it is, yeah.
<46>
<47> Q. Where did you go after that?

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. We went up to the Standard.
< 2>
< 3> Q. So that was at about, what, 10.30, 11?
< 4> A. Yeah.
< 5>
< 6> Q. Something like that?
< 7> A. Yeah.
< 8>
< 9> Q. Did you drink at the Standard?
<10> A. I had one can of rum when we first got there.
<11>
<12> Q. Again, pre-mixed rum and coke?
<13> A. Yeah, pre-mixed rum and coke.
<14>
<15> Q. Did you have anything else?
<16> A. No, that was all I had at the Standard because I - I
<17> got trod on a schooner glass and they kicked me out not
<18> long after I got there.
<19>
<20> Q. Having been kicked out, that was, what, at about,
<21> say, 11pm, give or take half an hour?
<22> A. Oh, probably 11.30, closer to 12 o'clock.
<23>
<24> Q. Having been kicked out of the Standard Hotel, where
<25> did you go?
<26> A. That's when I went down to the Royal and went and got
<27> a feed and then was talking to people.
<28>
<29> Q. Did you drink when you were at the Royal?
<30> A. No, I didn't drink at the Royal.
<31>
<32> Q. And so in the way that you've already described,
<33> having been at the Royal, having got a feed and then having
<34> come back to the Standard --
<35> A. Yes.
<36>
<37> Q. -- is it the case that by the time you got back to the
<38> Standard, do you say, that you hadn't had a drink for a
<39> couple of hours?
<40> A. No, probably an hour.
<41>
<42> Q. An hour?
<43> A. And then I was outside the front of the Standard for -
<44> until my friends left.
<45>
<46> Q. What, for an hour or more?
<47> A. Yeah.

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Just waiting for them?
< 3> A. I was talking to people.
< 4>
< 5> Q. Right.
< 6> A. I wasn't just waiting there by myself.
< 7>
< 8> Q. And drinking?
< 9> A. I had one drink, yeah.
<10>
<11> Q. What was that?
<12> A. A rum.
<13>
<14> Q. Again a pre-mixed Bundy and coke?
<15> A. Yeah.
<16>
<17> Q. What, from inside the hotel or how?
<18> A. No, he had it - I assume he had it before the hotel.
<19> He was obviously drinking out of his - I don't know whether
<20> they had them in the car on the way or - I'm not sure where
<21> he got it from.
<22>
<23> Q. This is a pre-mixed Bundy and coke in a can?
<24> A. Yeah.
<25>
<26> Q. That you got from a friend who was in the area of
<27> Standard Hotel?
<28> A. Yeah, they were on their way - or they'd just left or
<29> they'd come from somewhere.
<30>
<31> Q. So you drank that on the footpath, or something like
<32> that, did you?
<33> A. Yeah.
<34>
<35> Q. Did you drink anything other than that before you got
<36> to the car ultimately to take your friends home?
<37> A. No. No, I didn't.
<38>
<39> Q. So you had that drink, you were waiting for your
<40> friends, they were inside the Standard?
<41> A. Yes.
<42>
<43> Q. That is, the ones you were going to drive with?
<44> A. Yes.
<45>
<46> Q. Eventually they came out of the Standard?
<47> A. Yeah, they did.

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. This was your female friend and your male friend; is
< 3> that right?
< 4> A. Yes, that's correct.
< 5>
< 6> Q. Was there a discussion with them about where you would
< 7> go?
< 8> A. Oh, I was always going to go back to Lindsay's house.
< 9>
<10> Q. That's the female friend?
<11> A. Yes.
<12>
<13> Q. How far is that from the Standard Hotel - about?
<14> A. About 15ks - not even that, probably 12ks.
<15>
<16> Q. You had come from Lindsay's house --
<17> A. Originally, yeah.
<18>
<19> Q. -- into the city to go to these hotels?
<20> A. I clove Lindsay's car in that night.
<21>
<22> Q. Why did you drive in?
<23> A. Because I left my ute out at Lindsay's house.
<24>
<25> Q. I'm sorry, why didn't Lindsay drive?
<26> A. Because she'd been drinking before. She'd had a drink
<27> before we left her house.
<28>
<29> Q. You had, too?
<30> A. I hadn't had a drink before we left her house.
<31>
<32> Q. What about the punch and the --
<33> A. That was - that was where we went after we left
<34> Lindsay's house.
<35>
<36> Q. I see. All right.
<37> A. To start with, yeah.
<38>
<39> Q. The sequence isn't all that important, but you'd come
<40> from your home to go to Lindsay's house?
<41> A. Yeah.
<42>
<43> Q. Then gone to another friend's house?
<44> A. Yeah.
<45>
<46> Q. And then gone to the hotels; is that right?
<47> A. Yes, that's correct.

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. In any event, as to the drive home from the Standard
< 3> Hotel, how was it decided or how did it come about that you
< 4> would drive?
< 5> A. Oh, I already had the keys and I just --
< 6>
< 7> Q. You just took it upon yourself?
< 8> A. Yeah, I just took it upon myself, I guess, yeah.
< 9> There was never a discussion about it.
<10>
<11> Q. It appeared to be assumed by Lindsay, at least, that
<12> it would be you who was driving?
<13> A. Yeah.
<14>
<15> Q. Whereabouts was the car?
<16> A. It was in the car park where the auto place - K-Mart
<17> Auto is.
<18>
<19> Q. How close is that to the Standard Hotel?
<20> A. Just next to it.
<21>
<22> Q. The three of you went and got into the car?
<23> A. Yeah, we did.
<24>
<25> Q. You drove off intending to go to Lindsay's house?
<26> A. Yes.
<27>
<28> Q. Where did you go?
<29> A. Oh, I come out of the car park at the top corner of
<30> the car park where you're supposed to come out and I went
<31> down and went through the undercover car park to come out
<32> on Byng Street.
<33>
<34> Q. Why did you do that?
<35> A. Because it's easier than going to the main street and
<36> going all the way down the main street and around. It's
<37> just shorter. I always take that way.
<38>
<39> Q. Are you saying you didn't have in mind the possible
<40> need to evade the greater likelihood of police being on the
<41> main street?
<42> A. No. Well, they're normally around the hotel and the
<43> police station is just where Byng Street comes out of the
<44> car park.

<45>
<46> Q. So you say you were just doing what you always did for
<47> convenience?

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. Yeah, I always take that way.
< 2>
< 3> Q. Then you came out onto Byng Street; is that right?
< 4> A. Yeah.
< 5>
< 6> Q. And which way did you turn?
< 7> A. Well, you can only turn left.
< 8>
< 9> Q. You drove some distance down Byng Street and were
<10> pulled over by a police car; is that right?
<11> A. Yes, that's correct.
<12>
<13> Q. When you were driving, did you believe that you were
<14> over the legal limit?
<15> A. I didn't believe I was over the legal limit, no.
<16>
<17> Q. But you were then a P-plate driver; is that right?
<18> A. Oh, I was, yes. I just didn't think I would have -
<19> was much over. I didn't think I'd be over.
<20>
<21> Q. Did you have P-plates on the vehicle, by the way?
<22> A. Yeah, I did.
<23>
<24> Q. You knew, did you not, that as a P-plate driver you
<25> weren't entitled to drive with any alcohol in your blood?
<26> A. Yes.
<27>
<28> Q. In any event, you were pulled over by the police car
<29> and then did a police officer come to the vehicle?
<30> A. Yes, she did.
<31>
<32> Q. You said "she" - it was a female police officer?
<33> A. Yeah, it was Kate.
<34>
<35> Q. In fact, one you knew, Kate Lanser?
<36> A. Yeah.
<37>
<38> Q. Did she recognise you, can you tell?
<39> A. She did, yeah. I'm pretty sure she did.
<40>
<41> Q. Did you know that from what she said - that is, did
<42> she say, "Oh, it's you, Adam," or something like that?
<43> A. I don't believe she said my name, but the way she said
<44> hello, I assumed she knew who I was.
<45>
<46> Q. Then did she breath-test you using a little machine?
<47> A. She used the alcometer thing you talk into.

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. You talk into. She asked you to talk or to count or
< 3> something like that?
< 4> A. She asked me to count to 10.
< 5>
< 6> Q. Then having done that, did she a little while later
< 7> ask you to use a tube?
< 8> A. Yes.
< 9>
<10> Q. To blow into a machine?
<11> A. Yes, she did.
<12>
<13> Q. Did she tell you what the result of that test was?
<14> A. She did, yeah.
<15>
<16> Q. What did she say, do you remember?
<17> A. Oh, she said it was \$2 or something.
<18>
<19> Q. \$2?
<20> A. Yeah.
<21>
<22> Q. Did you know what that meant?
<23> A. It was pretty high.
<24>
<25> Q. Did you know that by saying "\$2", if she said that
<26> that it meant you were 0.2?
<27> A. Yeah.
<28>
<29> Q. And you knew that that level was very high?
<30> A. Yeah, it surprised me, yeah.
<31>
<32> Q. What happened after that?
<33> A. She made me park the car and we went down to the
<34> police station.
<35>
<36> Q. Before you went to the police station and after you'd
<37> parked the car, are you aware that there were some
<38> telephone calls, or at least one telephone call, between
<39> Kate Lanser and your father?
<40> A. Yes, because she said she was going to ring him and I
<41> spoke to him.
<42>
<43> Q. What, she rang him, as you understand it, using her
<44> mobile phone; is that right?
<45> A. Yeah.
<46>
<47> Q. And then, having made contact with your father, put

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> you on the line to him; is that right?
< 2> A. Yes, that's correct.
< 3>
< 4> Q. Did you tell him that you'd been pulled over and
< 5> breathalysed and had a positive reading?
< 6> A. He already knew.
< 7>
< 8> Q. He knew. What conversation did you have with him
< 9> then?
<10> A. Oh, I can't really remember it. He was pretty cranky,
<11> which he should be.
<12>
<13> Q. Yes.
<14> A. And he just told me to do what I was told to do.
<15>
<16> Q. All right.
<17> A. And sit there.
<18>
<19> Q. Do you remember where this happened, this telephone
<20> call? Was it while you were still on the street near your
<21> car?
<22> A. No, it was just inside the police station.
<23>
<24> Q. Inside the police station after you'd got back there?
<25> A. Yes, just as we got there.
<26>
<27> Q. Do you remember who it was who drove back to the
<28> police station in the police vehicle?
<29> A. I think it was the other copper. I don't think it was
<30> Kate.
<31>
<32> Q. Did you know him?
<33> A. No, I didn't, until that night.
<34>
<35> Q. When you got back to the police station, do you
<36> remember what happened there?
<37> A. I went into the charge room - oh, the arrest room, or
<38> whatever they call it.
<39>
<40> Q. With Kate?
<41> A. Yeah.
<42>
<43> Q. And what happened there?
<44> A. He read out a form, a letter, and I gave him my wallet
<45> and my watch, and all that.
<46>
<47> Q. When you say "he", you mean another police officer?

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. Yeah, a different police officer.
< 2>
< 3> Q. Was that police officer who was there at that time the
< 4> person who you now know to be Mark?
< 5> A. Yeah.
< 6>
< 7> Q. Prior to seeing him there in that police station on
< 8> that night, had you met him?
< 9> A. No, I don't ever remember meeting him.
<10>
<11> Q. Of course, your father was, in fact, himself a police
<12> officer at the Orange police station; is that right?
<13> A. Yeah.
<14>
<15> Q. And had been so for some time?
<16> A. Yeah.
<17>
<18> Q. And you, as a result of him being a police officer and
<19> yourself having gone to the police station to see your
<20> father and for other reasons associated with the district
<21> and social contact, knew quite a number of police officers
<22> who worked at the station?
<23> A. I knew a lot of them by face and I know a few names.
<24>
<25> Q. Kate was one you knew by name?
<26> A. Kate was one I knew by name, yes.
<27>
<28> Q. Did you know her surname?
<29> A. Oh, sometimes I do, sometimes I don't.
<30>
<31> Q. In any event, there was paperwork filled out and you
<32> gave up the things you were wearing, like watch and wallet
<33> and chain around your neck, and so forth; is that right?
<34> A. Yes.
<35>
<36> Q. And then at a particular time, not all that long after
<37> you'd got to the police station, did you go with the police
<38> officer Mark into another room?
<39> A. Yeah, I did.
<40>
<41> Q. In that room was there a machine which had a tube to
<42> it and a keyboard in front of it, that sort of thing?
<43> A. Yes.
<44>
<45> Q. What I'm going to do now is to play you a DVD
<46> recording, which you'll be able to watch on the screen
<47> there, of things that went on in that room from the time

.16/5/08 (3)

P-174

A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> that you first came into it, or thereabouts.
< 2>
< 3> MR STAEHLI: Commissioner, that DVD is barcoded 6425802.
< 4> Just so that every one understands this, in its original
< 5> form it is a CCTV video which perhaps in its original form
< 6> does not continuously record, that is, every moment of
< 7> every second of what happens in the room, but, rather, it
< 8> would seem it takes a frame with an interval in between.
< 9> The effect of this is that if the tape-recording, which is
<10> what we have, is played at normal speed, it happens very
<11> quickly and so some work has been done on that to slow it
<12> down to approximately real time and it is in that revised
<13> form that it is proposed we will play it now.
<14>
<15> THE COMMISSIONER: Mr Staehli, it is a DVD taken from
<16> the --
<17>
<18> MR STAEHLI: It is a DVD taken from a camera in the
<19> breath analysis room - I'll call it that - at Orange police
<20> station.
<21>
<22> THE COMMISSIONER: Thank you, Mr Staehli.
<23>
<24> MR STAEHLI: There is a date and time on it which
<25> apparently is close to, if not actually, real time. We
<26> will now play it, if that suits.
<27>
<28> THE COMMISSIONER: Do you want to tender it?
<29>
<30> MR STAEHLI: Yes, thank you, Commissioner.
<31>
<32> EXHIBIT #1 DVD FROM THE CAMERA IN THE BREATH ANALYSIS ROOM,
<33> BARCODED 6425802
<34>
<35> THE COMMISSIONER: It should come up in front of you there
<36> soon, Mr Clunes.
<37>
<38> MR STAEHLI: Although it is possible to fast forward, I
<39> think we'll just let it run, Commissioner.
<40>
<41> THE COMMISSIONER: I take it there's no sound?
<42>
<43> MR STAEHLI: There's no sound. It might be possible to
<44> drag it along and fast forward it.
<45>
<46> (DVD played)
<47>

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> MR STAEHLI: If it is possible - no doubt the recording
< 2> will be available to look at in its entirety later - can we
< 3> fast forward it up to about 3.58? Yes, that should do.
< 4> We've there jumped about 20 minutes. It is now proceeding
< 5> from 0359:26.
< 6>
< 7> (DVD played)
< 8>
< 9> MR STAEHLI: Q. It is 0400:09 now. Do you recognise
<10> yourself coming into the room and then going out again?
<11> A. Yeah.
<12>
<13> (DVD continues)
<14>
<15> MR STAEHLI: Q. It's 0401:08. Did you see it would seem
<16> you have just come into the room, gone over to the machine
<17> with the police officer and then something happened and
<18> then you've got back and are standing in the doorway; is
<19> that right?
<20> A. Yeah.
<21>
<22> (DVD continues)
<23>
<24> Q. It is now showing you standing alongside a desk near
<25> the machine with the police officer; is that right?
<26> A. Yes, that's correct.
<27>
<28> Q. Is that the police officer Mark to whom you've earlier
<29> referred in your evidence?
<30> A. Yes.
<31>
<32> (DVD continues)
<33>
<34> Q. At 0404:16 another police officer came into the room;
<35> do you see that?
<36> A. Yes.
<37>
<38> Q. Did you know him?
<39> A. I know his face. I keep forgetting his name, though.
<40>
<41> Q. Was he a male officer who was with Kate when you were
<42> detained?
<43> A. No.
<44>
<45> Q. No?
<46> A. No.
<47>

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> (DVD continues)
< 2>
< 3> Q. Then at 0406:07 you and Mark left that room; is that
< 4> right?
< 5> A. Yes.
< 6>
< 7> (DVD continues)
< 8>
< 9> MR STAEHLI: That's the end of that particular recording,
<10> Commissioner, but can we just go back to the period just
<11> before 4am, please, and replay just a section of it. Thank
<12> you.
<13>
<14> (DVD played)
<15>
<16> Can we just stop it there, please.
<17>
<18> Q. Apparently what could just be seen there, Mr Clunes,
<19> was that, firstly, you and Mark, a police officer, came
<20> into the room and went over and looked at the machine that
<21> was on the desk there; is that right?
<22> A. Yeah.
<23>
<24> Q. Do you remember what was said at that time, if
<25> anything?
<26> A. I don't think anything was said. I believe he was
<27> just showing me what it was.
<28>
<29> Q. Showing you what it was?
<30> A. Yes.
<31>
<32> MR STAEHLI: Could we run on the recording, please.
<33>
<34> (DVD played)
<35>
<36> Could we stop it there, please.
<37>
<38> Q. At 0400:47 you've company back into the room and gone
<39> to the area of the machine where Mark is standing with his
<40> back to the camera; is that right?
<41> A. Yes.
<42>
<43> Q. What happened at this point, do you remember?
<44> A. Well, Mark had the --
<45>
<46> Q. Had the tube?
<47> A. -- tube in his hand, yeah.

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Yes. Did someone breathe into it?
< 3> A. Yes.
< 4>
< 5> Q. Did he breathe into it?
< 6> A. Mark did, yes.
< 7>
< 8> Q. Prior to that happening, had he told you that that was
< 9> what was going to happen?
<10> A. Yes.
<11>
<12> Q. When did he do that?
<13> A. Before we went in the first time.
<14>
<15> Q. That is, outside this room, do you mean?
<16> A. Yes.
<17>
<18> Q. What did he say to you?
<19> A. He just said that he was going to walk in and he was
<20> going to breathe into the machine.
<21>
<22> Q. Did he tell you why he was going to do that?
<23> A. No. He just told me not to tell anyone.
<24>
<25> Q. So that happened before you came into the room the
<26> first time; is that what you mean?
<27> A. Yes.
<28>
<29> Q. As a result of that, you understood that when you came
<30> into the room, eventually supposedly to blow into the tube,
<31> it would be the police officer who would in fact blow into
<32> it; is that right?
<33> A. Yes.
<34>
<35> Q. Did he say anything about there being a camera in the
<36> room?
<37> A. He said there was a camera in the room, yeah.
<38>
<39> Q. Did he say anything about what, if anything, he was
<40> going to do about the camera being in the room?
<41> A. Oh, I think he just said he was going to stand where
<42> he was standing, I suppose.
<43>
<44> Q. I don't want you to guess at this because, as you can
<45> imagine, it's fairly important. Do you remember him saying
<46> something about how the camera might be dealt with?
<47> A. He just said he was going to have his back to this

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> wall, which was where the camera was.
< 2>
< 3> Q. All right. As we look at the screen now at 0400:47 it
< 4> would seem that Mark's back is to the camera?
< 5> A. Yes.
< 6>
< 7> Q. And the two of you are crouched over with your heads
< 8> almost touching?
< 9> A. Yes.
<10>
<11> Q. And you were aware when that happened, as you say,
<12> I gather, as a result of what Mark had previously said,
<13> that something like that physical arrangement needed to
<14> happen because of the camera; is that right?
<15> A. Yes.
<16>
<17> Q. I've put a lot of words in that question. Are you
<18> content that what you've just said completely accurately
<19> describes what happened there?
<20> A. Yes.
<21>
<22> MR STAEBLI: Could the recording be run on, please.
<23>
<24> (DVD played)
<25>
<26> And stopped about there.
<27>
<28> Q. After the tube had been blown into, as you perhaps are
<29> aware, the machine records something about the breath of
<30> the person who has blown into it?
<31> A. Yes.
<32>
<33> Q. Did you and Mark have any conversation about what had
<34> been recorded on the machine at around that time?
<35> A. No.
<36>
<37> Q. Was it pointed out to you what the reading was on the
<38> machine?
<39> A. It was when we went back into the other room.
<40>
<41> Q. So when you were back in the charge room, is that
<42> where you mean, the counter area where the dock was?
<43> A. Yes, that's where I remember being told it was zero.
<44>
<45> Q. By whom?
<46> A. By Mark.
<47>

.16/5/08 (3)

P-179

A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Are you sure of that?
< 2> A. Yeah, he was typing it it into the computer. I'm
< 3> pretty sure it was him.
< 4>
< 5> Q. So at this point, which is just after the breathing in
< 6> the tube with the two of you, it would seem, looking over
< 7> the machine, he didn't tell you then what the reading was?
< 8> A. I don't remember him telling me there, no.
< 9>
<10> Q. Did he tell you anything about whether or not the
<11> reading was okay or it had worked or anything like that?
<12> A. No, I don't think so. I don't remember it.
<13>
<14> MR STAEBLI: Could the recording be run on from where it
<15> is now, 0400:58.
<16>
<17> (DVD played)
<18>
<19> Q. Then as we saw when it was previously played, you went
<20> back and stood in the doorway of the room watching what
<21> Mark was doing, which was apparently doing something with
<22> the machine?
<23> A. Yeah.
<24>
<25> Q. You stayed there for a little while and then at about
<26> 0401:30, or a little after, 0401:35, you walked slowly back
<27> over to the machine where Mark was and the two of you stood
<28> near the desk?
<29> A. Yeah.
<30>
<31> Q. Do you remember any of the conversation, if there was
<32> any, that took place then?
<33> A. I don't remember a conversation. I don't think there
<34> was one.
<35>
<36> Q. You were just standing there watching whatever it was
<37> he was doing with paperwork and the machine; is that right?
<38> A. Yeah.
<39>
<40> Q. While it is playing, I might just ask you about
<41> something which is coming up which you saw when it was
<42> previously played, which is that other police officer
<43> apparently with blond hair who came in. Do you remember
<44> you saw him come into the room?
<45> A. Yes.
<46>
<47> Q. I asked you whether or not you new him and you said

.16/5/08 (3)

P-180

A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> you knew him by sight, I think?
< 2> A. Yes, if it is the one I thought --
< 3>
< 4> Q. Do you remember what, if anything, was said when that
< 5> officer came into the room?
< 6> A. I think he was asking about the lift home I was
< 7> getting, because I didn't have any keys or anything on me
< 8> anymore because Lindsay's house keys were on them, so I
< 9> gave them straight to her.
<10>
<11> Q. So, what, asking you about whether or not you needed a
<12> lift home, do you mean?
<13> A. Yes.
<14>
<15> Q. You understood that one of the officers was going to
<16> drive you home when these events were over; is that right?
<17> A. Yeah.
<18>
<19> Q. Was it that officer who came in who was the one who
<20> did eventually drive you home?
<21> A. Yes.
<22>
<23> Q. Do you think it would help you if I mentioned the name
<24> of that officer to remember whether or not it was him who
<25> came into the room then?
<26> A. Oh, I'm pretty certain it's him. It looks like him.
<27>
<28> Q. Jeremy Commins?
<29> A. Yes.
<30>
<31> Q. Do you know that to be his name, now I've mentioned it
<32> to you?
<33> A. Yes.
<34>
<35> Q. That's 0404:20. You say that at that stage you did
<36> not know that the reading the machine showed was zero?
<37> A. Oh, I assumed it was.
<38>
<39> Q. You assumed it was. All right. Yes, I think it's
<40> unnecessary to play the remainder of the recording again.
<41> Thank you. That might be stopped. Thank you. After that,
<42> as you've already told us, you went back into the charge
<43> room where you'd first been when Lanser had brought you in
<44> and you'd met Mark; is that right?
<45> A. Yes.
<46>
<47> Q. Do you remember what happened there?

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. He typed some things into his computer and more or
< 2> less said everything was right and I got my stuff back.
< 3>
< 4> Q. Was it there that he mentioned what the reading on the
< 5> machine had been?
< 6> A. Yeah. Well, he mentioned it when he was typing it
< 7> into the computer.
< 8>
< 9> Q. And said that it was zero or nought, or whatever?
<10> A. Yes.
<11>
<12> Q. Did he actually tell you that? Did he say that it
<13> was --
<14> A. That it was zero?
<15>
<16> Q. Yes.
<17> A. Yes.
<18>
<19> Q. I suppose that you had some appreciation about the
<20> significance of what had just happened?
<21> A. Yes.
<22>
<23> Q. Did you have any conversation with Mark concerning the
<24> significance of what had just happened?
<25> A. Only not to say anything to anyone because no-one
<26> else - from what he said, I assumed no-one else knew
<27> because he said not to mention it to the other officers or
<28> my dad.
<29>
<30> Q. That's something that Mark said to you --
<31> A. Yes.
<32>
<33> Q. -- in that charge room after the event - is that right
<34> - after you'd been to the machine?
<35> A. Before.
<36>
<37> Q. Before?
<38> A. Before the machine, yeah.
<39>
<40> Q. I'm sorry. That was a conversation that happened
<41> before you went into the room and he used the tube; is that
<42> right?
<43> A. Yes. That's correct.
<44>
<45> Q. At the end of what happened in the charge room, during
<46> that time after he'd used the tube and you were in the
<47> charge room and he was typing into the machine, did he say

.16/5/08 (3)

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> anything else about keeping it a secret or something like
< 2> that?
< 3> A. No, because I was - oh, from what he'd said before,
< 4> I don't think anything else --
< 5>
< 6> Q. Had to be said?
< 7> A. -- had to be said.
< 8>
< 9> Q. Then not that long after you were free to go, it
<10> seems; is that right?
<11> A. Yes.
<12>
<13> Q. You got back your property --
<14> A. Yeah.
<15>
<16> Q. -- and were driven towards home by that other officer,
<17> Commins, apparently; is that right?
<18> A. Yes.
<19>
<20> Q. Did you actually go home?
<21> A. I went to Lindsay's house, which is where I was
<22> supposed to be staying, yeah.
<23>
<24> Q. You were dropped off there sometime around or after -
<25> well, in the early morning still?
<26> A. Yes, it was still in the very early morning, yeah.
<27>
<28> Q. Was it dark still?
<29> A. It was a bit, yeah. It was dark.
<30>
<31> Q. Between the time when you'd spoken to your father on
<32> the telephone at the site being pulled over and getting
<33> back to Lindsay's place --
<34> A. Yeah.
<35>
<36> Q. -- an hour or two later, whatever it was, did you
<37> speak to your father on the telephone again?
<38> A. No, I don't think so.
<39>
<40> Q. Did you have a phone with you yourself?
<41> A. I did, yeah.
<42>
<43> Q. Was it working?
<44> A. It was working.
<45>
<46> Q. But so far as you can recall, you didn't have any
<47> conversation with your father that night other than the

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> time you were pulled over?
< 2> A. Yes, not until the next stage --
< 3>
< 4> MR TAYLOR: Can I object at this stage. That's now twice
< 5> that counsel assisting has said when he was pulled over.
< 6> My recollection of what the witness said is when he was
< 7> pulled over a conversation took place with Constable
< 8> Lanser. Then he was taken back to the station and it was
< 9> as he was going into the station --
<10>
<11> MR STAEHLI: That's true, yes.
<12>
<13> THE WITNESS: That's when I talked to him.
<14>
<15> MR STAEHLI: That's the event I'm referring to.
<16>
<17> MR TAYLOR: Could that be made perfectly clear.
<18>
<19> THE WITNESS: So from the first time --
<20>
<21> MR STAEHLI: Q. From the first time until you were
<22> dropped off?
<23> A. -- until I was dropped off, no, I didn't speak to him.
<24> I didn't speak to him until the next day when I was at
<25> work.
<26>
<27> Q. All right. By "the next day" do you mean --
<28> A. Oh, the same day, but later on.
<29>
<30> Q. The same day?
<31> A. Yeah.
<32>
<33> Q. A few hours later?
<34> A. Yeah, when I was working.
<35>
<36> Q. You knew that at the time, that is, on the night in
<37> question when you were at the police station, your father
<38> was on the Central Coast?
<39> A. Yeah, he was at nan and pop's house with his mate.
<40>
<41> Q. But that he was coming and did come back on that
<42> following --
<43> A. He came back straightaway --
<44>
<45> Q. On the day, the next day - the same day?
<46> A. Yes, he came back straightaway.
<47>

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you tell him, when you did get a chance to talk to
< 2> him, what had happened?
< 3> A. No, I still haven't told him the full truth. I've
< 4> only told him the story I've told --
< 5>
< 6> Q. The investigators?
< 7> A. The investigator just there (indicating).
< 8>
< 9> Q. By that, do you mean that you told your father that
<10> you, yourself, had blown in the tube of the machine?
<11> A. Yes, I told him that.
<12>
<13> Q. Are you sure about?
<14> A. I'm certain of that.
<15>
<16> Q. Other than speaking to your father, have you spoken to
<17> any other police officer about what happened that night in
<18> relation to Mark, the officer, having blown into the tube?
<19> A. No, I haven't.
<20>
<21> MR STAEHLI: Commissioner, that ends the questions I would
<22> like to ask Mr Clunes at the moment.
<23>
<24> THE COMMISSIONER: At this stage?
<25>
<26> MR STAEHLI: Thank you.
<27>
<28> THE COMMISSIONER: You envisage Mr Clunes being recalled
<29> at some stage?
<30>
<31> MR STAEHLI: It's a possibility. It would depend upon how
<32> the other evidence flows today, so to that end, I would
<33> like him to remain today, at least for the time being.
<34>
<35> THE COMMISSIONER: I just mention at this stage I won't
<36> invite any other questioning. We can review that. If you
<37> don't call him back, he can be called back if somebody
<38> wants to ask questions other than yourself.
<39>
<40> MR STAEHLI: Yes, thank you.
<41>
<42> THE COMMISSIONER: Q. You can just step down for the
<43> moment, thanks, Mr Clunes. You can stay in the hearing
<44> room, if you like, but don't believe the precincts of the
<45> hearing room or the building at the moment. Okay?
<46> A. Okay.
<47>

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A J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> MR STAEHLI: Commissioner, although it wasn't necessarily
< 2> planned, I would like to ask you for a short adjournment at
< 3> this stage just so we can review --
< 4>
< 5> THE COMMISSIONER: That's all right, Mr Staehli. You can
< 6> indicate when you're ready to return.
< 7>
< 8> MR STAEHLI: Thank you.
< 9>
<10> THE COMMISSIONER: We will adjourn.
<11>
<12> <THE WITNESS WITHDREW
<13>
<14> SHORT ADJOURNMENT
<15>
<16> THE COMMISSIONER: Mr Murray?
<17>
<18> MR MURRAY: I wonder if I might seek authorisation to
<19> appear for Mr Benson.
<20>
<21> THE COMMISSIONER: Yes, that authority is granted to you.
<22> Thank you, Mr Murray. I take it you've been filled in as
<23> to where we're at in the stage of things?
<24>
<25> MR MURRAY: Yes, thank you, Commissioner.
<26>
<27> THE COMMISSIONER: Yes, Mr Staehli.
<28>
<29> MR STAEHLI: I propose to call Kate Lanser now,
<30> Commissioner.
<31>
<32> MR TAYLOR: I can indicate Ms Lanser will be taking an
<33> oath on the bible and will be seeking a declaration.
<34>
<35> THE COMMISSIONER: Thank you Mr Taylor.
<36>
<37> <KATE LOUISE LANSER, sworn: [11.34am]
<38>
<39> THE COMMISSIONER: Q. Just take a seat for the moment,
<40> thank you, Ms Lanser. Just for the formalities, Ms Lanser,
<41> could you tell us your full name, rank and station if
<42> applicable, thanks?
<43> A. Kate Louise Lanser, constable, Orange police.
<44>
<45> Q. Ms Lanser, before the hearing proceeds any further,
<46> there are a number of matters I need to bring to your
<47> attention which Mr Taylor no doubt has alluded to and

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K L LANSER

Transcript produced by Merrill Legal Solutions

< 1> discussed with you, but I'll go through them with you again
< 2> in any event.

< 3>
< 4> You need to understand you must answer all questions
< 5> that are asked of you here unless I tell you that you do
< 6> not have to answer. You should also understand that you're
< 7> entitled to object to giving an answer. If you do object,
< 8> you must nevertheless give the answer, but the answer you
< 9> give is not admissible in evidence against you any in civil
<10> or criminal proceedings except for a prosecution for giving
<11> false or misleading evidence at a hearing of Commission
<12> that you knew to be false or misleading in a material
<13> particular; secondly, a prosecution for an offence which
<14> may have committed or you may commit under the legislation
<15> governing this Commission; and, thirdly, proceedings for
<16> contempt of the Commission under that legislation.

<17>
<18> Given your position as a member of NSW Police Force,
<19> the evidence you give at this hearing may also be used
<20> where the Commissioner of Police is deciding whether or not
<21> to make an order under section 173 of the Police Act in
<22> relation to allegations of misconduct or unsatisfactory
<23> performance or under section 181D of the Police Act for
<24> your summary removal as a police officer or under
<25> section 183A of that Act for revocation of a promotional
<26> appointment because of misconduct in obtaining the
<27> promotion and in any proceedings for review of such orders
<28> that I've just mentioned above.

<29>
<30> To avoid the need for you to object to answering each
<31> individual question that's asked of you, I'm able to make a
<32> declaration that Mr Taylor has indicated he seeks on your
<33> behalf that all the answers you give shall be regarded as
<34> having been given on objection so you don't have to object
<35> to each question. Do you understand what I've just said?

<36> A. Yes I do.

<37>
<38> THE COMMISSIONER: I make a declaration pursuant to
<39> section 41 of the Police Integrity Commission Act that all
<40> answers given by this will be regarded as having been given
<41> on objection by the witness.

<42>
<43> Q. As I've indicated before, the microphone is just there
<44> for recording, not amplifying, so make sure you don't move
<45> too far back.

<46> A. Yes.

<47>

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K L LANSER

Transcript produced by Merrill Legal Solutions

< 1> <EXAMINATION BY MR STAEHLI:
< 2>
< 3> MR STAEHLI: Q. Ms Lanser, it was you, together with
< 4> Constable Hall, who pulled over Adam Clunes on 21 December
< 5> 2007; is that right?
< 6> A. Yes.
< 7>
< 8> Q. Could you just briefly describe, please, what happened
< 9> after you'd stopped him?
<10> A. I got out of the car and approached the vehicle, where
<11> I saw that it was Adam Clunes. He was tested, which gave
<12> an indication of alcohol. I returned to the police vehicle
<13> and obtained a tube. I then returned back to where Adam
<14> was and retested him to give a reading. I asked him what
<15> his dad would say and said I would contact him and let him
<16> know. Adam's phone was flat so he was unable to provide me
<17> with his dad's mobile number so I called his mum, who gave
<18> me his dad's mobile number, and I called him and he was
<19> then taken back to the police station.
<20>
<21> Q. Did those calls that you made to Adam Clunes's home
<22> and speaking to his mother and then speaking to
<23> Colin Clunes happen at the roadside?
<24> A. Yes.
<25>
<26> Q. On your personal mobile phone?
<27> A. Yes.
<28>
<29> Q. As is plain perhaps from what you've said, you
<30> recognised Adam Clunes presumably from the time you
<31> approached him as he was seated in the car that you had
<32> stopped?
<33> A. Yes.
<34>
<35> Q. How well did you know him?
<36> A. Only to be Colin Clunes's son. He's come to the
<37> station for a lift home, and things like that. That was my
<38> only recollection of who he was.
<39>
<40> Q. What had been your contact with Colin Clunes in the
<41> work environment?
<42> A. He was my team supervisor whilst I was a probationary
<43> constable.
<44>
<45> Q. Had that supervision ended at some earlier time before
<46> 21st --
<47> A. I swapped teams.

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. When was that?
< 3> A. I think it was May or June.
< 4>
< 5> Q. 2007?
< 6> A. 2007, yes.
< 7>
< 8> Q. That was when you'd ceased being a probationary
< 9> constable, was it, around then?
<10> A. No, that was 1 September I ceased being probationary.
<11>
<12> Q. So you'd ceased your probation for about almost
<13> four months at the time of this incident of the stopping of
<14> Adam Clunes; is that right?
<15> A. That's correct, yes.
<16>
<17> Q. It was apparently your suggestion or decision that
<18> Colin Clunes should be notified?
<19> A. Yes.
<20>
<21> Q. Why did you decide that?
<22> A. Courtesy.
<23>
<24> Q. Courtesy? All right. Prior to this, had there been
<25> any other bringing to notice amongst police at Orange as to
<26> Colin Clunes's opinion about what happened when his son was
<27> charged with traffic offences?
<28> A. Sorry, could you rephrase what you --
<29>
<30> Q. Let me put it another way. Had anything come to your
<31> notice before 21 December which encouraged you to think it
<32> would be a good idea to call Colin Clunes?
<33> A. Yes.
<34>
<35> Q. What was that?
<36> A. Adam had been given traffic infringement notices.
<37>
<38> Q. When was that, do you recall?
<39> A. Prior to this occasion. A number of months. I don't
<40> not the exact time.
<41>
<42> Q. Some months before?
<43> A. Possibly, yes.
<44>
<45> Q. How had those infringements come to your notice?
<46> A. I had heard around the station.
<47>

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. What, that Adam Clunes had received some traffic
< 2> infringement notices?
< 3> A. Yes.
< 4>
< 5> Q. Did you hear anything about Colin Clunes's attitude to
< 6> those events?
< 7> A. Yes.
< 8>
< 9> Q. What did you hear?
<10> A. He wasn't happy about it.
<11>
<12> Q. He wasn't happy about it. Did you hear him express
<13> such views yourself personally?
<14> A. Yes.
<15>
<16> Q. Whereabouts?
<17> A. In the station.
<18>
<19> Q. Can you tell us what the effect of his expressions of
<20> unhappiness was? Can you tell us the words that he said,
<21> for example, on the occasion or occasions that you heard
<22> him say something about these matters?
<23> A. I don't recall the exact words, no.
<24>
<25> Q. But in any event, he expressed unhappiness; is that
<26> what you're saying?
<27> A. Yes.
<28>
<29> Q. I suppose conceivably any parent might be unhappy at
<30> his son being charged with anything. Did it go beyond what
<31> you regarded as being typical parent-like behaviour?
<32> A. No, probably not. Any parent would possibly be the
<33> same. I don't know. I'm not a parent myself, so --
<34>
<35> Q. Was any of Mr Clunes's unhappiness directed towards
<36> the police officer who had issued the the traffic
<37> infringement notices to his son?
<38> A. Yes.
<39>
<40> Q. Could you describe how that was so directed?
<41> A. It is my belief that he was issued with two tickets.
<42> He just thought it was a bit unfair he got two rather than
<43> one, I believe was the issue.
<44>
<45> Q. So Colin Clunes, you mean, thought it was a bit unfair
<46> that his son had got two infringement notices rather than
<47> one on this prior occasion; is that right?

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. That was my understanding of it, yes.
< 2>
< 3> Q. To your knowledge, was that view expressed to the
< 4> police officer who had caused those infringement notices to
< 5> issue?
< 6> A. I don't know. Not in my presence it wasn't.
< 7>
< 8> Q. So to go back to the start of that topic about such
< 9> unhappiness, are you saying that that was in your mind at
<10> the time that you thought it would be appropriate to
<11> contact Colin Clunes about his son having been pulled over
<12> by you?
<13> A. Yes, I am.
<14>
<15> Q. After calling home, you then got to talk to
<16> Colin Clunes by ringing him on his mobile phone; is that
<17> right?
<18> A. I believe it was his mobile phone, yes.
<19>
<20> Q. On a number you had been given by his wife in any
<21> event; is that right?
<22> A. Yes.
<23>
<24> Q. When you spoke to him, what did you tell him?
<25> A. I don't recall the exact conversation, but I believe
<26> I told him that we'd pulled Adam over and he'd registered a
<27> reading.
<28>
<29> Q. At some stage during that phone call, did Adam speak
<30> to his father, as far as you can --
<31> A. I don't know if it was the same call or if I called
<32> him again so Adam could speak to him.
<33>
<34> Q. In the call that you had, this first call you're
<35> talking about, do you remember what Colin Clunes said to
<36> you as a result of what you'd said to him?
<37> A. Not in the first - in the first call - I don't recall
<38> which call it was --
<39>
<40> Q. All right.
<41> A. -- which conversation.
<42>
<43> Q. You had a number of calls over the course of the next
<44> hour or two; is that right?
<45> A. I know there was more than one.
<46>
<47> Q. Yes.

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. I don't know how many there were --
< 2>
< 3> Q. All right.
< 4> A. -- from my recollection.
< 5>
< 6> Q. You had then more than one conversation with
< 7> Colin Clunes?
< 8> A. If I've called - yes.
< 9>
<10> Q. I mean, there are calls, of course, some of them might
<11> involve messages or voicemail. Did you actually speak to
<12> him on those calls on more than one occasion?
<13> A. I believe so, yes.
<14>
<15> Q. At any stage did he make any suggestion to you about
<16> what should happen in relation to Adam?
<17> A. I don't think he made any suggestion, no.
<18>
<19> Q. Did he say anything about the course of events that
<20> was to happen?
<21> A. That was to happen?
<22>
<23> Q. Yes.
<24> A. No, I don't believe so.
<25>
<26> Q. Did he suggest to you anything about what might happen
<27> to Adam if the charges proceeded?
<28> A. He said, "Katie, he'll lose his licence. He'll lose
<29> his job."
<30>
<31> Q. "He'll lose his licence. He'll lose his job"?
<32> A. I can't quote that, but it's something along those
<33> lines.
<34>
<35> Q. Did he suggest to you that you should do something
<36> about that?
<37> A. Not to my knowledge, no.
<38>
<39> Q. Do you remember giving evidence before this Commission
<40> on some earlier occasion?
<41> A. I do, yes.
<42>
<43> Q. I want to show you a page from the transcript of that
<44> occasion. Would you look at this page of transcript,
<45> please, page 22. (Shown to witness).
<46>
<47> MR TAYLOR: Might I seek access to a copy of that,

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Commissioner? Could I seek access to a copy of that
< 2> document?
< 3>
< 4> THE COMMISSIONER: I heard you, Mr Taylor. You don't want
< 5> to just play it at this stage, Mr Staehli?
< 6>
< 7> MR STAEHLI: Could I just ask this question first and see
< 8> where we go with that, please?
< 9>
<10> THE COMMISSIONER: Yes.
<11>
<12> MR STAEHLI: Q. Could I direct your attention to that
<13> page starting at line 8, please, Ms Lanser, and ask you to
<14> read down about halfway down the page.
<15> A. Would you like me to read it aloud or just to myself?
<16>
<17> Q. No, just to yourself, thank you. Have you had a
<18> chance to read line 17?
<19> A. Yes, and that's correct.
<20>
<21> Q. Did he say to you, "You've got to do something,
<22> Katie"?
<23> A. Yes, he did. He didn't say what.
<24>
<25> Q. I'm not suggesting that. He did say something to the
<26> effect, "You've got to do something, Katie. He'll lose his
<27> licence"?
<28> A. Yes, he did.
<29>
<30> Q. You've just said that he didn't suggest anything?
<31> A. He didn't suggest what to do, no.
<32>
<33> Q. What to do. Did you believe that he wanted you to do
<34> something?
<35> A. Yes.
<36>
<37> Q. What did you believe that he wanted you to do?
<38> A. I don't know.

<39>
<40> Q. Did you believe that he wanted you to do something
<41> which would result in Adam not losing his licence?
<42> A. Yes.
<43>
<44> Q. Of the options which were open to you, if any --
<45> A. Sorry?
<46>
<47> Q. Of the options which were open to you in that regard,

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> that is, to do something which would result in Adam not
< 2> losing his licence, could you think of any at that stage?
< 3> A. This was on the way back to the station. I believe it
< 4> was, "Don't take him back to the station."
< 5>
< 6> Q. When you say you believe it was "don't take him back
< 7> to the station" --
< 8> A. That would be my own perception of it. I don't - I
< 9> can't say that's what it was, though.
<10>
<11> Q. Your own perception of what Mr Clunes meant, you mean?
<12> A. Yes.
<13>
<14> Q. Because you told him that you'd breath-tested his son?
<15> A. Yes.
<16>
<17> Q. And although that might permit certain things to
<18> happen, it meant that there was a record, apart from
<19> anything else, of the reading which his son had recorded on
<20> the alcoholiser machine?
<21> A. Yes.
<22>
<23> Q. And you knew that there was a record inside the
<24> machine of that reading?
<25> A. Yes.
<26>
<27> Q. After the conversation with Mr Clunes which you have
<28> just recorded or told us about, repeated, did you say
<29> anything to him about what it was that you were going to
<30> do?
<31> A. I believe I told him he was going back. It was - he
<32> was going back.
<33>
<34> Q. Were you upset?
<35> A. I was, yes.
<36>
<37> Q. Why?
<38> A. Because I knew Col was upset.
<39>
<40> Q. So because your work mate, previous supervisor, was
<41> upset and you'd detained his son, that caused you to be
<42> upset?
<43> A. Yes.
<44>
<45> Q. In any event, you took Adam Clunes back to the
<46> station?
<47> A. Yes.

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. You were with Constable Hall?
< 3> A. Yes.
< 4>
< 5> Q. Did you discuss with him the fact that you'd had a
< 6> conversation with Mr Clunes?
< 7> A. He was there when I was on the phone.
< 8>
< 9> Q. He would have heard your end of it, but by that I mean
<10> did you tell him what Mr Clunes had said to you?
<11> A. I don't know if I told him the exact words. I don't
<12> recall.
<13>
<14> Q. Did you tell him the effect of what Mr Clunes had
<15> said?
<16> A. Yes.
<17>
<18> Q. Did you discuss with Mr Hall whether or not there was
<19> anything that the two of you, or either of you, could do to
<20> change the course of what should happen?
<21> A. Not by the time we were back at the station, no.
<22>
<23> Q. Do you mean not before you got back to the station?
<24> A. No --
<25>
<26> Q. I'm sorry we're at cross-purposes. Did you have any
<27> conversation like that with Mr Hall in the car?
<28> A. No. At the scene we said, "He's going back anyway.
<29> These are our jobs. It's not worth it. There are two
<30> other people in the car. He's coming back."
<31>
<32> Q. Did you say, "It's not worth it"?
<33> A. "It's not worth losing our jobs," I think were the
<34> words.
<35>
<36> Q. By that did you mean, "If we did something improper,
<37> it would not be worth losing our jobs"; is that what you
<38> meant?
<39> A. Yes.
<40>
<41> Q. Can we conclude from that that your belief, rightly or
<42> wrongly, about what Mr Clunes had said was that he had
<43> implied that something improper might be done, such as not
<44> taking his son back to the station?
<45> A. That was my belief, yes.
<46>
<47> Q. Did he actually say or ask you not to take his son

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K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> back to the station?
< 2> A. I don't recall. I don't know. I know he asked who
< 3> took him back. I don't recall whether he asked "don't take
< 4> him back" or not.
< 5>
< 6> Q. What do you mean, that he misunderstood where you were
< 7> at the time of the call?
< 8> A. I don't know.
< 9>
<10> Q. But that's something that he said, is it?
<11> A. I believe so, yes.
<12>
<13> Q. When you got back to the station, where did you go
<14> with Mr Clunes?
<15> A. Into the charge room.
<16>
<17> Q. Was it just you who took him there?
<18> A. I don't remember. I believe we both would have walked
<19> him in.
<20>
<21> Q. Was there someone in the charge room?
<22> A. As in a prisoner or a police officer?
<23>
<24> Q. Police officer.
<25> A. I believe Mark Christie was in there.
<26>
<27> Q. Did he have a particular function in the station on
<28> that night?
<29> A. He was supervisor, custody manager and BAS operator.
<30>
<31> Q. And BAS operator. The blood alcohol machine, he was
<32> the operator who was there to do those tests that night; is
<33> that right?
<34> A. Yes, playing a role in all the positions.
<35>
<36> Q. I assume, perhaps wrongly, that you yourself weren't a
<37> trained BAS operator; is that correct? Is that right?
<38> A. That's not wrong. I'm not BAS trained.
<39>
<40> Q. Did you say anything to Mr Christie about Adam Clunes
<41> being Colin Clunes's son?
<42> A. I believe I made him aware of it, yes.
<43>
<44> Q. Did you have any discussion with him about your
<45> discussion with Colin Clunes?
<46> A. I think I said, "Clunesy's making me feel like a
<47> cunt."

.16/5/08 (3)

P-196

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Right. You think you said that to Christie?
< 3> A. I believe so, yes.
< 4>
< 5> Q. Was that a truthful expression of how you felt at that
< 6> time?
< 7> A. Yes.
< 8>
< 9> THE COMMISSIONER: Q. I take it that was Mr Clunes
<10> senior you were referring to?
<11> A. Yes.
<12>
<13> MR STAEBLI: Q. You meant as a result of the phone call?
<14> A. Yes.
<15>
<16> Q. Although your meaning might be plain, you meant that
<17> he was making you feel?
<18> A. Upset.
<19>
<20> Q. Upset, as opposed to making you feel like a bad
<21> person, or both?
<22> A. What do you mean "a bad person"?
<23>
<24> Q. Well, it's one thing to be upset, that is, feeling
<25> sorry for yourself as a result of what happened; it is
<26> another for the description that you gave Christie to mean
<27> it might mean that Colin Clunes had implied that you were
<28> doing wrong by him in taking his son back. What did you
<29> mean when you said that to Christie?
<30> A. Just that I felt bad about the whole thing.
<31>
<32> Q. You just felt bad about it. All right. Was there any
<33> discussion with Christie about what, if anything, might
<34> take place afterwards?
<35> A. Not to my - not that I can recall.

<36>
<37> Q. Did you ever have any discussion with Christie about
<38> the fact that he might blow in the BAS machine instead of
<39> Adam Clunes?
<40> A. I don't remember having a conversation about that, no.
<41>
<42> Q. Did you ever have any discussion with Christie about
<43> the fact that he had blown in the machine instead of
<44> Colin Clunes?
<45> A. No.
<46>
<47> Q. Did you talk to Christie at all on that morning in

.16/5/08 (3)

P-197

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Orange police station, having brought Adam Clunes back,
< 2> about how it was that Mr Clunes might be dealt with,
< 3> Mr Adam Clunes might be dealt with?
< 4> A. I'm sorry, what was the question?
< 5>
< 6> Q. Yes. Did you have any discussion with Christie on
< 7> that morning about how Adam Clunes might be dealt with
< 8> other than in the normal way?
< 9> A. Not that I can remember. I don't know. I don't think
<10> so.
<11>
<12> Q. I suggest to you that it would be pretty vivid in your
<13> memory, even having regard to the stress of those events
<14> and subsequently, if Mr Christie had said to you anything
<15> about doing something improper in relation to Adam Clunes?
<16> A. I don't think so, because I think by the time we had
<17> him back at the station, that was it, there was only the
<18> one course of action we could take. We made the decision
<19> to bring him back on the street, and that was how it was
<20> going to be.
<21>
<22> Q. Then at some stage, though, you found out, did you
<23> not, that Adam Clunes had tested, apparently or allegedly,
<24> zero on the BAS machine?
<25> A. Yes, I did.
<26>
<27> Q. When did you find that out?
<28> A. When I was sitting in the muster room.
<29>
<30> Q. Apparently not long after the test had taken place; is
<31> that right?
<32> A. I don't know what time - yes, I believe it was just
<33> after the test, yes.
<34>
<35> Q. So it's still around --
<36> A. I don't know what time it was.
<37>
<38> Q. -- the 4am mark, something like that?
<39> A. It possibly could have been. I don't know what time
<40> it was.
<41>
<42> Q. How did you find out?
<43> A. I was brought out the BAS certificate to the muster
<44> room.
<45>
<46> Q. By whom?
<47> A. Mark Christie.

.16/5/08 (3)

P-198

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Did he actually tell you what the test result was?
< 3> A. I don't think he did, no.
< 4>
< 5> Q. Did he show you the certificate?
< 6> A. He handed me the certificate and the custody records.
< 7>
< 8> Q. What happened after that?
< 9> A. I believe Adam Clunes was driven home and we resumed
<10> other duties.
<11>
<12> Q. Did you talk to any of the other officers other than
<13> Christie about what had happened?
<14> A. On that morning or --
<15>
<16> Q. Yes, firstly, on that morning, yes.
<17> A. On that morning? We didn't discuss the possibility of
<18> what had happened. We, I believe - I don't know if I spoke
<19> to Steve or Jeremy and said, "What's gone on there?", and
<20> they just said, "Don't know. Don't know."
<21>
<22> Q. You're giving that answer with a down-turned mouth and
<23> raised eyebrows, in effect, suggesting that --
<24> A. I didn't think the reading was right, but it wasn't
<25> discussed what could have happened, no.
<26>
<27> Q. So, to put it neutrally perhaps, there were some
<28> queries expressed about how it could have been that he'd
<29> registered zero when he'd registered 0.202 at the roadside;
<30> is that right?
<31> A. Yes.
<32>
<33> Q. When you said "Steve and Jeremy", you mean
<34> Constables Hall and Commins; is that right?
<35> A. Yes.
<36>
<37> Q. Do you remember there being any conversation about
<38> there being a camera in the BAS room?
<39> A. I remember some conversation. I don't know who it was
<40> with or where it was.
<41>
<42> Q. Do you remember any of the participants in that
<43> conversation?
<44> A. No.
<45>
<46> Q. No?
<47> A. Not 100 per cent, no, I don't.

.16/5/08 (3)

P-199

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Were you a participant in that conversation?
< 3> A. I don't recall being a participant. I recall being
< 4> there when it was - I remember hearing something about it.
< 5> I don't know whether it was a conversation or whether it
< 6> was a passing comment.
< 7>
< 8> Q. Were you aware that there was a camera in the
< 9> BAS room?
<10> A. Yes, I was.
<11>
<12> Q. How did you know that, just as a matter of interest?
<13> A. There's cameras throughout the entire charge area and
<14> cell complex.
<15>
<16> Q. Do you know whether or not Christie was a participant
<17> in that conversation?
<18> A. I don't know.
<19>
<20> Q. Do you know whether or not Hall was or Commins was?
<21> A. I don't remember. I remember there being a
<22> conversation. I couldn't for 100 per cent nominate,
<23> I don't believe.
<24>
<25> Q. Were there any other officers there at that time?
<26> A. The station officer which was Constable Commins.
<27> I don't recall there being anybody else. There may have
<28> been; I don't know.
<29>
<30> Q. Did you have any conversation with anyone about what
<31> Adam Clunes had said about his drinking that night?
<32> A. Sorry, did I have any conversation with what?
<33>
<34> Q. With anyone at the police station about what
<35> Adam Clunes had said he was drinking that night before you
<36> had detained him?
<37> A. I don't believe I had a conversation. It was written
<38> in the custody records. I don't believe I had a
<39> conversation with anyone.
<40>
<41> Q. At the time that you'd pulled him over and
<42> breath-tested him, had you had any conversation with him
<43> about what he had drunk that night?
<44> A. No, I don't think I did.
<45>
<46> Q. You would normally do so, would you not?
<47> A. I would, yes.

.16/5/08 (3)

P-200

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Why did you not on this occasion?
< 3> A. I don't know. It's the familiarity with him. I don't
< 4> believe I followed the steps I would usually take.
< 5>
< 6> Q. By the steps you'd usually take, I mean, as you've
< 7> said, you tested him, detected alcohol and then retested
< 8> him; is that right? You didn't ask him questions about how
< 9> much he'd been drinking?
<10> A. No. I don't believe I did. I don't recall if I did
<11> or not, but I don't think I did.
<12>
<13> Q. But for that, is there anything else that you would
<14> normally do which you did not do at the roadside?
<15> A. I believe - like I would usually say, "You're under
<16> arrest for the purpose of a breath analysis," and give a
<17> spiel and a caution. I don't believe I did either of those
<18> two things.
<19>
<20> Q. You say that was because you were familiar with Adam
<21> and, for whatever reason, didn't find it necessary to do
<22> those things?
<23> A. No.
<24>
<25> Q. After Adam Clunes had left to go home, did you again
<26> speak to Colin Clunes?
<27> A. I don't know if I spoke to him. I may have - I think
<28> I let him know that he'd been released without charge. I
<29> don't recall. I don't know.
<30>
<31> Q. You believe that happened but can't remember the
<32> circumstances?
<33> A. I think I let him know and he said he was coming back
<34> from the Central Coast or something.
<35>
<36> Q. Obviously you would have had to let him know by
<37> telephone call?
<38> A. That would be correct.
<39>
<40> Q. Could I ask you to look at a list of calls which is
<41> barcoded 7189562. This list, I ask you to accept,
<42> Ms Lanser, is taken from call charge records. I just want
<43> you to look at them firstly, and then I'll briefly take you
<44> to them. Can you see that all of them but the last one
<45> deal apparently with a period of time on 21 December 2007
<46> between 3.05am and 4.32am, ignoring the last call?
<47> A. That's what's typed there, yes.

.16/5/08 (3)

P-201

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Yes. Do you remember now that you detained
< 3> Adam Clunes at around about 3am or perhaps a little after?
< 4> A. It would have been around 3am, yes, because the first
< 5> call was 3.05.
< 6>
< 7> Q. Yes. I can show you the COPS record which contains
< 8> more information, if necessary, but there, assuming the
< 9> list to be an accurate reflection of the records, we can
<10> see that your mobile phone called the Clunes's home phone.
<11> That's what you said you did first; is that right?
<12> A. That's correct, because Adam's phone was flat and he
<13> didn't know his dad's mobile so I contacted Vicky who
<14> provided it to me.
<15>
<16> Q. Then a few minutes later, 3.08, your phone rang
<17> Colin Clunes's mobile apparently?
<18> A. That's correct, and it rang out so I tried again
<19> straightaway.
<20>
<21> Q. And on that third call on the list, it would seem then
<22> that you had a conversation with him lasting a minute and
<23> 16 seconds, or so, and this was the first occasion that you
<24> had a chance to tell him what had happened to his son; is
<25> that right?
<26> A. That's correct.
<27>
<28> Q. And then 10 minutes later it would seem he rang you
<29> back and, judging by the length only, it would seem that
<30> you had another conversation with him. Do you see that?
<31> A. That's what it would appear to be, yes.
<32>
<33> Q. And then three minutes later, 3.21, another call
<34> lasting a bit over two minutes; do you see that?
<35> A. Yes.
<36>
<37> Q. And then following that, there are four brief calls,
<38> apparently coming from him, perhaps him leaving a message
<39> causing you to access your voicemail in relation to each
<40> set of those calls - 3.34, 3.35, 3.44, 3.45; do you see?
<41> A. That would be what it appears, yes.
<42>
<43> Q. And then at 4.14, which according to the camera in the
<44> BAS room was about a quarter of an hour or so after the
<45> test of Adam Clunes, you called his mobile briefly and then
<46> 11 minutes later called it and it would seem had a
<47> conversation, having regard to the duration of the call,

.16/5/08 (3)

P-202

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> being slightly in excess of two minutes; do you see that?
< 2> A. Sorry, what was the question?
< 3>
< 4> Q. It would seem that after the event, in the way that
< 5> you've mentioned, you did have a conversation with
< 6> Colin Clunes, probably at 4.25, in which you got to speak
< 7> to him.
< 8> A. That's would be what it appears, yes.
< 9>
<10> Q. Can we conclude from your evidence that it was at
<11> around that time that you told him that his son had been
<12> made free to go?
<13> A. I presume so. I couldn't 100 per cent agree with
<14> that, but I would presume that that would be what it was,
<15> yes.
<16>
<17> Q. Did you have any opinion about whether or not
<18> something unusual had happened in relation to the BAS
<19> testing of Adam Clunes?
<20> A. I had an opinion, yes.
<21>
<22> Q. What was your opinion?
<23> A. That it wasn't correct.
<24>
<25> Q. Did you have any opinion as to how it had transpired
<26> that he had blown zero or that it had been recorded that
<27> he'd blown zero?
<28> A. No, I didn't.
<29>
<30> Q. Is it the case, then, that you had some suspicions
<31> about the possibility that something improper had happened?
<32> A. Yes.
<33>
<34> Q. Did you have any idea about what it could have been?
<35> A. Not to my knowledge, no; not at the time, no.
<36>
<37> Q. Did you ever hear anything about whether or not
<38> Christie had stood in a way in the BAS room which had
<39> obscured the coverage of the camera there at the time that
<40> he was testing Adam Clunes?
<41> A. Not until I came here the first time.
<42>
<43> Q. When you spoke to Colin Clunes after his son had been
<44> let go, did you say anything to him about the
<45> circumstances?
<46> A. I don't believe so, no.
<47>

.16/5/08 (3)

P-203

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you deliberately not say anything to him about the
< 2> circumstances?
< 3> A. Not that I recall. Possibly.
< 4>
< 5> Q. If at the time you were suspicious in the way that
< 6> you've said you were, is it something that you felt you
< 7> should keep to yourself or was it something that you
< 8> expressed to others?
< 9> A. Possibly the less that you know the better. I don't
<10> know.
<11>
<12> Q. In any event, you say that you didn't actually know
<13> anything about what had happened?
<14> A. Not for sure, for certain, no, I didn't.

<15>
<16> MR STAEHLI: I have no further questions at the moment for
<17> Ms Lanser.
<18>
<19> THE COMMISSIONER: Thank you, Mr Staehli. Does anybody
<20> else have any questions at this stage? Mr Taylor?
<21>
<22> MR TAYLOR: I have no questions, thank you,
<23> Mr Commissioner.
<24>
<25> THE COMMISSIONER: Q. Ms Lanser, just to recap, as
<26> of December last year, how long had you been a police
<27> officer?
<28> A. I graduated from the academy on 1 September 2006, so
<29> just short of 16 months, I believe.
<30>
<31> Q. Were you initially posted to Orange?
<32> A. Yes, I was.
<33>
<34> Q. So up until this event in December last year, all your
<35> service had been at Orange; is that right?
<36> A. Yes, still has been, yes.
<37>
<38> Q. Prior to this event on the 21st, had you had occasion,
<39> not only in relation to random breath-testing, but in any
<40> way relating to the exercise of your duties as a police
<41> officer, to encounter friends or relatives or people you
<42> knew?
<43> A. I've lived in Orange my entire life, I was born there,
<44> so I've come across numerous people I know.
<45>
<46> Q. But in circumstances where, say, in relation to
<47> Mr Clunes you may have had to carry out some process that

.16/5/08 (3)

P-204

K L LANSER (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> may have at the end of it charging or something like that?
< 2> A. I can't think of any offhand, but I believe I have,
< 3> yes.
< 4>
< 5> Q. All right.
< 6> A. I can't give a name or --
< 7>
< 8> Q. In those circumstances, is there anything different
< 9> that you have done in those matters that you can think of
<10> with a relative --
<11> A. I can't think of any offhand, so --
<12>
<13> Q. Were you --
<14> A. I can't answer that question.
<15>
<16> Q. I am sorry, you can't think of any --
<17> A. I can't think of any offhand. I'm sure I have, but I
<18> can't think of any at the present to answer the question.
<19>
<20> THE COMMISSIONER: I don't think there's anything arising.
<21> You can step down for the moment, thanks, Ms Lanser. We
<22> won't discharge you for the moment. You can stay in the
<23> hearing room, or in the precincts of the building at least.
<24> It is a matter for you.
<25>
<26> <THE WITNESS WITHDREW
<27>
<28> THE COMMISSIONER: Mr Staehli?
<29>
<30> MR STAEHLI: Colin Clunes, please.
<31>
<32> THE COMMISSIONER: Mr Clunes, as I've indicated before, it
<33> is not a court, but nonetheless you give your evidence on
<34> oath or affirmation. I take it you're comfortable with the
<35> oath?
<36>
<37> MR CLUNES: Yes.
<38>
<39> <COLIN JAMES CLUNES, sworn: [12.13pm]
<40>
<41> THE COMMISSIONER: Q. Just take a seat there for the
<42> moment, thank you, Mr Clunes. Just for the purpose of
<43> formalities, Mr Clunes, could you tell us your full name
<44> rank and station, if applicable?
<45> A. Colin James Clunes, as previously said, C-L-U-N-E-S.
<46> I'm a leading senior constable stationed at Orange.
<47>

.16/5/08 (3)

P-205 C J CLUNES

Transcript produced by Merrill Legal Solutions

< 1> THE COMMISSIONER: Mr Madden, I take it you've had an
< 2> opportunity to have a conversation with Mr Clunes?
< 3>
< 4> MR MADDEN: I have, Commissioner, and he asks for a
< 5> declaration.
< 6>
< 7> THE COMMISSIONER: Q. Mr Clunes, what I'm about to say
< 8> to you may be repetitive because you may have discussed
< 9> this with Mr Madden, but I'll go through it, nonetheless.
<10> A. That's fine, your Honour.
<11>
<12> Q. I want you to understand that you have to answer all
<13> questions that are asked of you here, unless I tell you
<14> that you do not have to answer. You should also understand
<15> that you are entitled to object to giving an answer. If
<16> you do object, you must, nevertheless, give the answer, but
<17> the answer you give is not admissible in evidence against
<18> you in any civil or criminal proceedings, but there are
<19> some exceptions to that: firstly a prosecution for giving
<20> false or misleading evidence at a hearing of the Commission
<21> that you knew to be false or misleading in a material
<22> particular; secondly, a prosecution for an offence which
<23> you may have committed or you may commit under the
<24> legislation governing this Commission; and, thirdly,
<25> proceedings for contempt of the Commission under that
<26> legislation.
<27>
<28> Given your position as a member of the NSW Police
<29> Force, the evidence you give at this hearing may also be
<30> used where the Commissioner of Police is deciding whether
<31> or not to make an order under section 173 of the Police Act
<32> in relation to allegations of misconduct or unsatisfactory
<33> performance or under section 181D of the Police Act for
<34> your summary removal as a police officer or under
<35> section 183A of that Act for revocation of a promotional
<36> appointment because of misconduct in obtaining the
<37> promotion and any proceedings for review of such orders
<38> that I've just mentioned above.
<39>
<40> To avoid the need for you to object to answering each
<41> individual question that's asked of you, I'm able to make a
<42> declaration, which Mr Madden has sought on your behalf,
<43> that all the answers you give shall be regarded as having
<44> been given on objection so you don't have to object to each
<45> individual question. Do you understand what I've just said
<46> to you?
<47> A. I understand, your Honour, yes.

.16/5/08 (3)

P-206

C J CLUNES

Transcript produced by Merrill Legal Solutions

< 1>
< 2> THE COMMISSIONER: I make a declaration pursuant to
< 3> section 41 of the Police Integrity Commission Act that all
< 4> answers given by this witness will be regarded as having
< 5> been given on objection by the witness.
< 6>
< 7> Q. As I previously indicated, Mr Clunes, just be mindful
< 8> of the microphone and don't move too far away?

< 9> A. Yes, your Honour.
<10>
<11> MR STAEHLI: Just before I start, can I tender that list
<12> of calls, please?
<13>
<14> THE COMMISSIONER: Yes. That was barcode 7189562 being a
<15> list of telephone calls. That document can be admitted and
<16> marked exhibit 2.
<17>
<18> EXHIBIT #2 LIST OF TELEPHONE CALLS, BARCODED 7189562
<19>
<20> <EXAMINATION BY MR STAEHLI:
<21>
<22> MR STAEHLI: Q. Mr Clunes, you first got to hear about
<23> your son being pulled over on 21 December 2007 when you
<24> received a phone call where you were on the Central Coast;
<25> is that right?
<26> A. That's correct, yes.
<27>
<28> Q. Was the first call that came through that you heard
<29> Kate Lanser?
<30> A. Yes, there was one call I missed. I missed the phone,
<31> because I believed it to be my mate's phone, and then the
<32> phone rang again and he let me know in no uncertain terms
<33> it was mine, so I answered it, yes.
<34>
<35> Q. It was Ms Lanser on the other end telling you that
<36> your son had been pulled over and breath-tested?
<37> A. It was Kate, yes.
<38>
<39> Q. Is that what she told you?
<40> A. That's what she told me, yes.
<41>
<42> Q. What did you say to her?
<43> A. I can't recall exactly. I was angry at the time,
<44> obviously - I'd just been woken up. I was angry with my
<45> son for him being out on a Thursday night before work.
<46> I can't really recall what I said, but I do - the last
<47> thing I did say to Kate - I said, "Kate, just do what

.16/5/08 (3)

P-207

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> you've got to do."
< 2>
< 3> Q. "Do what you've got to do"?
< 4> A. That's correct, yes.
< 5>
< 6> Q. Meaning what?
< 7> A. Do your job.
< 8>
< 9> Q. "Take him back and charge him, if appropriate," do you
<10> mean?
<11> A. Run the process and do whatever you have to do to
<12> follow the processes.
<13>
<14> Q. Did you say to her, as she has just recently said this
<15> morning, "You've got to do something, Katie. He'll lose
<16> his licence"?
<17> A. Yeah, I probably that.
<18>
<19> Q. Something like that?
<20> A. Yeah, I would have said that, I guess, yes.
<21>
<22> Q. By that did you intend her to understand that you
<23> meant she's got to do something which will stop him losing
<24> his licence?
<25> A. No. At that stage, as I said, I was angry, I was
<26> awakening up, and the last thing I said, "Kate, you've got
<27> to do what you've got to do."
<28>
<29> Q. That was the thing you said, but I gather you're
<30> accepting that you may have said something like, "You've
<31> got to do something, Katie. He'll lose his licence"?
<32> A. Possibly, yes.
<33>
<34> Q. And you're attributing the reason for saying that to
<35> your anger and the time of night, and so forth; is that the
<36> position?
<37> A. I am, yes.
<38>
<39> Q. So it was rash to say it, would you agree?
<40> A. I'd say so, yes.
<41>
<42> Q. But you say, whatever its intent, it was cured,
<43> in effect, by what you said last to her about having to do
<44> what she had to do, or words to that effect?
<45> A. Katie's a young officer. I just told Katie she has to
<46> do what she's got to do.
<47>

.16/5/08 (3)

P-208

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you want her to do something other than to do her
< 2> duty?
< 3> A. Not really. As I said, I told Katie, "Do what you've
< 4> got to do." We don't want things to happen to our sons,
< 5> but if the wrong thing's done, the wrong thing's done.
< 6>
< 7> Q. You said "not really". That implies that in the back
< 8> of your mind, if not in the front of it, was a question
< 9> mark over whether or not there was some way that your son
<10> could get out of it?
<11> A. Basically wishing it could all just go away.
<12>
<13> Q. Wishing it?
<14> A. Wishing it hadn't happened, basically.
<15>
<16> Q. Did you think you were in any position to influence
<17> Lanser in relation to making it go away?
<18> A. I don't think so. I'm senior to Kate, but there's a
<19> lot of senior police to Kate at the station.
<20>
<21> Q. Had you previously, in the way that she'd described,
<22> made your displeasure known in the station about
<23> infringement notices issued to your son?
<24> A. Yeah, that's correct.
<25>
<26> Q. What were the circumstances of that?
<27> A. Oh, just anger. I believed he was loaded up at the
<28> time, but I speak to that officer, there's no problems
<29> there.
<30>
<31> Q. When you say "loaded up", what do you mean?
<32> A. Oh, I don't know, police terms. We all know police
<33> terms - you give more tickets than you think - or some
<34> police you believe give more tickets than is necessary. I
<35> don't know.
<36>
<37> Q. Than is necessary?
<38> A. Yes.
<39>
<40> Q. What were the circumstances of your son's previous
<41> traffic offences?
<42> A. His traffic offences, he was pulled up for speeding,
<43> he didn't have a P-plate on.
<44>
<45> Q. Right.
<46> A. Yes.
<47>

.16/5/08 (3)

P-209

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. What notices were issued to him?
< 2> A. Speeding ticket and not display P-plates.
< 3>
< 4> Q. And not display P-plates?
< 5> A. That's right, yes.
< 6>
< 7> Q. I see. Which of those did you regard as involving a
< 8> loading up?
< 9> A. The P-plate.
<10>
<11> Q. Why, because he'd been caught for a speeding offence?
<12> A. The speed was over 30ks speed. He was going to lose
<13> his licence anyway and be dealt with. What's the point of
<14> taking money out of a young fella's pocket, that's all.
<15>
<16> Q. Having heard about this, you say you took that up with
<17> the relevant, what, Highway Patrol officer, did you?
<18> A. I did, yeah. He confronted me about it.
<19>
<20> Q. He confronted you about it?
<21> A. He come to see me about it, yeah, and asked if there
<22> was a problem.
<23>
<24> Q. Did he do that because you had been expressing a view
<25> in the station that it had been a problem?
<26> A. I don't know.
<27>
<28> Q. You don't know?
<29> A. I don't know how he thinks. I'm sorry, I can't tell
<30> you how he's feeling.
<31>
<32> Q. Let me put it another way: had you been expressing
<33> your view in the station about it being a problem?
<34> A. I probably had a bitch about it, yes.
<35>
<36> Q. You probably had a bitch about it?
<37> A. More than likely.
<38>
<39> Q. You did have a bitch about it?
<40> A. I probably did, yeah.
<41>
<42> Q. You know that you did.
<43> A. I did. I probably did.
<44>
<45> Q. You probably did?
<46> A. It was some time ago.
<47>

.16/5/08 (3)

P-210

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. All right. You could deduce, being an experienced
< 2> police officer, that the reason that the Highway Patrol
< 3> officer came to you was because you had been broadcasting
< 4> this in the station; is that not right?
< 5> A. I wouldn't say I had been broadcasting it. I have
< 6> known that officer for some time. Obviously he was a bit
< 7> disturbed that I'd said something, and he came to speak to
< 8> me about it.
< 9>
<10> Q. What was that you'd said?
<11> A. I can't recall exactly what I said.
<12>
<13> Q. Had you insulted him?
<14> A. I can't remember insulting him.
<15>
<16> Q. Had you criticised him?
<17> A. As I said, I told him he'd loaded him up.
<18>
<19> Q. You'd expressed that view to some other officer or
<20> officers, had you?
<21> A. I don't know.
<22>
<23> Q. So he came to you. What was the nature of your
<24> discussion?
<25> A. I can't recall at the moment. We had words, and that
<26> was the end of it at that stage.
<27>
<28> Q. When you got this call from Lanser, did you express
<29> any opinion to her about whether she'd done the right
<30> thing?
<31> A. I didn't express any opinion to Katie.
<32>
<33> Q. But you were upset?
<34> A. I was pissed off, yes, about my boy being there.
<35>
<36> Q. During the course of that night, you and Lanser had a
<37> number of conversations; is that right?
<38> A. A couple of conversations, yes.
<39>
<40> Q. The last of them, was that a conversation in which it
<41> was conveyed to you that your son had been permitted to
<42> leave without charge?
<43> A. I was told he was released without charge, yes.
<44>
<45> Q. You returned to Orange not long after?
<46> A. A number of hours after, yes.
<47>

.16/5/08 (3)

P-211

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. And spoke to your son about what had happened?
< 2> A. I didn't see Adam until later that day.
< 3>
< 4> Q. Yes, that's what I mean. When you did see him, did
< 5> you speak to him about what had happened?
< 6> A. I did, yes.
< 7>
< 8> Q. And did he tell you that he'd been tested positive at
< 9> the roadside?

<10> A. He did, yes.
<11>
<12> Q. Did he tell you what the reading had been?
<13> A. He told me it was a high reading.
<14>
<15> Q. Did he tell you anything about what had happened back
<16> at the station, in particular in relation to the BAS
<17> machine?
<18> A. No, he told me he'd completed the test as per police
<19> procedures.
<20>
<21> Q. Well, did he use those words?
<22> A. Well he told me he did the test.
<23>
<24> Q. Did he tell you what the result of the test was?
<25> A. He said it was zero.
<26>
<27> Q. Did that surprise you?
<28> A. It was surprising, but he also told me that he'd had a
<29> mouthful of drink beforehand. During the training, the BAS
<30> operator training, and on the job in the street there is
<31> often variances in the readings, large variances at times.
<32>
<33> Q. Did you ever discuss with Adam, your son, up until
<34> today, the question as to whether or not some police
<35> officer had blown in the tube of the BAS machine instead of
<36> him?
<37> A. I've spoken to Adam a number of times.
<38>
<39> Q. About that?
<40> A. Yes.
<41>
<42> Q. When was the first time?
<43> A. Oh, I can't recall. It would have been that afternoon
<44> or that night, I guess, when he got home from work.
<45>
<46> Q. I'm sorry, did you discuss with him that a police
<47> officer might have blown in the tube; is that what you're

.16/5/08 (3)

P-212

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> saying?
< 2> A. I asked him what had happened at the scene - at the
< 3> station.
< 4>
< 5> Q. And you've told us that he said --
< 6> A. That he did the test.
< 7>
< 8> Q. That he did the test?
< 9> A. Yes.
<10>
<11> Q. I'm sorry we're at cross-purposes here. Has it ever
<12> come to your notice as a result of conversations with your
<13> son that a police officer had blown in the bag?
<14> A. Over the last couple of days, yes. I've spoken to
<15> Adam strongly before coming to the Commission today.
<16>
<17> Q. Right.
<18> A. He made it clear to me what did happen, and so
<19> I instructed him of the course of action he should follow.
<20>
<21> Q. I'm sorry I missed that?
<22> A. I told him to tell the truth, sorry.
<23>
<24> Q. Thank you. Do you say that was the first time that
<25> you knew that he said that a police officer had blown in
<26> the tube?
<27> A. Yes.
<28>
<29> Q. Prior to him telling you that, had you heard from any
<30> other police officer that that may have happened?
<31> A. No. I heard there was - that the tapes were viewed
<32> from the BAS room.
<33>
<34> Q. Yes.
<35> A. Yes.
<36>
<37> Q. You were told about that happening?
<38> A. I was told about that, yes.
<39>
<40> Q. Yes. Who was it who told you?
<41> A. Detective Stelling would have been the fellow I spoke
<42> to, Anthony Stelling.
<43>
<44> Q. Do you remember when that was?
<45> A. I can't recall exactly. I was back in Sydney on that
<46> day. I was at a mate's house.
<47>

.16/5/08 (3)

P-213

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. How was it that you came to have a conversation with
< 2> Stelling?
< 3> A. We got a phone call.
< 4>
< 5> Q. He rang you?
< 6> A. I can't - as I said before, I can't recall. I
< 7> received a phone call, I rang him. I know there was - I
< 8> can't remember who called who at what time and --
< 9>
<10> Q. What was it that he told you?
<11> A. He said that the tapes had been viewed of the night
<12> Adam got breath-tested.
<13>
<14> Q. Did he tell you who it was who had viewed them?
<15> A. He said he'd viewed them with the boss.
<16>
<17> Q. He, Stelling --
<18> A. I believe so.
<19>
<20> Q. -- said that he had viewed them with the boss?
<21> A. I believe so, yes.
<22>
<23> Q. The boss being Mr Szalajko?
<24> A. I took it as that, yes.
<25>
<26> Q. Did he tell you what the result of the viewing was?
<27> A. He just said it didn't show nothing. I don't know.
<28> At that stage, Adam had told me he did the test. I wasn't
<29> worried about it anyway.
<30>
<31> Q. Between then and the last few days, have you been
<32> worried about what it was that might have happened then?
<33> A. I've been worried the last couple of days about what
<34> might happen.
<35>
<36> Q. But before that?
<37> A. You always worry. It's my son.
<38>
<39> Q. Had you been worried about whether or not it may well
<40> have been the case that a police officer had done this on
<41> behalf of your son?
<42> A. Things do cross your mind, yes.
<43>
<44> Q. Have you discussed with any other officers who work at
<45> Orange whether or not a police officer had blown in the
<46> tube that night?
<47> A. No, I haven't; not that I recall.

.16/5/08 (3)

P-214

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Is it possible that you have had such conversations
< 3> and have forgotten about it?
< 4> A. I can't recall having a conversation. I've spoken to
< 5> the current acting superintendent about the procedures,
< 6> what happens with the hearing, and that's all I can recall.
< 7>
< 8> Q. What happens with this hearing, do you mean?
< 9> A. Yes, this hearing, yes.
<10>
<11> Q. So other than that, you say you can't remember having
<12> spoken to any other police officers about the circumstances
<13> of what happened on the night your son was detained, other
<14> than what you've already told us about?
<15> A. That's correct.
<16>
<17> MR STAEHLI: Yes, I don't have any further questions at
<18> this stage of Mr Clunes. Thank you, Commissioner.
<19>
<20> THE COMMISSIONER: Thank you, Mr Staehli. Mr Madden?
<21>
<22> MR MADDEN: I have nothing, thank you, Commissioner.
<23>
<24> THE COMMISSIONER: Q. Mr Clunes, just going back to the
<25> other matter involving your son where he was given the
<26> ticket for the speeding and the not displaying P-plates --
<27> A. Yes.
<28>
<29> Q. -- I take it you had, I think you said, some
<30> conversation with the relevant Highway Patrol officer who
<31> issued those tickets?
<32> A. I did, yes.
<33>
<34> Q. Was there anything suggested to you by that officer
<35> that at the time that he pulled over your son, shall we
<36> say, he knew that he was your son?
<37> A. Oh, he knows Adam.
<38>
<39> Q. So you picked that up --
<40> A. As I said, I've known him for a number of years, and
<41> my son played sport with the officer's nephew, so he knew
<42> my family from when I was out at Cudal.
<43>
<44> Q. He indicated to you in his conversations with you
<45> about it that as soon as he pulled the car over and saw who
<46> it was, that it was Adam?
<47> A. He knew it was him, yes.

.16/5/08 (3)

P-215

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. I think you said at some stage that you were a
< 3> supervisor in relation to Ms Lanser; is that right?
< 4> A. I do supervise on a number of shifts if the team
< 5> leader is away, but I think what Kate was referring to,
< 6> I was a field training officer when Kate was a probationary
< 7> constable, yes.
< 8>
< 9> Q. So you have a certain responsibility in relation to
<10> probationary officers; is that right?
<11> A. I do, yes.
<12>
<13> Q. What does that involve?
<14> A. Basically, making sure they complete their training
<15> process and step up to the next level of being a sworn
<16> constable.
<17>
<18> Q. Do those duties involve any advice to, say, people
<19> like Ms Lanser as a probationary as to what to do in
<20> circumstances where, say, in a country town - I'm not
<21> suggesting Orange is a small country town, but a country
<22> town, as it were - where more often than not it may be the
<23> case that you will encounter, as a police officer, people
<24> you know or relatives or friends in the discharge of
<25> duties?
<26> A. Yes, I think we've spoken about that with Kate being a
<27> local, because I've had previous probationary constables
<28> who have also grown in the town, and it is hard sometimes
<29> when you are dealing with people you know, so --
<30>

<31> Q. What sort of the advice can you remember you may have
<32> dispensed to Ms Lanser if she ever encountered those
<33> situations?
<34> A. The same as I said before: basically, "You've got to
<35> do your job. You've got to find out. You know where the
<36> line is. You do the job."
<37>
<38> Q. That was similar advice that you gave to Ms Lanser?
<39> A. Yeah, that's right. I said, "Kate, you've got to do
<40> what you've got to do."
<41>
<42> THE COMMISSIONER: Q. You can step down for the moment,
<43> Mr Clunes. You can stay in the hearing room, if you like,
<44> it's a matter for you, but certainly don't leave the
<45> precincts of the hearing room for the moment.
<46> A. Thank you, your Honour.
<47>

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P-216

C J CLUNES (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> <THE WITNESS WITHDREW
< 2>
< 3> MR STAEHLI: Mr Hall.
< 4>
< 5> THE COMMISSIONER: Mr Hall, you've heard me previously say
< 6> that, whilst it is not a court, your evidence is either
< 7> given on oath or affirmation. It's whatever you're
< 8> comfortable with.
< 9>
<10> MR HALL: Oath.
<11>
<12> <STEVEN JOHN HALL, sworn: [12.33pm]
<13>
<14> THE COMMISSIONER: Q. Just take a seat there for the
<15> moment, thanks, Mr Hall.
<16>
<17> MS DAVID: Could I indicate, Commissioner, that my client
<18> will be seeking a section 41 declaration.
<19>
<20> THE COMMISSIONER: Thank you, Ms David.
<21>
<22> Q. Mr Hall, just for formality, could you tell us your
<23> full name, rank and station, if applicable, thanks?
<24> A. Steven John Hall, constable, Orange.
<25>
<26> Q. Thank you, Mr Hall. Mr Hall, I take it, from what
<27> Ms David has said, that you've had a conversation with her
<28> about certain matters here relating to how you give your
<29> evidence, so if what I'm about to say to you is repetitive,
<30> then it is important, nonetheless, just to make sure you
<31> understand.
<32>
<33> You need to understand you must answer all questions
<34> that are asked of you here, unless I tell you that you do
<35> not have to answer. You should also understand that you're
<36> entitled to object to giving an answer. If you do object,
<37> you must, nevertheless, give the answer but the answer you
<38> give is not admissible in evidence against you in any civil

<39> or criminal proceedings, but there are some exceptions to
<40> that: firstly, a prosecution for giving false or
<41> misleading evidence at a hearing of the Commission that you
<42> knew to be false for misleading in a material particular;
<43> secondly, a prosecution for an offence which you may have
<44> committed or you may commit under the legislation governing
<45> this Commission; and, thirdly, proceedings for contempt of
<46> the Commission under that legislation.
<47>

.16/5/08 (3)

P-217

S J HALL

Transcript produced by Merrill Legal Solutions

< 1> Given your position as a member of the NSW Police
< 2> Force, the evidence you give at this hearing may also be
< 3> used where the Commissioner of Police is deciding whether
< 4> or not to make an order under section 173 of the Police Act
< 5> in relation to allegations of misconduct or unsatisfactory
< 6> performance or under section 181D of the Police Act for
< 7> your summary removal as a police officer or under
< 8> section 183A of that Act for revocation of a promotional
< 9> appointment because of misconduct in obtaining the
<10> promotion and in any proceedings for review of such orders
<11> that I've just mentioned above.
<12>

<13> To avoid the need for you to object to answering each
<14> individual question that's asked of you, I can make a
<15> declaration, which Ms David has sought on your behalf, that
<16> all the answers which you shall give shall be regarded as
<17> having been given on objection. Do you understand what
<18> I've just said?
<19> A. I understand.

<20>
<21> THE COMMISSIONER: I make a declaration pursuant to
<22> section 41 of the Police Integrity Commission Act that all
<23> answers given by this witness will be regarded as having
<24> been given on objection by the witness.
<25>

<26> Q. As you've probably heard me previously point out,
<27> Mr Hall, just make sure you don't move too far back from
<28> the microphone?
<29> A. Yep, no worries.

<30>
<31> <EXAMINATION BY MR STAEHLI:
<32>

<33> MR STAEHLI: Q. Mr Hall, you were with Lanser when
<34> Adam Clunes was pulled over on 21 December 2007; is that
<35> right?
<36> A. Correct.

<37>

<38> Q. When his vehicle was first pulled over, did you go
<39> with Lanser up to that vehicle?
<40> A. No, I was the driver. I stayed in the vehicle.

<41>

<42> Q. When was the first that you knew that it was
<43> Adam Clunes, the son of Colin Clunes, in that vehicle?
<44> A. Either Kate mentioned - like, motioned for me to come
<45> up to the car or she came up to the car, I'm not sure, but
<46> she told me it was Clunesy's son.
<47>

.16/5/08 (3)

P-218

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you yourself personally know Adam Clunes?
< 2> A. I'd only been at Orange for a month at that stage, so
< 3> I didn't really know anyone.
< 4>
< 5> Q. You didn't know him, in any event?
< 6> A. No.
< 7>
< 8> Q. You became aware, if you could not actually see it,
< 9> that she had and was breath-testing --
<10> A. Yes.
<11>
<12> Q. -- Adam Clunes?
<13> A. She had the alcometer in her hand, yes.
<14>
<15> Q. Did she tell you at some stage that he'd tested
<16> positive?
<17> A. Yes.
<18>
<19> Q. Did you witness her causing him to blow into the
<20> alcoliser in order to return an actual reading?
<21> A. No, I was conducting a transport - just various checks
<22> on the car, and that, so I wasn't paying 100 per cent
<23> attention to what was going on.
<24>
<25> Q. Did you find out that he had tested 0.202?
<26> A. Yes. I got out of the vehicle and Kate told me he
<27> blew \$2, or I looked at the machine and I saw that was \$2,
<28> 0.202 on there.
<29>
<30> Q. Do you remember there being some telephone calls had
<31> then or --
<32> A. Yes.
<33>
<34> Q. -- between then and your return to the station?
<35> A. Yes.
<36>
<37> Q. Were you aware that Lanser was attempting to contact
<38> Colin Clunes?
<39> A. Yes.
<40>
<41> Q. Did she tell you that?
<42> A. Yes.
<43>
<44> Q. Did you witness telephone calls in which she, as you
<45> understood it, was talking to Colin Clunes?
<46> A. Yes, I saw her on the phone, yes.
<47>

.16/5/08 (3)

P-219

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you witness her demeanour after the calls?
< 2> A. She was upset, yes.
< 3>
< 4> Q. How could you tell that?
< 5> A. Just the look on her face. I don't know if she was
< 6> crying, but you could tell she was upset.
< 7>
< 8> Q. Did she say anything to you about what Colin Clunes
< 9> had said to her?
<10> A. I don't believe she told me exactly what he said, but
<11> that he wasn't happy. I got the response that he wasn't
<12> happy about what had happened.
<13>
<14> Q. Did you get any more information from her than that?
<15> A. I think there was a conversation - a small
<16> conversation about that Adam had been pulled up before by
<17> Highway Patrol and got a couple of tickets and almost lost
<18> his licence, or something like that.
<19>
<20> Q. Did you yourself know anything about that before this
<21> night?
<22> A. No, I didn't.
<23>
<24> Q. Was anything said to you by Lanser about what she
<25> believed Colin Clunes wanted to be done?
<26> A. Not that I can recall.
<27>
<28> Q. For example, as you've heard from Ms Lanser, was there
<29> any suggestion conveyed to you by Lanser that there may
<30> have been a request that he, Adam Clunes, not be taken back
<31> to the station?
<32> A. All I can remember is something about "You've got to
<33> do what you've got to do."
<34>
<35> Q. Right.
<36> A. And that's basically all I can remember.
<37>
<38> Q. By that, do you mean that's something Lanser said to
<39> you?
<40> A. Yes, "We've got to do what we've got to do," or,
<41> "You've got to do what you've got to do," something of that
<42> nature.
<43>
<44> Q. So Adam Clunes, in any event, was conveyed back to the
<45> station?
<46> A. I walked up to the car, told him he was under arrest,
<47> cautioned him, told him what for. He had two friends in

.16/5/08 (3)

P-220

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> the car. We had a bit of a conversation about how they
< 2> were going to get home. I didn't want the female to walk
< 3> home, because she was quite young, and eventually they
< 4> walked off. We were probably about 15 minutes there. We
< 5> put him in the car and took him back to the station.

< 6>
< 7> Q. Back at the station, what happened, so far as you were
< 8> concerned?
< 9> A. We took him out of the car. He obviously walked by
<10> himself, he wasn't playing up or anything, so we walked
<11> into the station, into the custody room, and I believe Kate
<12> started filling out the field arrest form. I then left the
<13> room.
<14>
<15> Q. Up until that time, did you yourself form any view
<16> about Adam Clunes's sobriety?
<17> A. No, because I really hadn't had any direct contact
<18> with him. After he'd blown \$2, he obviously - in my view,
<19> he was affected by alcohol, so that's about the only view I
<20> took.
<21>
<22> Q. I mean in relation to any matters of appearance or
<23> demeanour?
<24> A. He looked worried when he was in the car.
<25>
<26> Q. He looked worried. Could you smell alcohol on him?
<27> A. No, I didn't get close enough.
<28>
<29> Q. In any event, back at the station you say you left the
<30> room and, what, left him in the hands of Lanser and?
<31> A. And Mark Christie.
<32>
<33> Q. And Mark Christie. Did you play any part in the
<34> mechanics of registering his custody, or anything else?
<35> A. No.
<36>
<37> Q. Where did you go?
<38> A. I probably went outside for a smoke or to the muster
<39> to do an event or floated around the station.
<40>
<41> Q. As it turned out, eventually you did do the COPS event
<42> in relation to his detention; is that right?
<43> A. That's correct.
<44>
<45> Q. When did you start that, do you know?
<46> A. 5.23 or 5.27, I think it says on the COPS event.
<47>

.16/5/08 (3)

P-221

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> MR STAEHLI: Perhaps the first page of that could be
< 2> brought up, Commissioner, barcoded 7132409.
< 3>
< 4> Q. Do you recognise that document as being the COPS event
< 5> record?
< 6> A. That's correct.
< 7>
< 8> Q. Created by you?
< 9> A. That's correct.
<10>
<11> Q. There's a time in the top right. Is that the time -
<12> that's not the time it was prepared, obviously, excuse me.
<13> "Date/Time Created". Is that the time at which you started
<14> to create the entry --
<15> A. No --
<16>
<17> Q. -- about seven lines down?
<18> A. About seven lines down it's got, "21/12/2007. 5.22".
<19> That's when the actions of the police involved go in, but
<20> the event would have started probably - I think it's 5.23,
<21> somewhere in there.
<22>
<23> Q. There are various times. "Actions", the heading a bit
<24> further down, "5.17"; "Date/Time Created"?
<25> A. Yes, narrative details: "Date/Time Created 5.23."
<26>
<27> Q. It is not of great moment, but did you start this
<28> entry, created it, in the first instance?
<29> A. At 5.23, yes.
<30>
<31> Q. At 5.23. Do you say in relation to the
<32> breath analysis action type - was that entered by you?
<33> A. No. What happens is because I'm not a BAS operator,
<34> the person who does the BAS part of the event, it's an
<35> incomplete action when I finish it and the BAS operator
<36> updates at a later stage with their entries.
<37>
<38> Q. Apparently by Christie in this case: is that right?
<39> A. Yes. I believe it looks like at 10.22 that same day
<40> but that evening, on the night shift.
<41>
<42> Q. So about 17 hours later, or something like that?
<43> A. That's correct.
<44>
<45> Q. Otherwise, have you had a chance to look through this
<46> entry recently?
<47> A. Yes, I have.

.16/5/08 (3)

P-222

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Perhaps the subsequent pages could just be shown, just
< 3> dwelling briefly on each of them. Would you just cast your
< 4> eye down the details, please, Mr Hall.
< 5> A. Yes.
< 6>
< 7> Q. Then page 3.
< 8> A. Mmm-hmm.
< 9>
<10> Q. On page 3 which we're now looking at, barcode 7132411,
<11> towards the bottom, about five lines of typing up, it has,
<12> alongside the heading "Level of Intoxication", the words
<13> "slightly affected". Were they words that you put into
<14> this entry?
<15> A. I'm unsure if that's part of my entry or if that's
<16> part of the BAS operator's entry: I'm not sure.
<17>
<18> Q. Would you look at the next page, page 4. Looking
<19> again towards the bottom of the page, about six lines up,
<20> 7132412 - towards the bottom of the page, thank you - their
<21> opinion of sobriety is the heading six lines up where the
<22> word "slightly" appears alongside that. Do you see that?
<23> A. That's not my entry.
<24>
<25> Q. That's not your entry. Do you think that was done by
<26> the BAS operator or may have been?
<27> A. That's correct.
<28>
<29> Q. Are you familiar with those headings and that kind of
<30> description of a person's appearance?
<31> A. I'm familiar, but I'm not a BAS operator or BAS
<32> operator trained and I haven't done that course.
<33>
<34> Q. Is that an opinion that you would agree with about
<35> Mr Clunes's state of sobriety, or do you have no view at
<36> all?
<37> A. Yeah, I - reading it, yes, that's the way I perceived
<38> him on the night.
<39>
<40> Q. Slightly affected?
<41> A. Scared. He said he'd been at the pub. I suppose
<42> that's what formed my opinion.
<43>
<44> Q. Ignoring things that he said for the moment.
<45> A. Well no, I don't have an opinion then.
<46>
<47> Q. In relation to him, say, staggering or not being able

.16/5/08 (3)

P-223

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> to walk straight or having bloodshot eyes, you didn't form
< 2> any views --
< 3> A. I never saw any of that, no.
< 4>
< 5> Q. By the time that you commenced this COPS entry,
< 6> Adam Clunes had left the station: do you recall that?
< 7> A. I believe so, yes.
< 8>
< 9> Q. Did you know that he'd left the station?
<10> A. No.
<11>
<12> Q. Did you know that he had purportedly blown a zero test
<13> on the BAS machine?
<14> A. I was informed, yes.
<15>
<16> Q. By whom?
<17> A. I believe it was Mark Christie.
<18>
<19> Q. In what circumstances?
<20> A. Constable Lanser and I were in the muster room
<21> I believe and I'm not sure what presented the BAS
<22> certificate. It was on the table when I grabbed it and
<23> I read it and saw the "zero" and - yeah.
<24>
<25> Q. So are you saying that you saw it in the certificate
<26> rather than being told it by Christie, are you, or not?
<27> A. Yes, I don't believe there was any conversation
<28> between us. I read it off the certificate to get - where I
<29> saw "00".
<30>
<31> Q. You don't believe any conversation between you and --
<32> A. At that stage, no.
<33>
<34> Q. -- Christie, do you mean?
<35> A. Mark Christie, yes, sorry.
<36>
<37> Q. Do you recall there being any discomfort or something
<38> similar in the muster room amongst the police who were
<39> there about the fact that Mr Adam Clunes had apparently
<40> tested zero?
<41> A. I asked Mark Christie. I said "How?" And he said,
<42> "He said he had a mouthful of alcohol before he left the
<43> pub." And I went, "Oh, okay."
<44>
<45> Q. So you did have that verbal conversation?
<46> A. That was after I received the certificate.
<47>

.16/5/08 (3)

P-224

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Did you find that an acceptable explanation of how
< 2> Mr Adam Clunes had apparently tested zero?
< 3> A. It's feasible, but I've probably only done two PCA
< 4> charges in my whole career.
< 5>
< 6> Q. What, so you mean you lacked expertise?
< 7> A. Yeah, I really don't have - I just - when I came to
< 8> Orange, that was the first time I learned how to use that
< 9> digital alcometer, so --
<10>
<11> Q. The first time you'd learned to use what?
<12> A. The digital alcometer.
<13>
<14> Q. The digital alcometer. Right. This participation
<15> with Lanser, you were in a patrol car: is that the
<16> position?
<17> A. Yes.
<18>
<19> Q. Had you been involved in breath-testing on prior
<20> occasions?
<21> A. I don't believe I've - I still haven't breath-tested
<22> somebody since I've been at Orange, other than RBT on the
<23> side of the road, but I haven't pulled a car up and
<24> breath-tested someone.
<25>
<26> Q. How long have you been in Orange?
<27> A. Since November last year.
<28>
<29> Q. Do you remember there being any conversation that
<30> morning in the police station about there being a camera in
<31> the BAS room?
<32> A. I didn't - I - hearing of it today, I remember
<33> something, but I don't remember on the morning, no.
<34>
<35> Q. Well --
<36> A. It doesn't stick in my mind. I can't remember or
<37> recall a conversation about it.
<38>
<39> Q. But you think that you might have heard such a
<40> conversation, is that what you mean?
<41> A. Yes, if that makes sense, yeah. I don't recall there
<42> being a conversation about a camera in the BAS room until
<43> somebody said something this morning.
<44>
<45> Q. And what, that jogged your memory?
<46> A. Yeah. I remember hearing something, but I can't
<47> recall when it was: if it was that day, another day or --

.16/5/08 (3)

P-225

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Did you participate in or hear any conversation that
< 3> night in which people expressed concerns, other than what
< 4> you've already told us about what you yourself said, about
< 5> what had happened with Adam Clunes?
< 6> A. No.
< 7>
< 8> Q. Subsequently, you've become aware, obviously, that an
< 9> investigation has proceeded in relation to the
<10> circumstances: is that right?
<11> A. That's correct.
<12>
<13> Q. Have you discussed with anyone, any other police
<14> officer, the circumstances which gave rise to Adam Clunes
<15> being permitted to leave the station that night?
<16> A. No.
<17>
<18> Q. When did you first become aware of the fact that there
<19> was an allegation that Mr Christie had blown into the tube
<20> on the BAS machine instead of Mr Clunes?
<21> A. This morning.
<22>
<23> Q. This morning?
<24> A. (Witness nods head).
<25>
<26> Q. You mean you haven't heard from any other police
<27> officer that that was what the allegation was?
<28> A. Rumours, but I don't get involved in that sort of
<29> stuff.
<30>
<31> Q. Rumours. Does that mean that you must have heard
<32> discussions by others about such matters: is that right?
<33> A. Sorry, involved in or heard?
<34>
<35> Q. Heard. You said "rumours". That means you've heard
<36> someone say something about --
<37> A. I've heard rumours that something wasn't right about
<38> the evening.
<39>
<40> Q. Have you heard that it had something to do with the
<41> camera?
<42> A. No.
<43>
<44> Q. Have you heard that it had something to do with
<45> Mr Christie?
<46> A. No.
<47>

.16/5/08 (3)

P-226

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Have you not inquired about these things?
< 2> A. I haven't spoken to anyone about it, no.
< 3>
< 4> Q. You've just heard others talking about it, is that
< 5> what you mean?
< 6> A. Yes.
< 7>
< 8> MR STAEHLI: Yes. I have no further questions of Mr Hall
< 9> at the moment. Thank you, Commissioner.
<10>

<11> THE COMMISSIONER: Ms David, you don't?
<12>
<13> MS DAVID: No.
<14>
<15> MR STAEHLI: I should tender the COPS entry.
<16>
<17> THE COMMISSIONER: Yes. Thank you, Ms David. The COPS
<18> entry which is barcoded 7132409 through to 7132414 can be
<19> admitted and marked. We might make that a confidential
<20> exhibit, given the nature of the information in it,
<21> Mr Staehli. I will limit access to Commission staff and
<22> those legal representatives granted authority to appear at
<23> the hearing. That can be admitted and marked exhibit 3C.
<24>
<25> EXHIBIT #3C COPS ENTRY BARCODED 7132409-7132414
<26>
<27> THE COMMISSIONER: Q. I am sorry, Mr Hall, I don't think
<28> anyone has any questions for you. For the moment, you can
<29> step down. You can stay in the hearing room or not, it is
<30> a matter for you, but just don't leave the precincts of
<31> this building at this stage.
<32> A. No worries.
<33>
<34> <THE WITNESS WITHDREW
<35>
<36> THE COMMISSIONER: I am just noting the time, Mr Staehli.
<37> Do you want to --
<38>
<39> MR STAEHLI: Yes. I think Mr Christie would be next and
<40> it might be convenient for all if that was delayed until
<41> 2pm. Thank you.
<42>
<43> THE COMMISSIONER: We will take the luncheon adjournment
<44> now and we will come back at 2pm. Thank you.
<45>
<46> LUNCHEON ADJOURNMENT
<47>

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P-227

S J HALL (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> UPON RESUMPTION:
< 2>
< 3> THE COMMISSIONER: Mr Staehli?
< 4>
< 5> MR STAEHLI: Senior Constable Christie, please.
< 6>
< 7> THE COMMISSIONER: Are you happy to give your evidence on
< 8> oath, Mr Christie?
< 9>
<10> MR CHRISTIE: Yes, Commissioner.
<11>
<12> <MARK RONALD CHRISTIE, sworn: [2.06pm]
<13>
<14> THE COMMISSIONER: Q. Just for the formalities,
<15> Mr Christie, could you tell us your full name, rank and
<16> station, if applicable?
<17> A. Mark Christie, senior constable, Orange police
<18> station.
<19>
<20> THE COMMISSIONER: Mr Oates, I take it you have had an
<21> opportunity to have a conversation with Mr Christie about
<22> sections 40 and 41?
<23>
<24> MR OATES: Yes. He seeks the declaration, if you please,
<25> Commissioner.
<26>
<27> THE COMMISSIONER: Thank you, Mr Oates.
<28>
<29> Q. Mr Christie, what I am about to say to you may be
<30> repetitive - given what Mr Oates has indicated, you've
<31> probably had this discussion with him - but nonetheless,
<32> I will say it to you, so I want you to listen carefully to
<33> what I'm about to say. You need to understand that you
<34> must answer all questions that are asked of you here unless
<35> I tell you that you do not have to answer. You should also
<36> understand that you are entitled to object to giving an
<37> answer. If you do object, you must, nevertheless, give the
<38> answer, but the answer you give is not admissible in
<39> evidence against you in any civil or criminal proceedings,
<40> but there are some exceptions to that: firstly, a
<41> prosecution for giving false or misleading evidence at a
<42> hearing of the Commission that you knew to be false or
<43> misleading in a material particular; secondly, a
<44> prosecution for an offence which you may have committed or
<45> you may commit under the legislation governing this
<46> Commission; and, thirdly, proceedings for contempt of the
<47> Commission under that legislation.

.16/5/08 (3)

P-228

M R CHRISTIE

Transcript produced by Merrill Legal Solutions

< 1>
< 2>
< 3> Given your position as a member of the NSW Police
< 4> Force, the evidence you give at this hearing may also be
< 5> used where the Commissioner of Police is deciding whether
< 6> or not to make an order under section 173 of the Police Act
< 7> in relation to allegations of misconduct or unsatisfactory
< 8> performance or under section 181D of the Police Act for
< 9> your summary removal as a police officer or under section
<10> 183A of that Act for revocation of a promotional
<11> appointment because of misconduct in obtaining the
<12> promotion and in any proceedings for review of such orders
<13> that I have mentioned above.

<14>
<15> To avoid the need for you to object to answering each
<16> individual question when it is asked, I am able to make a
<17> declaration, which Mr Oates has sought on your behalf, that
<18> all the answers you give shall be regarded as having been
<19> given on objection, so you don't have to object to each
<20> individual question. Now, do you understand that?

<21> A. Yes.

<22> THE COMMISSIONER: I make a declaration pursuant to
<23> section 41 of the Police Integrity Commission Act that all
<24> answers given by this witness will be regarded as having
<25> been given on objection by the witness.

<26>
<27> Q. I just remind you, Mr Christie, of what I have said to
<28> other witnesses about the microphone, so just make sure you
<29> don't move back too far from it.

<30> A. All right.

<31>
<32> <EXAMINATION BY MR STAEHLI:
<33>

<34> MR STAEHLI: Q. Mr Christie, on 21 December last year
<35> when you were in the BAS room at Orange police station with
<36> Adam Clunes, did you blow in the tube of the BAS machine?

<37> A. Yes.

<38>
<39> Q. When Adam Clunes should have?

<40> A. Yes.

<41>
<42> Q. Why did you do that?

<43> A. There's a considerable amount of reasons for that.

<44>
<45> Q. Try to tell us what they are, please?

<46> A. In the roughly two years preceding, I'd been involved
<47> in a number of high-stress incidents. I've since been

.16/5/08 (3)

P-229

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> placed on medication to assist with that. I felt a great
< 2> deal of empathy for his position. I felt very sorry for
< 3> his position. It was also escalated by Constable Lanser,
< 4> who was crying, or it could almost be said that she was in
< 5> hysterics when she brought him into the charge room.
< 6> I felt very overwhelmed by the situation I was in.
< 7> I hadn't worked in a team environment for more than four
< 8> years, so it was a very daunting and emotional situation at
< 9> the time, and that's what's led me to my incorrect
<10> decision.

<11>

<12> Q. You say you had empathy for Adam Clunes's position.

<13> A. Yes.

<14>

<15> Q. Do you mean more than you felt sorry for him, or is
<16> that what you mean?

<17> A. Well, more than I felt sorry for him. I was aware
<18> that he from time to time lived a considerable distance
<19> from town. The young fella was obviously in great peril of
<20> losing his driver's licence, his job, his career and at 19
<21> I considered that and, like I say, I felt a deal of
<22> empathy.

<23>

<24> Q. That is something which applies to many, many people
<25> who find themselves testing positive to the presence of
<26> blood alcohol in their system and being charged by police,
<27> isn't it?

<28> A. Yes.

<29>

<30> Q. Was there something different about Adam Clunes,
<31> for example, the fact that his father was a fellow police
<32> officer?

<33> A. No, that had nothing to do with my decision.

<34>

<35> Q. You are not serious, are you?

<36> A. I'm fair dinkum serious.

<37>

<38> Q. How many other BAS tests had you done at Orange in the
<39> time that you'd been there?

<40> A. I don't know.

<41>

<42> Q. You'd done quite a number, though; is that not right?

<43> A. There'd be a few. I don't know the exact number.

<44>

<45> Q. How long had you been at Orange?

<46> A. About six months.

<47>

.16/5/08 (3)

P-230

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. Where had you been before that?
< 2> A. In Deniliquin local area command.
< 3>
< 4> Q. In that LAC, had you been a BAS operator?
< 5> A. Yes.
< 6>
< 7> Q. It also being a country area, I presume you would have
< 8> tested many other people whose livelihood depended on them
< 9> having their licence; is that not right?
<10> A. Correct.
<11>
<12> Q. Had you ever done something like this before?
<13> A. No.
<14>
<15> Q. Wasn't the principal difference between Mr Clunes and
<16> anyone else who you tested the fact that his father was a
<17> police officer?
<18> A. No.
<19>
<20> Q. This was just a spontaneous outpouring of empathy on
<21> your behalf because he was a 19-year-old boy in this
<22> position; is that what you say?
<23>
<24> MR OATES: I object, Commissioner. That is not what the
<25> evidence was prior. That is not his evidence.
<26>
<27> MR STAEHLI: I'm asking him if that is what he says now,
<28> Commissioner.
<29>
<30> THE COMMISSIONER: I will allow that.
<31>
<32> THE WITNESS: Can I have the question again, please?
<33>
<34> MR STAEHLI: Q. Yes. I will put it in a slightly
<35> different way: this was something which spontaneously
<36> arose in you in relation to this particular 19-year-old
<37> young man, was it?
<38> A. Something that arose in me on that night or in days
<39> leading to that where I began to feel very much different
<40> about life. Ten days roughly prior to that I was seriously
<41> assaulted in cells and received a concussion and was
<42> hospitalised.
<43>
<44> Q. Right.
<45> A. I began to feel very much different about life.
<46>
<47> Q. That, I assume, was something which was reported and

.16/5/08 (3)

P-231

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> recorded in the police station's records, was it?
< 2> A. And investigated, yes.
< 3>
< 4> Q. Was someone charged in respect of it?
< 5> A. No, because he was mentally ill.
< 6>
< 7> Q. Were you yourself receiving any medical treatment at
< 8> the time, that is, at 21 December 2007?
< 9> A. Yes.
<10>
<11> Q. What form of treatment were you receiving?
<12> A. Physio. I was strapped up - I had my shoulder
<13> strapped up and ribs and I was prescribed
<14> anti-inflammatories and I can't remember if I was
<15> prescribed any other medication.
<16>
<17> Q. Were you, for example, taking any medication in
<18> relation to stress?
<19> A. I can't remember.
<20>
<21> Q. Were you seeing a general practitioner in relation to
<22> the injuries you've just mentioned?
<23> A. Yes.
<24>
<25> Q. Was he your regular general practitioner?
<26> A. Yes.
<27>
<28> Q. What is his name?
<29> A. Dr Guy Date.
<30>
<31> Q. At some time have you consulted him in relation to
<32> your stress condition?
<33> A. I have.
<34>
<35> Q. Have you consulted him since 21 December in that
<36> regard?
<37> A. A number of times.
<38>
<39> Q. Are you now on medication?
<40> A. Yes.
<41>
<42> Q. For that condition?
<43> A. Yes.
<44>
<45> Q. You mentioned Constable Lanser's emotional state when
<46> she came back in?
<47> A. Yes.

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P-232

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. Did you inquire of her what the problem was?
< 3> A. No.
< 4>
< 5> Q. That is, more specifically, did you ask her any
< 6> questions to find out whether or not there was a
< 7> relationship with how she was reacting and the person she'd
< 8> brought in?
< 9> A. No, I didn't ask.
<10>
<11> Q. You didn't ask?
<12> A. No, I didn't ask.
<13>
<14> Q. How did you know that her emotional state had anything
<15> to do with the person that she brought in?
<16> A. She told me.
<17>
<18> Q. What did she tell you?
<19> A. She said that this was Colin Clunes's son.
<20>
<21> Q. Right.
<22> A. She made mention that he'd received infringements in
<23> the past.
<24>
<25> Q. Yes.
<26> A. That's about all I remember of the conversation.
<27>
<28> Q. Are you saying that then it occurred to you that you
<29> might do something to help young Mr Clunes out?
<30> A. Not at that stage, no.
<31>
<32> Q. When did that arise?
<33> A. Almost immediately before the breath analysis.
<34>
<35> Q. You were here this morning when Adam Clunes gave his
<36> evidence; is that right?
<37> A. Yes.
<38>
<39> Q. He said that you told him before you went into the
<40> room - that is, you both went into the room together - that
<41> he was going to walk in and you were going to breathe into
<42> the machine; did you tell him that?
<43> A. Yes.
<44>
<45> Q. You say that it was, what, shortly before then that
<46> you conceived of this plan?
<47> A. Yes.

.16/5/08 (3)

P-233

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. This was, at that time, you say, do you, simply
< 3> because you were sorry, sympathetic, for a young man in his
< 4> position?
< 5> A. Yes.
< 6>
< 7> Q. And that the fact that his father was a police officer
< 8> with whom you worked played no part in your decision?
< 9> A. No, that's right.
<10>
<11> Q. Did you know Colin Clunes?
<12> A. In passing at that stage.
<13>
<14> Q. Had you worked with him on the same shifts at Orange
<15> police station?
<16> A. In response to that, I would say I don't recall ever
<17> working a rostered shift with Senior Constable Clunes.
<18>
<19> Q. But you had met him, obviously?
<20> A. On change of shifts.
<21>
<22> Q. On change of shifts. All right. Did you tell
<23> Adam Clunes that there was a camera in the room?
<24> A. Yes, I did.
<25>
<26> Q. You obviously knew there was a camera in the room?
<27> A. Yes.
<28>
<29> Q. You had thought of how you would conceal what was
<30> going to happen from the camera, had you?
<31> A. Yes.
<32>
<33> Q. Which was, in the way shown on the recording this
<34> morning, that you would stand with your back to the camera;
<35> is that right?
<36> A. Yes.
<37>
<38> Q. And, in effect, loom over Adam Clunes so as to conceal
<39> what was happening with the tube; is that right?
<40> A. I don't think I had to loom over. I think I was able
<41> to stand straight upright.
<42>
<43> Q. Is that what you say you did?
<44> A. Yes.
<45>
<46> Q. But knowing or believing that by doing that and having
<47> him in front of you, the camera would hopefully not be able

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P-234

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> to reveal what in fact took place?
< 2> A. Yes.
< 3>
< 4> Q. You were taking a very big risk, weren't you?
< 5> A. Yes.
< 6>
< 7> Q. After the tests, later on you told Adam Clunes that
< 8> he'd tested zero?
< 9> A. Yes.
<10>
<11> Q. What was your view of his state of being under the
<12> influence of alcohol, if at all?
<13> A. In response to that, I stand by all records that I
<14> made, that I don't believe that he was affected by alcohol.
<15> I observed him to show a high degree of dexterity to be
<16> able to take a chain off his neck. For someone that was
<17> impaired to the reading that was shown on the alcoliser,
<18> I don't believe that that would be possible. He was able
<19> to stand unaided. He wasn't swaying. His speech was
<20> clear. There was a faint smell of rum on his breath, but
<21> other than that, I don't think that he was affected.
<22>
<23> Q. But nonetheless, you knew that he was a driver on a
<24> provisional licence?
<25> A. Yes.
<26>
<27> Q. And that any recording of blood alcohol would most
<28> likely have the effect that he would lose his licence?
<29> A. That's correct.
<30>
<31> Q. After the event, did you say to him something like
<32> that he was not to say anything to anyone else about what
<33> had taken place?
<34> A. Something like that.
<35>
<36> Q. Did you tell him that in the hope that what had
<37> happened between the two of you in the room would remain a
<38> secret?
<39> A. Yes.
<40>
<41> Q. Later, in the presence of other police, did you say
<42> anything about the existence of a camera in the BAS room?
<43> A. I don't recall discussing it.
<44>
<45> Q. Did you say anything in response to hearing other
<46> officers raising the issue of the fact that Adam Clunes had
<47> apparently tested zero when he'd had such a high initial

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P-235

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> test?
< 2> A. One officer raised the issue.
< 3>
< 4> Q. What did you say, if anything, about it?
< 5> A. If I can just have a moment to think.
< 6>
< 7> Q. Yes. Firstly, while you're thinking about it, can you
< 8> remember what it was the other officer said?
< 9> A. There was general conversation, which I can't remember
<10> the content of, but I recognised that the officer appeared
<11> depressed. I asked them what was wrong.
<12>
<13> Q. Was this a male or a female officer?
<14> A. Male. They said they were under investigation by
<15> PIC --
<16>
<17> Q. I am sorry, this is later on, is it, that you are
<18> talking about: much later on?
<19> A. No.
<20>
<21> Q. I'm sorry?
<22> A. No.
<23>
<24> Q. This is on the night?
<25> A. Yes. I said - I asked, "What's it about?" They said
<26> they couldn't say. I didn't understand what PIC was about
<27> at that time. I asked them again, "What's going on?
<28> What's going on?", and they said it was to do with another
<29> member of staff. I asked who the member of staff was, and
<30> they said they couldn't say, and then they said, "You blew
<31> in the machine, didn't you?", and I said, "No, I didn't."
<32> Then there was further conversation. I think it was just
<33> general work related, but it's nothing that I can recall.
<34> Then the officer said again, "You blew in the machine,
<35> didn't you?", and I said, "Well, mate, do you think this
<36> whole thing's been staged as an integrity test just for
<37> your benefit?", and they shrugged their shoulders, and that
<38> was it.
<39>
<40> Q. I presume, having regard to the length of that
<41> conversation, you can remember with whom you had it?
<42> A. Yes.
<43>
<44> Q. Who was it?
<45> A. Constable Commins.
<46>
<47> Q. Constable Commins, all right. In any event, having

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P-236

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> been confronted in that way with the proposition that you
< 2> had done something improper, you denied it to Commins, did
< 3> you?
< 4> A. Yes.
< 5>
< 6> Q. Was he the only person with whom you had a
< 7> conversation in which the subject matter of what had
< 8> happened in the BAS room came up?
< 9> A. As far as I can remember.
<10>
<11> Q. Was that a conversation had while others were in the
<12> near vicinity?
<13> A. Yes.
<14>
<15> Q. Whereabouts did it take place?
<16> A. The front of the police station.
<17>
<18> Q. I'm sorry, what do you mean by "the front"? Do you
<19> mean inside the police station?
<20> A. No, outside.
<21>
<22> Q. How did that come about; that you were all there,
<23> I mean?
<24> A. I don't know what the car crews were up to. One of
<25> the car crews, I'm sure, was there. I think it may have
<26> been Lanser and Hall. I'm not sure where Commins came
<27> from, but he was walking up the steps towards the front of
<28> the station, the side steps.
<29>
<30> Q. Commins, as you may know, drove Adam Clunes home, or
<31> at least to his friend's place. Did you know that?
<32> A. No, I didn't.
<33>
<34> Q. I was going to ask you whether or not you believe this
<35> conversation took place when he'd returned from that or did
<36> it happen shortly after the test using the BAS machine?
<37> A. Could you - sorry?
<38>
<39> Q. I will put it another way to refresh your memory about
<40> the chronology. You went through the testing. He tested
<41> zero. After some paperwork, Adam Clunes was permitted to
<42> go - do you remember that?
<43> A. Yes.
<44>
<45> Q. Commins, as you perhaps know - perhaps you don't -
<46> drove him away to stay at a friend's place?
<47> A. I didn't know that until today.

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P-237

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. You didn't know that. All right. We don't know, on
< 3> the evidence today, how long that took, but perhaps if it
< 4> was 15 kilometres, it might have taken half an hour or
< 5> more. My question was did the conversation which you have
< 6> related which you say took place with Commins happen
< 7> relatively quickly after the tests, or would it have
< 8> happened half an hour or an hour later?
< 9> A. I couldn't recall that. I don't know.
<10>
<11> Q. Do you say to this day that he is the only person with
<12> whom you have had a conversation, the only police person
<13> with whom you've had a conversation, in which there has
<14> been a mention of you taking the test, you blowing into the
<15> machine?
<16> A. As far as I remember.
<17>
<18> Q. What I mean is, in particular, since the investigation
<19> started, or since the police station investigation started,
<20> into what had happened on that occasion, have you discussed
<21> with any other Orange police officer the fact that you did
<22> in fact blow into the tube?
<23> A. No.
<24>
<25> Q. Have you denied to any other Orange police officer
<26> that you blew into the tube?
<27> A. No. It hasn't been raised by anybody.
<28>
<29> Q. Can I ask you, please, to look at some documents which
<30> will appear on the screen which represent the record in the
<31> breath analysis data record book relevant to that night,
<32> the first page of which is barcoded 7132374. It is quite
<33> difficult to read the spotted version there. Can I hand
<34> you this photocopy, which is a little bit easier to read.
<35> I have shown you a photocopied page of the document
<36> barcoded 7132374 in the top right - do you see that?
<37> A. Yes.
<38>
<39> Q. Can you see there that that appears to be a form
<40> numbered 477771 in respect of Adam Clunes, giving his
<41> address and occupation, amongst other information, which
<42> apparently relates to what took place in the BAS room on
<43> that night?
<44> A. Yes.
<45>
<46> Q. Did you fill in everything that is written in
<47> handwriting on that form?

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. Yes.
< 2>
< 3> Q. Did you actually administer a caution to him?
< 4> A. Yes.
< 5>
< 6> Q. Did you actually ask him those questions numbered 1 to
< 7> 4?
< 8> A. Yes.
< 9>
<10> Q. Whereabouts did you do that?
<11> A. I think the vast majority of this form would have been
<12> completed in the charge room, the best I remember.
<13>
<14> Q. Before or after the use of the BAS machine?
<15> A. Before.
<16>
<17> Q. About halfway down on the left-hand side there is a
<18> record or written in the boxes there is a reading of the
<19> supposed grams of alcohol in 100 millilitres of blood
<20> which, in the normal instance, would have been the reading
<21> of Mr Clunes's blood; is that right?
<22> A. Yes.
<23>
<24> Q. But there you have written "0.000"; is that right?
<25> A. Yes.
<26>
<27> Q. Did you actually say to him, in the way that this form
<28> suggests you did, what is written there alongside the
<29> letter "(a)" in brackets - that is:
<30>
<31> This instrument has analysed a sample of
<32> your breath and it displayed a reading of
<33> 0.000 grams of alcohol in 100 millilitres
<34> of blood.
<35>
<36> A. Yes.
<37>
<38> Q. Did he actually say in response to that "Thank God"?
<39> A. Yes.
<40>
<41> Q. Where did you have that conversation with him?
<42> A. As far as I know, it would have been in the BAS room
<43> for that part, the best I remember.
<44>
<45> Q. The details on the right-hand side, in particular
<46> relating to the amount of alcohol that he'd had to drink,
<47> the time of first drink, the time of last drink, the size

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P-239

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> of drinks, the number of drinks, the type of drink, did you
< 2> get that information from him?
< 3> A. Yes, I did.
< 4>
< 5> Q. Do you say it accurately records what he told you?
< 6> A. Yes.
< 7>
< 8> Q. Did you actually ask him that question relating to the
< 9> use of the services of a doctor --
<10> A. Yes, I did.
<11>
<12> Q. -- contained in the box on the left-hand side?
<13> A. Yes.
<14>
<15> Q. Why did you do that?
<16> A. In relation to this form, I followed every other
<17> procedure other than not doing the breath analysis itself
<18> properly.
<19>
<20> Q. That being, you say, the only thing that was not done
<21> properly, in effect?
<22> A. Yes.
<23>
<24> Q. Except it led to the result that he managed to leave
<25> the station not having been charged, as perhaps he might
<26> have been otherwise?
<27> A. Perhaps.
<28>
<29> Q. Might we look at the next page, barcode 7132375, and
<30> might you return the hard copy to me, please. Do you see
<31> there the document which is apparently the print-out from
<32> the Drager alcotest 7110?
<33> A. Yes.
<34>
<35> Q. Being the print-out which you received from the
<36> machine that night after you had blown into the tube?
<37> A. Yes.
<38>
<39> Q. Of the information on that slip, some of it is entered
<40> in the normal course by the operator of the BAS machine; is
<41> that right?
<42> A. Yes.
<43>
<44> Q. Of that material, did you enter it all?
<45> A. Yes.
<46>
<47> Q. At an earlier time, that is, before you actually were

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P-240

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> in the room with Mr Clunes, did you start up the machine?
< 2> A. Yes.
< 3>
< 4> Q. The time that is on the top of the slip is 0343 hours.
< 5> Is that the time that you started the machine?
< 6> A. I can't read that on this document.
< 7>
< 8> Q. Accept from me, if you would, that it shows 0343.
< 9> A. Okay.
<10>
<11> Q. Just so that you don't have any doubt about it, let me
<12> show you the original --
<13>
<14> THE COMMISSIONER: It has been refocused a bit,
<15> Mr Staehli.
<16>
<17> Q. Can you see that now, Mr Christie?
<18> A. Yes.
<19>
<20> MR STAEBLI: Q. You can see now that it says 0343, can
<21> you?
<22> A. Yes.
<23>
<24> Q. Was that the time at which you started up the machine?
<25> A. Yes.
<26>
<27> Q. The test itself did not take place until, according to
<28> what is on that slip, 0405 hours. Do you see that down the
<29> bottom, "Subject's analysis test time", towards the bottom?
<30> Do you see that?
<31> A. Yes.
<32>
<33> Q. At the time that you started up the machine, did you
<34> have in mind that you would blow into it?
<35> A. No, I don't think so at that stage.
<36>
<37> Q. Then, as you would know, the slip also records the
<38> carrying out of the test by using the words
<39> "sufficient sample" and having a list or run of asterisks
<40> or stars which record the machine's assessment of the
<41> breath sample being sufficient; is that right?
<42> A. Yes.
<43>
<44> Q. In the end result, as we know, it tested zero and then
<45> the machine printed out this slip; is that right?
<46> A. Yes.
<47>

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P-241

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> Q. You took it along with the other documentation for the
< 2> purposes of fixing into the breath analysis records; is
< 3> that right?
< 4> A. Yes.
< 5>
< 6> Q. Similarly in some respects, did you complete the
< 7> certificate under section 33 of the Road Transport Safety
< 8> and Traffic Management Act which had to be completed in the
< 9> case of such a breath analysis?
<10> A. It's automatically generated.
<11>
<12> Q. Yes, but insofar as it needed completion, did you sign
<13> it?
<14> A. Yes.
<15>
<16> Q. And put your rank and station on the form?
<17> A. Yes.
<18>
<19> Q. Look at the document barcoded 7132376 now shown on the
<20> screen, please, and, in particular, at the signature and
<21> other writing at the bottom. Is that your signature and
<22> your handwriting?
<23> A. Yes.
<24>
<25> Q. Is it your signature above the words "Authorised
<26> police officer"?
<27> A. Yes.
<28>
<29> Q. Finally, amongst these documents, is there an
<30> observations sheet barcoded 7132377 which is now partly on
<31> the screen? Do you recognise your handwriting on that
<32> document?
<33> A. Yes.
<34>
<35> Q. Is it possible to show the whole of the page. Can you
<36> still read that in that form? I will have you shown the
<37> original in the breath analysis data record book. Is all
<38> the handwriting on that page of the observation sheet in
<39> that book relevant to Mr Clunes your writing?
<40> A. Yes.
<41>
<42> Q. Is there anything on that form which you say is
<43> incorrect in relation to the observations that you did make
<44> of him?
<45> A. No.
<46>
<47> Q. In relation to the opinion, which is towards the

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> bottom of the page, do you say it was the case that you
< 2> formed the opinion that he was slightly affected due to
< 3> liquor?
< 4> A. I indicated to you before, I don't think he was
< 5> affected. There is no other area there or line to make any
< 6> other comment for that opinion. This form transcribes over
< 7> onto to a computer entry, and it's the same with that.
< 8>
< 9> Q. So, what, you say your view is that he was unaffected
<10> by alcohol?
<11> A. Yes.
<12>
<13> Q. As to the contemporaneous notes about food consumption
<14> and the like, do you say that those are things which he
<15> told you?
<16> A. Yes.
<17>
<18> Q. "Had a large meal before drinking and had chips while
<19> drinking"?
<20> A. Yes.
<21>
<22> Q. Might that book be returned, please. Then you also
<23> completed, I suggest, a custody management cover sheet in
<24> relation to Mr Clunes?
<25> A. I can't remember.
<26>
<27> Q. Might Mr Christie be shown the document barcoded
<28> 7132415, please. Is that your handwriting on that
<29> document?
<30> A. Yes, I completed that document.
<31>
<32> Q. Included amongst the handwriting, about a third of the
<33> way down the page, is "Negative BAS". Did you write that
<34> in?
<35> A. Yes.
<36>
<37> Q. Then in the bundle of documents, I think after some
<38> pages apparently filled in by Constable Lanser, can I show
<39> you a document barcoded 7132418. This is the caution and
<40> summary of Part 9 of the Law Enforcement (Powers &
<41> Responsibilities) Act 2002. Is that your handwriting which
<42> appears a little over halfway down that page under the
<43> heading of "Acknowledgment"?
<44> A. Yes.
<45>
<46> Q. In which you have completed the time and the date and
<47> signed as custody manager; is that right?

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P-243

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> A. Yes.
< 2>
< 3> Q. And Mr Clunes has signed and written his name a little
< 4> further down that form; is that right?
< 5> A. Yes.
< 6>
< 7> Q. Did you complete a property docket in respect of
< 8> Adam Clunes?
< 9> A. I can't remember.
<10>
<11> Q. Might Mr Christie be shown the document barcoded
<12> 7132420. Is that your signature which appears under -
<13> alongside the word "signature" and above and below your
<14> name and rank in the bottom left of that docket?
<15> A. Yes.
<16>
<17> Q. Then there is a custody management record, or a
<18> print-out of a custody management record. Might
<19> Mr Christie be shown that, starting with page 7132422,
<20> please. Can you see that the document is as I have
<21> described it?
<22> A. Yes.
<23>
<24> Q. And that it relates to Adam Clunes?
<25> A. Yes.
<26>
<27> Q. And his custody on 21 December 2007?
<28> A. Yes.
<29>
<30> Q. Would you look at the following page, 7132423, and the
<31> page after that, 7132424, and the page after that, 7132425.
<32> Could the top of that page just be blown up a little bit,
<33> please. Is this a computerised record?
<34> A. Yes.
<35>
<36> Q. Were you responsible, at least in part, for entering
<37> the material which is there recorded onto the computer
<38> system at Orange police station?
<39> A. Yes.
<40>
<41> Q. Did you make the record which is contained on that
<42> page under your name, starting with the words "Negative
<43> BAS"?
<44> A. Yes.
<45>
<46> Q. Do you say that the sentence starting "States that
<47> just before driving his car he had a mouth full of rum and

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P-244

M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> coke" was something which he told you?
< 2> A. Yes.
< 3>
< 4> Q. Do you say that the sentence "Was scared to tell the
< 5> police owing to being on provisional driver's licence" was
< 6> something that he told you?
< 7> A. Yes.
< 8>
< 9> Q. Are you sure about that?
<10> A. Yes.
<11>
<12> Q. At the start of giving your evidence this afternoon,
<13> you gave an explanation about why this happened in answer
<14> to my question about why it happened?
<15> A. Yes.
<16>
<17> Q. Is there anything you want to add to that?
<18> A. I'm very sorry for my actions, the disgrace that it's
<19> brought on to my colleagues, to the NSW Police as a whole,
<20> and as a result of my actions, I know that I will have to
<21> wear the consequences.
<22>
<23> I want the Commission to understand and believe me
<24> that I acted alone. I haven't needed to collude with other
<25> police. It was a poor decision that was made on my behalf
<26> on the night. I've gone some way in explaining to you why
<27> I had that moment of weakness. Nothing can undo what's
<28> happened, and I'd like to thank Mr Modra, the investigator,
<29> for his fairness and politeness in his dealing with me. Is
<30> there anything else you would like me to address?
<31>
<32> Q. No, I don't think so.
<33>
<34> MR STAEHLI: I don't have any further questions,
<35> Commissioner.
<36>
<37> THE COMMISSIONER: Thank you, Mr Staehli. Mr Oates, do
<38> you have any questions?
<39>
<40> MR OATES: No, thank you, Commissioner.
<41>
<42> MR STAEHLI: I just need to tender some of those
<43> documents, if I might.
<44>
<45> THE COMMISSIONER: Yes, I was just coming back to that.
<46> The BAS form I think was the first one, barcoded 7132374.
<47> Was it only one document?

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> MR STAEHLI: No, there are four of them. The number range
< 3> goes to 377.
< 4>
< 5> THE COMMISSIONER: The BAS form 7132374 to 7132377 can be
< 6> admitted and marked exhibit 4. The Section 33 certificate
< 7> I think was the next one, barcoded 7132376 --
< 8>

< 9> MR STAEHLI: I'm sorry, I have included all those
<10> documents. They might travel as one exhibit, I think,
<11> conveniently.
<12>
<13> THE COMMISSIONER: That is up to and including the
<14> observation points to look for document?
<15>
<16> MR STAEHLI: Yes. They are all stapled together in the
<17> original record.
<18>
<19> THE COMMISSIONER: So that can be exhibit 4 as one
<20> exhibit - 7132374 to 7132377. The next one was 7132415,
<21> the custody management cover sheet?
<22>
<23> MR STAEHLI: Yes.
<24>
<25> THE COMMISSIONER: I'm not sure whether there was some
<26> information in those documents that might --
<27>
<28> MR STAEHLI: Might access to both those documents be
<29> restricted to the legal personnel?
<30>
<31> THE COMMISSIONER: Yes. The BAS forms as well?
<32>
<33> MR STAEHLI: Yes, please.
<34>
<35> THE COMMISSIONER: All right. The BAS forms which were
<36> admitted as exhibit 4 can be exhibit 4C, with access
<37> limited to Commission staff and those legal representatives
<38> given leave to appear at the hearing.
<39>
<40> EXHIBIT #4C BAS FORMS BARCODED 7132374-7132377
<41>
<42> THE COMMISSIONER: The observations points was part of it.
<43> The custody management cover sheet, 7132415 can be admitted
<44> and marked exhibit 5C, with similar orders regarding
<45> access.
<46>
<47> EXHIBIT #5C CUSTODY MANAGEMENT COVER SHEET BARCODED 7132415

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> THE COMMISSIONER: The caution and summary of Part 9 Form,
< 3> barcoded 7132418, can be admitted and marked exhibit 6C
< 4> with the same restrictions as regarding access.
< 5>
< 6> EXHIBIT #6C CAUTION AND SUMMARY OF PART 9 FORM
< 7> BARCODED 7132418
< 8>
< 9> THE COMMISSIONER: The document barcoded 7132420, the
<10> property docket, can be admitted and marked exhibit 7C.
<11>
<12> EXHIBIT #7C PROPERTY DOCKET BARCODED 7132420
<13>
<14> THE COMMISSIONER: That will have the same restrictions
<15> regarding access. The last document, barcode 7132422, the
<16> custody management record, can be admitted and marked
<17> exhibit 8C, with the same restrictions regarding access.
<18>
<19> EXHIBIT #8C CUSTODY MANAGEMENT RECORD BARCODED 7132422
<20>
<21> MR STAEHLI: Thank you, Commissioner.
<22>
<23> THE COMMISSIONER: Q. Mr Christie, you may have heard
<24> some evidence earlier this morning from Mr Clunes regarding
<25> a prior incident that Adam Clunes had had with the Highway
<26> Patrol regarding being pulled over for a speeding ticket
<27> and a not display P-plate. Do you remember that evidence
<28> this morning? Were you here for that?
<29> A. Yes.
<30>
<31> Q. Were you aware of that at the time of this incident on
<32> 21 December, that Mr Clunes senior had raised some issue
<33> about the circumstances of those two tickets being issued?
<34> A. I first became aware of it when Constable Lanser and
<35> Constable Hall presented Clunes to the charge room. That's
<36> the first time I became aware of it.
<37>
<38> Q. When you say you became aware of it, you became aware
<39> of what?
<40> A. That he'd received some recent infringements.
<41>
<42> Q. How is it that you became aware of that?
<43> A. Constable Lanser told me.
<44>
<45> Q. Is that all she told you about it, or was there
<46> anything further about Mr Clunes senior's attitude about
<47> those two tickets?

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M R CHRISTIE (Mr Staehli)

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< 1> A. I've explained Constable Lanser was bordering on
< 2> hysterical. She was crying. She was upset. There were a
< 3> lot of things said. I have no idea what she was saying,
< 4> but I did hear that.
< 5>
< 6> Q. That Adam Clunes had earlier received tickets of some
< 7> description --
< 8> A. Yes.
< 9>
<10> Q. -- in relation to some driving offences; is that right?
<11> A. (Witness nods).
<12>
<13> Q. But you heard what Mr Clunes senior said this morning
<14> about having had a discussion with the actual Highway
<15> Patrol officer about those tickets?
<16> A. Yes.
<17>
<18> Q. That aspect of it, though, you don't recall Ms Lanser
<19> saying anything about that?
<20> A. No, and it's quite possibly prior to me being at
<21> Orange police station. I have no knowledge of it at all.
<22>
<23> Q. When did you first start at Orange police station?
<24> A. About nine months ago.
<25>
<26> Q. How long have you been a police officer?
<27> A. Nine and a half years, roughly.
<28>
<29> Q. Where were you before you arrived at Orange?
<30> A. Deniliquin local area command.
<31>
<32> Q. Has most of your service been in the country?
<33> A. Yes.
<34>
<35> Q. The camera in the BAS room at Orange police station,
<36> I think you said you were aware that there was a camera in
<37> that room before this incident; is that right?
<38> A. Yes.
<39>
<40> Q. The BAS room, is that just a room for the purposes of
<41> conducting BAS tests, or does it serve other purposes as
<42> well?
<43> A. It at times becomes a general dumping ground for
<44> prisoner blankets and steel shelving, or whatever other
<45> stuff needs to be shot out of the hallway. There's a
<46> LiveScan machine in there. There's comms cabinets in
<47> there. The room's quite dangerous for operational police,

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1> given all the other things that are in there that shouldn't
< 2> be.
< 3>
< 4> Q. We heard some evidence in relation to an earlier
< 5> incident during this hearing about the BAS machine being a
< 6> fixed piece of equipment; is that right? It's fixed, not
< 7> mobile, it can't be moved around?
< 8> A. It can't be moved without permission from the BAS
< 9> unit.
<10>
<11> Q. But it can be moved, can it?
<12> A. By specialists.
<13>
<14> Q. But it's not similar to a roadside apparatus that's
<15> used?
<16> A. No.
<17>
<18> Q. Do you have any understanding or insight as to the
<19> particular purpose that the camera in that room is meant to
<20> serve?
<21> A. Prisoner mishandling issues. It's the first station
<22> I've ever worked in, as far as I'm aware, that's had video
<23> surveillance.
<24>
<25> Q. In a room where you also conduct BAS tests; is that
<26> right?
<27> A. In any room.
<28>
<29> Q. In any room in a police station?
<30> A. Yeah, as far as I'm aware.
<31>
<32> Q. You'd conducted BAS tests, I take it, as you've said,
<33> before you arrived at Orange; is that right?
<34> A. Yes.
<35>
<36> Q. How often would they sort of take up, say, your daily
<37> duties?
<38> A. Very, very infrequently.
<39>
<40> Q. So roughly how many BAS tests do you think you would
<41> have conducted over your time as a police officer, if you
<42> can put an estimate on it?
<43> A. I couldn't put an estimate on it. In the four and a
<44> half years prior to getting to Orange, I probably did five.
<45>
<46> Q. Five?
<47> A. Yeah, at an estimate.

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M R CHRISTIE (Mr Staehli)

Transcript produced by Merrill Legal Solutions

< 1>
< 2> Q. I take it, though, from what you have said in response
< 3> to Mr Staehli, that all those BAS tests were conducted in
< 4> the normal, usual way; is that right?
< 5> A. Yes.
< 6>
< 7> THE COMMISSIONER: Is there anything arising?
< 8>
< 9> MR STAEHLI: Not from me, thank you.
<10>
<11> THE COMMISSIONER: Q. Mr Christie, you can step down for
<12> the moment. Thank you very much. Just stay within the
<13> hearing room, if you like, or at least the precincts of the
<14> building until we indicate otherwise.
<15>
<16> <THE WITNESS WITHDREW
<17>
<18> MR STAEHLI: Commissioner, also on the witness list today
<19> were Constables Benson and Commins, but in the light of
<20> what has just taken place, that is, Mr Christie having
<21> admitted to the conduct which is being investigated, there
<22> is no purpose to be served by calling Messrs Benson and
<23> Commins, in my view, and I suggest that they, together with
<24> the other witnesses today, be discharged from their
<25> summonses.
<26>
<27> THE COMMISSIONER: In those circumstances, as you said,
<28> Mr Staehli, is it at this stage only in relation to
<29> Mr Benson and Mr Commins that you seek --
<30>
<31> MR STAEHLI: No, I think the others can be discharged as
<32> well. Thank you.
<33>
<34> THE COMMISSIONER: All those witnesses who have given
<35> evidence or otherwise been summonsed can now consider
<36> themselves discharged from any further obligations under
<37> the summonses and are otherwise free to go or leave the
<38> hearing or certainly the precincts of the building.
<39>
<40> MR STAEHLI: In addition, there is Ms Donnelly. Mr Willis
<41> was here earlier in her respect. She might also be
<42> discharged from the future requirement that she attend
<43> under the summons.
<44>
<45> THE COMMISSIONER: Mr Willis is not here at the moment,
<46> but we can let Mr Willis know about that and we will let
<47> Ms Donnelly know as well. I take it, Mr Staehli, there is

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M R CHRISTIE (Mr Staehli)

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< 1> nothing else from you?
< 2>
< 3> MR STAEHLI: No, that's right.
< 4>
< 5> THE COMMISSIONER: There is nothing else from anyone else?
< 6> In relation to submissions, Mr Staehli, do you want to
< 7> discuss that?
< 8>
< 9> MR STAEHLI: Might we discuss that at the Commission and
<10> then make contact with the other parties in that respect?
<11>
<12> THE COMMISSIONER: We can communicate that, certainly.
<13> Unless there is anything else, I thank everybody and we
<14> will adjourn.
<15>
<16> AT 3.56PM THE COMMISSION WAS ADJOURNED ACCORDINGLY
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