

MASTER TAPE NO. 2844/1/2/

CENTRAL COURT OF PEACE

98 LIVERPOOL STREET SYDNEY

WEDNESDAY 21ST. FEBRUARY 1979

BEFORE: K. WEBB, ESQUIRE, STIPENDIARY MAGISTRATE

POLICE

v.

DEFENDANT:
c.c. 194,195,
196,
200,201,

VICO VIRKEZ
'Stealing'
'Possess Explosive'
'Conspiracy'

and

DEFENDANT:
c.c. 88,
89,
90,
210,211

ANTON ZVIROVIC
'Possess Unlicensed Pistol'
'Possess Explosive'
'Possess Explosive'
'Conspiracy'

and

DEFENDANT:
c.c. 64,
208,209,

MILE NEKIC
'Possess Explosive'
'Conspiracy'

and

DEFENDANT:
c.c. 62,
202,203,

JOSEPH KOKOTOVIC
'Possess Explosive'
'Conspiracy'

and

DEFENDANT:
c.c. 63,
204,205,

ILIJA KOKOTOVIC
'Possess Explosive'
'Conspiracy'

and

DEFENDANT:
c.c. 206,207,

VJEKOSLAV BRAJKOVIC
'Conspiracy'

and

DEFENDANT:
c.c. 189,190,
191,
192,
193,
198,199

MAKSIM BEBICH
'Stealing'
'Possess Explosives'
'Assault Occasioning Actual Bodily Harm'
'Possess Firearm'
'Conspiracy'

APPEARANCES: Mr. Amor-Smith of counsel instructed by Higgs & Higgs appears for and with the defendant Virkez

Mr. Hazelwood, solicitor, instructed by Baker & Hazelwood appears for and with the defendant Zvirotic

Mr. R. Scott of counsel instructed by Mr. McCrudden, solicitor, appears for and with defendants Nekic, Joseph Kokotovic and Ilija Kokotovic and Bajkovic

Mr. Young, Public Solicitor, appears for and with defendant Bebich

Defendants appear from custody.

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(Charges read to defendants)

PROSECUTOR: As I understand the matter to be sir that all these charges have been set down for hearing and the suggested date is a hearing commencing on the eleventh of June, that is Monday the eleventh of June and three weeks has been set aside for that hearing. I understand further that in the vicinity of eighty to ninety witnesses will be called and I might indicate to the court that I will be opposing bail in relation to each of the defendants, and I anticipate there are bail applications from each Counsel.

BENCH: I think the first thing might be a little academic but the adjournment to the eleventh of June consented to or not at this stage?

A: I don't consent to it if Your Worship pleases.

MR. SCOTT: I might indicate Your Worship I am told that is the first time that this court can facilitate the hearing of the matters against my four clients Your Worship and I know you sir would regard that as normally an intolerable delay but sir if that is the situation logistically then whilst I certainly don't agree to it we are in a situation where if we don't consent but we must we must abide Your Worship the order of the court if that's the first day that can be made available.

PROSECUTOR: That's the first available date.

BENCH: I'm aware of what you've said but there are other reasons why I ask Counsel to indicate their...

A: Your Worship I'm instructed not to consent.

A. Your Worship I'd be asking for the first available date but I appreciate the remarks that have already been made but if that is the first available date, while not consenting I'd appreciate the order Your Worship is likely to make.

BENCH: Well I think at this stage I haven't made any personal enquiries, I've no reason to doubt that the Sergeant has and that's the date that's been indicated, as the matter stands at the moment as being the first available date for the commencement of the hearing having regard to the length of time that it is said the matter will take, with that in mind though I think at this stage the matter would have to be approached on another basis and accepted that so far as today at any rate is concerned we are at this stage looking at the matter on the basis that there's no consent forthcoming to an adjournment of that length of time and I think for the purposes in those

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BENCH: circumstances we should be talking about the matter being adjourned for mention only again until the twenty eighth of February.

BENCH: Perhaps you might commence Sergeant by giving me some indication what you base your refusal for bail upon?

PROSECUTOR: Your Worship will appreciate the nature of the charges with the fresh charges that have been preferred against each and all of these defendants. Briefly that is an allegation or a conspiracy to murder two named persons.

Now a further charge has been laid as a conspiracy against each of these defendants to cause by explosive substances explosions in the State of New South Wales which would endanger life and cause injury to property.

Now in relation to those two particular series of charges we have a grave and genuine fear for the safety of the persons of New South Wales in that we fear that if these defendants are granted bail they would continue.

MR. HAZELWOOD:

OBJECTION: / I object if Your Worship pleases to matters raised/on the last occasion this matter was before the court in the nature of allegations, it received quite some publicity and were put before the court at some length. I objected on that occasion to the statements of the then prosecutor and I object to them now, the proper way to do it is to -

BENCH: Is to?

A: Call evidence about it -

PROSECUTOR: I understood Your Worship called upon me to address you on the question of bail, sir, and it's never been suggested that we enter into the realm of evidence at this stage.

BENCH: I don't follow you, Mr. Hazelwood, in that I don't propose to conduct an enquiry to see whether there is sufficient evidence to establish a prima facie case at this stage.

MR. HAZELWOOD: But I'm just objecting to the statements of the Sergeant on the question of bail Your Worship, just bald statements - if he's going to make such allegations let's hear some evidence of them.

PROSECUTOR: I don't propose Your Worship at this stage to enter into a hearing but I can assure the court that the prosecution has strong and cogent evidence to support my allegation.

BENCH: Yes, you may continue.

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PROSECUTOR: We fear that if these defendants if granted bail would continue with their conspiracy and as a result we fear as I've indicated for the safety of the citizens of New South Wales; we fear, sir, for the safety of the persons named in the 'Conspiracy to Murder', we fear that if granted bail the defendants would interfere and tamper with witnesses and in view of the serious nature of the charges and their complicity and we allege certain persons and all persons have made certain admissions we would urge Your Worship to refuse bail.

BENCH: Is that all you wish to say at this stage, Sergeant?

BENCH: Right, you might indicate to me when it would be that the prosecution would be able to present evidence to the court in relation to the matters.

PROSECUTOR: We anticipate we will be ready to proceed in approximately three weeks time.

BENCH: Mr. Scott?

MR. SCOTT: Your Worship I'm placed in somewhat of a difficult situation Your Worship can appreciate because I on behalf of my four clients said to you, Sir, that as far as a day for hearing and that's what I'm most anxious to commence these matters, sir, as far as a day was concerned that I would accede to the date suggested Your Worship which was the eleventh of June; now of course Your Worship and I don't say this by way of criticism, it's now suggested that as far as my four clients are concerned it may now be put in for mention on the twenty eighth of February and I now I hear a further suggestion that evidence could be started or commenced in about three weeks time so in terms of time is just what the court is about with great respect in terms of these matters going over -

BENCH: Well I make it quite clear to you as I understand the Provisions of the Justices Act there can't be an adjournment for any date in excess of eight days unless it's with the consent of the defendant, that's the first point.

MR. SCOTT: Your Worship I consent to the matters going over for hearing to the eleventh of June as far as my four clients are concerned -

BENCH: You consent to that?

MR. SCOTT: Yes, sir, now Your Worship if that is the situation and my four clients go over to the eleventh of June we will then be in a situation Your Worship to have these matters ventilated and not by way of allegations

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MR. SCOTT: Your Worship but of course by way of evidence. Your Worship if I could give Your Worship a little bit of background as far as each of these four men are concerned. Sir, and I wasn't of course in this matter before when it was mentioned before you Your Worship -

BENCH: No.

MR. SCOTT: The situation seems to be that on the night of the eighth of February three of these gentlemen, sir, Mr. Nekic and the two gentlemen Kokotovics at a home in fact occupied by the Kokotovics at Burwood, Mr. Nekic living nearby with his family at Burwood and likewise Your Worship Mr. Brajkovic on the same night was at home with his family at Restwell Street Rosley Park and it seems sir by a stroke of orchestration that a number of police arrived almost simultaneously although apart at Burwood and at Liverpool and fortunately Your Worship for these four gentlemen they were at that time in the company of their families and friends who were in the home. Statements have been obtained Your Worship and it would seem that the allegations made by the Prosecution on the earlier occasion when bail was refused can be reputed by way of people who were there at the home.

So, sir, in relation to the allegation of possession which is still before you, these particular explosive substances and instruments Your Worship, can I say clearly and explicitly and emphatically as I can Your Worship that these allegations of possession are denied.

Your Worship in relation to the fresh matters which have been preferred to-day although we were given advance notice, I suppose about two hours ago of the nature of the charges, they are matters we have not investigated or have had time, Your Worship will appreciate that, but sir certainly these four men wish it known sir that they are Croatsians, they belong to an organisation of which I have sighted the Constitution and a translation and certainly, sir, in this country they have on my instructions and certainly what's been presented to me, no thought your Worship to interfere with or harm any citizen or property in this country; their sole motives Your Worship in so far as they have any political motivations and are apologists for any particular party, is that they apparently Your Worship have strong feelings about a regime overseas but certainly sir as far as my friend's allegations of the citizens of New South Wales, they wish it known clearly, sir, that as far as property Your Worship and as far as the person of any person here and that includes their own Nationals, no one need have any fear concerning them.

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MR. SCOTT: I don't say these matters tritely to Your Worship, they are my instructions, I can show Your Worship the Constitution and a translation of the relevant part, indicate Clause 4, they do not belong, and they must sign this Your Worship, to any secret group within or without the party and the basic branches must obey the laws of the country where they are living and comply with the civil and legal associations in the country. As I understand it Your Worship they are motivated to keep within the law and that applies to the four of them.

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MR. SCOTT: So Your Worship as far as my friend's statement of the allegations, they are allegations, I'm instructed sir that they have made no interviews with the Police and I'd ask my friend in relation to my four clients, to indicate to you sir, whether he can tell you from the Bar table that either of these four men have made any signed acknowledgement of any complicity at all. On my instructions Your Worship they have not. Now Your Worship if that be the situation and he remains silent, then the situation would be that the Prosecution relies, I understand it on some type of verbal admission or some type of document not acknowledged as being one of these four, and of course they'll need to be tested in due course to see where the truth of those lie.

Sir in relation to these four people, I am sir asking you, even though one's in a Courtroom, perhaps with a lot of people, to apply Your Worship's mind individually to each of these men and I'd suggest Your Worship hears about them, they are four men who are entitled in terms of untested allegations against them, in terms of the length of delay, in terms of the type of people they are. They are entitled Your Worship to surety bail with reporting conditions, bearing in mind the seriousness of the charges and I'll be asking Your Worship in fact to grant bail on that basis.

But I deal sir firstly with Mr. Brajkovic. Sir, he's twenty nine years of age Your Worship, he was born on 31st August 1949 in Croatia sir, he came here in 1974. He has been married sir in this country five years. He has sir, one child presently aged four. He's undertaken sir in this country a trade course of a fitter and turner and is presently sir undergoing a course equivalent to an electronic technicians course Your Worship. He worked for a company at Villawood for some, I think two years, and now sir is employed by another company, presently employed at Liquip and has been there sir for a period I think of about two years now. He has sir a stable background as far as his work and certainly his association with this country. He tells me Your Worship, my friend will no doubt show it to you, that because of his beliefs involving this overseas country and certainly the regime there, he has been involved Your Worship in demonstrations, when it's been appropriate he has not used violence Your Worship, but apparently would have some - as I understand, reasonably minor matters reported arising as I understand sir, out of these demonstrations. It is of interest sir to note that he saw fit to become a naturalised citizen

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MR. SCOTT CONT'D: citizen of this country. So certainly on investigation by the appropriate authorities he was seen fit as a person to be accepted as a citizen of this country. Your Worship he has a present place of abode at 16 Restwell Road Bosley Park. He has a fixed place of work. He has a family sir, he's naturalised and his intention sir is to defend strenuously the allegations made by the Prosecution. I am told sir and this is in common with not only he but also the others, that friends and relations sir will find surety bail for him. It won't be his money sir, it will be friends and relations in the proper term of surety and sir a sum of a thousand dollars apparently could be forthcoming. But I mention sir that there is a fifth gentleman, Mr. Joseph Stipich, that you sir have the papers in front of you, he was a man alleged to be involved in certain parts of a complicity. Sir that matter has not been mentioned in front of you but bail has been granted with him, even though he was alleged to ^{have} possessed I understand also. Certain explosive devices. Bail was granted sir in relation to him I'm told in a thousand dollars surety bail. I'm asking sir with Mr. Brajkovic, notwithstanding the fresh charges which don't involve Mr. Stipich, that's bail be granted in a thousand dollars. I note Your Worship that Bosley Park, the closest Police Station there would no doubt be Fairfield Police Station, that's the closest Station to where he resides. He tells me sir that his work is of a day nature and he could report on a daily basis, that's seven times a week sir between the hours of 6.00p.m. and 8.00p.m. that night and I'm seeking on his behalf sir, bearing in mind the length of delay that he be granted surety bail in that sum with that reporting condition.

Sir if I can turn from him, there are other matters touching him which I don't think Your Worship is appropriate at this time to ventilate in this Court, but certainly suffice to say he wishes to have a number of matters ventilated concerning his arrest and what transpired and what was put to him by certain people. I'm not going to go into the details sir, it's not an appropriate time. It's suffice to say for the third time, he wishes to maintain his evidence and deny sir any complicity and have these matters ventilated.

Sir if I can turn from him to Mr. Nekic. He sir was with with the Kokotovics, that's the night sir of the 3th February at their home when this arrest took place. As I say Your Worship fortunately the number of people present there at the time. He's thirty one years of age sir, born on 2nd July 1947, again in Croatia, he arrived here in 1969 sir. He married in May of

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MR. SCOTT CONT'D 1975, he has one child aged three, his education sir was at the degree of School Certificate. He sir as well has finished a fitter's course. He worked sir for some two years with Gatcheson and Hughes and then sir as he's presently employed by apparently the A.W.A. Corporation and has been there for one and a half years. So again sir Your Worship has a background of a solid and certainly as far as his work, a consistent work record. Sir he resides as Your Worship sees on the charge at Yaralla Street Burwood and he tells me Your Worship that in fact he is due to go back to work tomorrow, these have been his holidays may it please you sir and holiday period at least. He tells me sir that he could report again, he only works five days a week and could report Your Worship between 6.00 and 8.00p.m. at night. The closest Police Station being Burwood Police Station Your Worship, bearing in mind he lives at Yaralla Street Burwood.

Sir in relation to the other two gentlemen, firstly Mr. James Kokotovic sir, Your Worship sees he resides at number nine Livingstone Avenue Burwood. Thirty one years of age, born sir in Yugoslavia on 18th April 1947. He came ^{here} in 1963. Married sir 1971, he has one child, aged six. He too sir has completed a trade course as a fitter and turner and has worked Your Worship for the one company at Camperdown, a engineering company for eight years. Another company at Leichhardt sir, John Heine Pty. Limited for two years. Carthew and Parr for four years and has been sir with Email now for a period of eight months. He's had Your Worship in the time he's been here since 1963, only four residential addresses. The first at Annandale, I think Croydon again sir and Burwood now for three years. His second place of abode sir at Greenhill Street Croydon, he was there nine years and he's been as I say sir at Livingstone Street Burwood for a period of three. So again Your Worship there's the picture built up about this man in common with the others, of a stable work background sir, a stable residential background and again as far as his conviction sir, when my friend shows them to you, they're matters sir apparently involving again demonstrations of a reasonably minor nature. Certainly nothing as I understand of any violent nature.

Your Worship the fourth gentleman sir, Mr. Joseph Kokotovic, he's twenty six sir, born on 23rd April 1952, came here in 1963 with his brother. Your Worship he has a daughter aged two and a half, his wife sir who is in Court today was due to have their second child yesterday, the child's overdue, but sir he certainly has a two and a half year old child and would be

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MR. SCOTT CONT'D: expected by the end of this week to have a second child. He sir also completed an electrical fitters course, has been with Email sir where his brother works now, for eight months, he's been there sir for nine years in that one job. Your Worship as I say he's a tradesman, he lives at that address sir with his wife and parents and their children sir, and apparently Your Worship they are paying off this home at Livingstone Street Burwood. I'm told sir as far as his background the only thing the Prosecution could point to would be matters that arise out of demonstrations again sir and those matters not of a grave or consequential nature. Sir in common with the others he has friends sir who can raise the same bail as Stipich sir, a thousand dollars would be within the means of friends in relation to bail for him. So Your Worship in relation to these four gentlemen, the situation emerges with them, notwithstanding the gravity of the offence. That if sir they were ordered in three of them to report on a daily basis, per week, the fourth Your Worship Mr. Brajkovic to report to the Fairfield Police Station. Certainly the Police can have a daily record of their attendance and where they are. They have jobs sir and they are sold jobs. They have Your Worship fixed places of abode and my friend has made quite properly sir, allegations of what the Prosecution will allege. We sir will wish not only to deny these allegations but to raise certain other important matters which would indicate to us sir, that perhaps the Police here sir, unwittingly are being used by other organisations and sir certainly there are a number of matters that would have to be ventilated before a Court in New South Wales because sir it does seem that what my friend has said, and certainly what our instructions are, amount to only the tip of what apparently in terms, one shouldn't say persecution, but certainly Your Worship the presence of agent provocateurs perhaps, involving themselves in the peaceful nature of these people to in fact stir up and incite others against them and it would seem sir these matters have to be ventilated correctly, not from the Bar table, but by way of sworn evidence and we'll welcome I'm told sir that opportunity to vindicate these ^{four} men. But certainly on the traditional aspects of bail, there is nothing in their background to indicate they will not answer bail and sir I have had my instructing solicitor take out all the relevant authorities on bail and one is struck time and time in again in these Courts of New South Wales by Supreme Court Judges it being brought home to Courts of that nature and this nature. That these are untested allegations made. Unless the Prosecution can point affirmatively to something, not just saying there are fears held, but call

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MR. SCOTT CONT'D: evidence in relation to it, just substantiated that in front of you sir, and that of course is what the new bail Act envisages anyway. Then in those circumstances sir, my statements are as worthy of credit as my friend's statement and putting those two together one then looks at the background of these four men to decide Your Worship is there in their background, bearing in mind that three of them are naturalised, I should have mentioned that sir, three are naturalised, but Mr. Nekic is not naturalised sir, the other three are, that's the two Kokotovics and Mr. Brajkovic, looking at their background, looking at what minor convictions they have, looking at whether they're the type of people not to answer bail or is it the situation that given surety bail with reporting conditions, you sir can have faith that on 11th June these four men will appear to answer these charges and have them ventilated. Need I say Your Worship that a delay of nearly four months before these matters can come to hearing, is on any view intolerable and sir I say without criticism of the Court or of my friend, but the fact is that before three citizens in fact of this country and a fourth man welcomed by the Government to reside here, to languish in gaol for nearly four months against untested allegations, is not sir to be tolerated in this State. Sir I suggest that bail should be granted for them. I ask Your Worship quite earnestly sir to look at their backgrounds, the four of them and to come to the conclusion Your Worship that on surety bail, with reporting conditions, they are people entitled to in fact a grant of bail.

BENCH: Thank you Mr. Scott, Mr. Amor-Smith?

MR. AMOR-SMITH: Your Worship I'm instructed as follows, I too only received information this morning in relation to the two extra charges. I haven't had time in this juncture to take sufficient instructions. I'm instructed further Your Worship that my client is twenty eight years of age, born on 3rd June 1951. Presently resides or used to reside at Lithgow. His own premises situated at 6 McCauley Street Lithgow, was a married man Your Worship, is now divorced and has been a labourer with Ralph Lee, Electrical Contractors at Lithgow for some four months of this juncture. My client is not a naturalised Australian, however Your Worship has been here since 1969, early 1970. I'm instructed further Your Worship that my client is prepared to report to the Police on a daily basis. If Your Worship could consider the aspect of reporting on every second day, perhaps between the hours of 6.00 and 8.00p.m. each night at the Lithgow Police Station. I'm further instructed

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MR. AMOR-SMITH CONT'D: Your Worship my client has no criminal record in this State or ^{in the} Commonwealth of Australia or in any other country. Your Worship I note Your Worship has suggested the date of the 28th, be a date for the adjournment. Your Worship I'm in personal difficulties on that particular day and if the Court could see it, perhaps 1st March? Your Worship when one sees this particular situation, admittedly my client has signed records of interview, in relation to several matters Your Worship, I request the Court first of all to grant my client bail, secondly to allow a surety or surety to a maximum of one thousand dollars Your Worship. If Your Worship doesn't grant that, then to adjourn the matter to 1st March and notwithstanding those matters Your Worship, on instructions I request that my client obtain medical assistance as soon as possible as he is suffering from certain medical problems in the last couple of days. He had certain medication which was taken away from him and he is now suffering in great pain, and suffering at this time Your Worship. Thank you Your Worship.

MR. HAZELWOOD: Your Worship unlike my friends I appeared for the defendant Zvirotic on the last occasion. It was then suggested that these fresh charges would be laid. According to the matters were adjourned for a week, that is until today. Now Your Worship is placed with the situation whether they'll be adjourned for another week. We've still achieved very little so far as getting the matters heard is concerned. It's often very difficult in a situation like that, but it does appear but in any event the matters would be unlikely to be able to proceed before 11th June and then proceed for at least three weeks it would seem which is almost another month. We're faced with the proposition before the Court is in any way in a position to determine whether or not there's a prima facie case against not only the defendant Zvirotic but also in relation to their other defendants. I also said on the last occasions that the charges that were then before the Court were denied and that of course still remains to be the case. Today we have two fresh charges and they are also denied by the defendant Zvirotic, and today is the first time that we've heard anything about the strength of the Crown case and then we heard nothing, bar a statement by the Prosecution, it simply said that he alleges that all persons have made admissions. Well I would submit Your Worship that that is not sufficient at all and I personally would like to know what other allegations or what are the allegations made against the defendant Zvirotic in relation to the strength of the case of course. I'd ask my friend to indicate that.

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PROSECUTOR: I would like to indicate - - in relation to the particulars I am sure that my friend is fully aware of the situation where he could make application but I would urge Your Worship to refer to S.393 of that indicating sir that this is not a hearing of the matter and the Court cannot direct any particulars or details of overt acts be supplied to the defence.

MR.HAZELWOOD: Firstly I wasn't asking for particulars of the offence or overt acts, I was asking what the allegations are and which the Sergeant's mademany allegations and he has said he has had many fears, but he hasn't told us anything about the strength of the case which is obviously a relevant matter for Your Worship to take into account on the question of bail and that's all I'm asking.

PROSECUTOR: We're quite satisfied Your Worship a prima facie case will be established on each defendant.

BENCH: Based on admissions that you indicated based on -?

PROSECUTOR: If I could indicate this Your Worship in reply to Mr.Scott that as I understand it there are certain signed records of interview. There are some unsigned records of interview and there are admissions. Coupled with the fact that property, that is, explosives have been found in various persons possession and I might indicate sir from that and other evidence we are satisfied that we can establish a prima facie case against each defendant.

MR.HAZELWOOD: It still really doesn't answer what I was asking the Prosecution to indicate Your Worship. I refer to my friend Mr.Scott's suggestion, while I was asking my friend to indicate in relation to one defendant for whom I appear and that's the defendant Zvirotic, the nature of the case and the admissions -.

BENCH: What is the situation.

MR.HAZELWOOD: He said there's been three statements, five unsigned and -.

BENCH: That is alleged in respect -.

PROSECUTOR: As I understand it sir in relation to this particular defendant, the submissions made property found and other corroborative evidence.

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BENCH: Admissions made in what light?

PROSECUTOR: Oral evidence sir.

MR. HAZELWOOD: Any oral admissions are denied on the part of the defendant but I was only trying to find out which category was - Your Worship having previously indicated that they were denied. Now the situation is Your Worship that so far as this defendant's personal details are concerned, he has been here for some ten years. He has been virtually in constant employment and he's not employed at the moment, but he's supporting himself on worker's compensation benefit. Well that goes without saying of course Your Worship that that happened during the course of his employment and he's been on unemployment benefits for some time but he is able to raise some surety bail and I would ask Your Worship to fix a surety bail. He was in fact arrested from his home at Ashfield and of course we're faced with the prospect of a very lengthy hearing, a very lengthy time. He has no convictions and he does of course enjoy the presumption of innocence.

MR. YOUNG: Well Your Worship's been asked to refuse bail in face of the broadest possible allegations that I've heard probably for some time in Court Your Worship. There is very few specific details been alleged against any or all of these defendants Your Worship. My instructions such as they are at this stage indicate that any of the type of evidence that has been referred to here this morning Your Worship certainly isn't admitted and nor would it be able to be established against the defendant Babich Your Worship, but in the face of what we have as the practicality would indicate that this matter won't be heard till June and I'd ask Your Worship to take that into account when assessing whether bail should be granted or not. When contrasted with the apparent strength of the Crown case as it has been outlined to us at the moment. Your Worship when contrasting that also with the stable background of this particular defendant Your Worship, he's resided the same address for quite some time. He's had the same job with the Housing Commission for the last five years Your Worship and his involvement on the allegations so far would not appear to be sufficient to warrant Your Worship refusing bail at this stage and in view of the lengthy adjournment, he tells me that a surety would be forthcoming if Your Worship were minded to grant bail and he would be prepared to accede to any other conditions that Your Worship was minded to impose on the bail if it was set.

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BENCH: Do you wish to reply any of the matters that have been raised?

PROSECUTOR: Well I might indicate that on previous occasions Your Worship as I understand it, there were allegations made in relation to this particular defendant at certain premises in the city of Sydney, were mentioned as I understand it in relation to your client Mr. Young. That's all I wish to say on that.

BENCH: Is anything known of the defendants previously?

PROSECUTOR: These documents, perhaps you might show it to counsel first. I tender the documents in relation to each of the defendants sir.

(?) I did wish to mention shortly Your Worship that is dealing with the question of bail. Obviously when the matters are to come to Court, it is a very significant matter to Your Worship to take into account and the fact that no other matters could only be adjourned for one week. I would submit Your Worship that it doesn't necessarily asks Your Worship's discretion in the overriding principles in relation to the matters. What Your Worship said was the matters be adjourned till next week for mention only.

BENCH: What I was trying to get an indication of -?

(?) I appreciate that.

MR. SCOTT:

(?) / I have no objection to Your Worship seeing these sir. Your Worship will see that certainly - or at least one of them, it's unfortunate there are matters which, a matter at least that has been dismissed but it appears Your Honour, you - of that. I didn't just slightly sir and I apologise for this, in relation to one man that's Mr. Nekic I appear for Your Worship, you'll see there is one matter there of a somewhat more serious nature sir and not gravely serious but a little more serious ^{than} that. I didn't indicate that sir and I apologise for that. - - -.

MR. AMOR-SMITH: Your Worship I do have an apology in relation to my client. I indicated on instructions there was no record. I find that there are two - I would term small matters Your Worship. Apart from that there is nothing else.

MR. YOUNG: No objection to Your Worship seeing the record of Maksim Bebich. Your Worship that indicates that he's presently on a bond and he instructs me he is under the supervision of the Probation Service where he's been living and there's certainly nothing on his record that comes anywhere near the allegations that are here to-day Your Worship. They're fairly minor matters and on my instructions his probation officer has been satisfied with his attendances at her office and his general behaviour.

PROSECUTOR: I might indicate, sir, in relation to the defendant Virkez, the matters indicated there are the present matters upon which he's under remand.

MR. AMOR-SMITH: They're the present matters, nothing - ? Well I stand by my original agreement Your Worship. Your Worship may I just remind Your Worship of my application in relation to medical assistance for my client?

BENCH: Yes. I have made a note of that.

I believe that up until this point of time the Informations that were before the Court were in relation to summary offences only. I have had some opportunity to look at those Informations and unless I am mistaken that was the situation. Of course today the Prosecution have brought two further Informations as I understand it which have been read to each of the defendants relating to matters which are of an indictable nature and indeed the allegation of conspiring to murder of course has been one of an extremely serious nature and that is not to say that the other allegation of intending to cause serious injury to property by explosion is not also of a very serious nature. The Prosecution have indicated that so far as they are concerned they are satisfied that they are able to substantiate their allegations to the extent that they can present a strong prima facie case. The arrests or the original arrests in these matters appear to have been made on eighth of February and it is now the twenty first of February when these fresh Informations are brought before the Court.

BENCH: It would seem with that amount of time available to them and the fact that these Informations are bought by police officers engaged in investigation and conduct of enquiries with that additional time available to them that they have not been lightly bought; it's been pointed out by counsel that of course at this stage they remain allegations, a matter for evidence, and no doubt any allegations made and any evidence brought will be strongly contested; in the end the situation is such that the Prosecution are able to present a case of such a nature and after any evidence put by the defence the courts are of the opinion that the matter should go to trial, of course any questions of guilt would be matters for a jury.

The question at the moment here is on the issue as to whether or not the defendant should be allowed bail pending the hearing of the committal proceedings. The offences themselves as I've indicated are of an extremely serious nature and the Prosecution in addition make allegations as to fears that they entertain and as they've put them in open court suggests that there's some basis for their making these matters known as to the likelihood of interference with witnesses and continuance of the course of conduct that they say has brought about these proceedings.

The prosecution have indicated that the evidence they have available consists of types of admissions together with the taking possession of property and other matters and that they would be in a position to present their evidence in approximately three weeks time and that is of course, I would consider, in the circumstances that the original charges were laid on the eighth of February, three weeks - only two weeks since then - that would mean a period of approximately five weeks from the laying of the original information and I don't think anyone could suggest that that wasn't a reasonable length of time for the Prosecution to gather their information, collect their witnesses and present them to the court.

I am now told that because of court commitments that there is no likelihood of these matters proceeding to a hearing before the eleventh of June and that is some four months from the date of the laying of the original informations and that of course is unacceptable to the defence counsel as a reasonable period of time if the defendants are to remain in custody. It's already been indicated by Mr. Scott that period of time is agreed to but of course clearly indicating that it is an intolerable

BENCH: period of time if the defendant or the four gentlemen that he appears for are to be kept in custody and with those sentiments I heartily agree.

By the same situation, by the same set of circumstances I do not feel that a court can be placed in a situation where it says that these are matters of such a serious nature having regard to the circumstances and the material placed before the court, bail should be refused and then back track as it were and say but because we can't get a hearing for a lengthy period of time I propose to grant the defendants bail. I certainly don't propose to be led into that situation.

I'm not satisfied at this point of time that sufficient information has been put before me to cause me to believe that the full particulars of the matter are known to the administration and the eleventh of June is the first available time when the matter could proceed to a hearing. I'm well aware and I accept what the Sergeant said that that's the information that he has had. At this stage I consider that to be unreasonable and I don't propose to adjourn the matter till the eleventh of June. Indeed, at the moment, I don't propose to adjourn it beyond to-day. I propose to stand the matter down in the list till two o'clock and I'll make my own enquiries as to the prospects and likelihood of the matter proceeding at a date earlier than the eleventh of June.

MATTERS TO STAND UNTIL TWO O'CLOCK

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BENCH: I have made some further enquiries which I'll refer to shortly, I think I should firstly deal with the question of bail and having referred to a number of matters previously and still bearing those in mind and having regard to what's been put to me by Mr. Scott and the other counsel representing the defendants for reasons that I've already referred to, basically the nature of these charges, the seriousness of the consequences and if the Prosecution are successful in obtaining convictions against them, if there is in fact a committal and the fact that that is a matter that any person charged with an offence of this nature would no doubt have in mind when thinking about his position as to whether he should or should not attend in the initial stages or at any time during the proceedings, the penalties that the offences would carry upon conviction, the circumstances that have been outlined in relation to the matter and even bearing in mind that it is not unusual they are strenuously denied at this stage. It is my intention to refuse bail in each case.

Now so far as those defendants are concerned for whom Mr. Scott does not appear, as I understand the situation at the moment from the enquiry I initially made I would be adjourning those matters until the first of March, does anyone want to suggest that that is not in accordance with what I was told - all right - well that's the eight days - there was no consent forthcoming and under the Provisions of the Justices Act there cannot be a remand for any longer period than eight days without the consent of the defendant and the consents in those cases weren't forthcoming. Now Mr. Scott has indicated that he is consenting to an adjournment until the eleventh of June. From the enquiries I have made I am able to indicate that the matters could so far as the court is concerned commence on the seventh of May for a period of three weeks. The difficulty I'm given to understand in relation to the matters is that it has been indicated that the preliminary hearing would take that length of time and it would not be possible to allocate three consecutive weeks at any earlier time. The calendar at this stage in fact is that loaded it would not be possible to introduce them even on a five day hearing and then adjourn them for some longer period for continued hearing. Now as the matter stands at the moment unless some further indication is given by defence counsel the indicated date for the commencement of the hearings will be the eleventh of June, the seventh of May is a date on which they can commence if anyone wishes to

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BENCH: make any suggestion in relation to that date.

MR. HAZELWOOD: I would like to indicate about that matter is on the last occasion the matter was before the court I indicated that I was not consenting to any lengthy adjournment and certainly my position remains the same.

BENCH: The matters you're involved in, Mr. Hazelwood, will be back in the list on the first of March, I am only indicating what the - I've been told is the situation as at the present moment and I can't do other than that, I'm indicating as at the present time unless some overtures are made to have the matter commence on the seventh of May and I might say that that would require the reorganisation of the already committed matters that are for the court but because of the fact that the defendants would appear at this stage to be going to remain in custody for some period of time at least, it was felt that other matters would have to stand out of the list and they would have to be put in for that date but at the present stage unless something is said about that I propose to adjourn Mr. Scott's matters to the date that the consent has been indicated for hearing to the eleventh of June - some alteration can be made to that at some later date if necessary but that was the date that was indicated and that was the date that was consented to and that's the date that I propose to adjourn them.

Now those four defendants will each be remanded to appear before this court on the eleventh of June 1979 as I indicated bail being refused and the other three defendants will be remanded to appear before this court on the first of March 1979 when the matters will be for mention again and bail will be refused.

I/We, the undersigned, being (a) Transcription Typist(s) for the sound-recording of proceedings at the Central Court of Petty Sessions, Sydney, held before **K. Webb** Esq., Stipendiary Magistrate, who directed that the depositions be so recorded, and being duly authorized in this behalf by the Clerk of Petty Sessions, DO HEREBY CERTIFY that the within written transcript is a correct transcript of the recording of the proceedings in the matter of

POLICE

v.

DEFENDANTS: **VIRKEZ & ORS.**
c.c. nos. (See cover sheet)

HEARING DATE: **21st. FEBRUARY 1979**

MASTER TAPE NO: **2844/1/2** CASSETTES:

DATED AT THE CENTRAL COURT OF PETTY SESSIONS, SYDNEY,
this ~~Fourteenth~~ day of **March** 19 **79** .

<u>NAME:</u>	<u>PAGES:</u> <u>Cassettes</u>	<u>SIGNATURE:</u>
<u>H. Callan</u>	<u>1,2,4,5,</u>	<u></u>
<u>M. Froml</u>	<u>3,</u>	<u></u>
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MASTER TAPE NO. 2900/1

79/357

CENTRAL COURT OF PETTY SESSIONS
98 LIVERPOOL STREET, SYDNEYTHURSDAY, 1st MARCH, 1979.BEFORE: K.W. JONES, ESQUIRE, STIPENDIARY MAGISTRATE.

POLICE

-v-

DEFENDANT: VICO VIRKEZ
 C.C. 43 "Stealing"
 C.C. 44 "Stealing"
 C.C. 45 "Stealing"
 C.C. 46 "Possess explosives"
 C.C. 47 "Conspire to cause injury"

DEFENDANT: ANTON ZVIROTIC
 C.C. 48 "Possess pistol without license"
 C.C. 49 "Possess explosives"
 C.C. 50 "Possess explosives"
 C.C. 51 "Conspire to murder"
 C.C. 52 "Possess explosives"

SERGEANT BRADY:	Appears by leave for the Informant.
MR. AMOR-SMITH: Instructed by Higgins and Higgins, Solicitors.	Appears for Defendant. Vico Virkez.
MR. HAZELWOOD: Instructed by Baker and Hazelwood Solicitors.	Appears for Defendant Anton Zvirotic.

This document is a copy of the original and is not to be used for any purpose other than the conduct of these proceedings, it is prohibited.

1.

2900/1 MH (1)
1st March, 1979.

MR. AMOR-SMITH: Your Worship I refer to the Charge Matters numbers 43-47 inclusive. Your Worship this matter was before you approximately a week ago, an application for bail was made on behalf of my client. That application was refused, I advise Your Worship at this juncture that I will be making a further application for bail.

PROSECUTOR: In relation to these defendants and other defendants, Your Worship, as indicated on prior occasions it was alleged that these men and other persons arrested at Lithgow were involved in what could be described as a number of terrorists acts throughout the Metropolitan area and we alleged that these acts consist of planting time bombs in a number of premises and one of which I understand to be the Elizabethan Theatre which was ^{to have been} occupied by the public at that time. Our further information that when and if detonated widespread fatalities and devastation would occur. It is further alleged that other premises, clubs and travel agents were to have been similarly devastated by means of explosive matter. Further, that it was intended by these and by other conspirators to blow up the water supply between, a water supply pipe between the Warragamba Dam and the Prospect Reservoir. Now also ^{these persons are} charged with conspiracy to murder named persons and at the time of arrest these persons and other co-conspirators were found to have in their possession explosive substances and electronic devices capable of being used in the preparation of time bombs. The persons arrested at Lithgow had in their possession four time bombs which are described as "properly constructed and capable of causing widespread devastating damage" and I understand further, Sir, each of these bombs were of the approximate weight of twelve or twelve and a half kilograms. Now there is a reason for the application, Sir, that the investigation at this stage is still not complete and there is a number of matters further to be investigated and it is upon those reasons, Sir, that I am asking for the remand and in view of the serious nature of the charges where there were serious allegations made I will be asking Your Worship to refuse bail. Thank you Your Worship.

BENCH: Are either of the defendants previously known.

PROSECUTOR: I understand the defendant Anton Zvirotic has no prior convictions, and Virkez nothing prior as I understand it on a name check.

2.

2900/1 MH (2)
1st March, 1979.

BENCH: Yes Mr. Hazelwood.

MR. HAZELWOOD: Just shortly Your Worship, the defendant has of course a permanent place of abode. He was in fact arrested from his residence and he tells me since he has been in Australia, I think about ten years, eight years Your Worship he has always remained in constant ^{employment} and he has been well able to support himself. In fact, he is doing that at the moment, he is indeed on Worker's Compensation obviously due to an injury received throughout the course of his employment. He tells me that he is a naturalized Australian and that he does not have a passport. Your Worship has heard that he has no previous convictions. Now Your Worship will notice a number of charges before you in relation to this defendant. There are three summary charges and they were the original charges with which he was charged, the explosives and the pistol and there are two charges of conspiracy. Well one of those charges of conspiracy, of course, as Your Worship would be aware is in fact Common Law misdemeanor. The other one is Statutory I think under Section 26, the conspiracy to murder. Now I would put this to your Worship that if Your Worship was dealing here with simply three summary charges and faced with as we are with an adjournment of some four months before the matters can be heard Your Worship would have no hesitation in granting bail. I submit, Your Worship, that that situation would not alter one iota due to the fact of the Common Law misdemeanor because as Your Worship would be well aware with the Section of the Justices Act and I think from memory it is 41, it is 62 is it, a section of the Justices Act that provides that bail must be granted upon committal to trial on a Common Law misdemeanor and of course that can only arise as Your Worship is well aware after the Crown have presented their evidence and a prima facie case has been found. Well at this stage of course there has been no prima facie case, we enjoy the presumption of innocence and I would submit to Your Worship that therefore that could not and would not prevent Your Worship in granting bail in relation to these allegations then so that the only charge Your Worship would be considering would be refusing bail on would be that charge under Section 26

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1st March, 1979

MR. HAZELWOOD: Most of the allegations raised by the Prosecution have been denied by myself as representing the Defendant Zvirotis on two previous occasions and they are of course still denied. Most of the allegations that the Sergeant makes Your Worship, are in relation to the Common Law misdemeanour. The allegations of the Statutory Conspiracy that's the conspiracy to murder, is before Your Worship and we heard on the last occasion some matters put before the Court as to the strength of the crown case in relation to that matter, and what we heard about that was that there was some oral confessions. That's all! Now it is well known the law, Your Worship in relation to delay and it's a matter for Your Worship to take into account along with other matters, of course the primary concern is that Your Worship is well aware also, is the question of whether or not the Defendant if granted bail would fail to appear and that of course is the over-riding principle, we've heard nothing about that. We can only assume therefore that the Police have no fears that the Defendant Zvirotis in any event, would not appear if granted bail. He's naturalised, he has been here for eight years, he has been in constant employment and there is certainly nothing in his record that would indicate such propensity. So, weighing all those matters and more particularly the delay, because as I understand it from the Prosecution, they are anxious that all charges against all Defendants proceed together, and the earliest that that can be, is the eleventh of June. They anticipate calling some eighty odd witnesses, there has been a period of some three weeks set aside for it, now it would obviously be with seven Defendants and presumably all if not most who represented that we could be hard pressed to finish it, even within that time. So that, in effect Your Worship, we are even talking about these Defendants could conceivably be in custody/ until early July. Now that's ^{some} five months after they're arrested in early January, in early February I beg Your Worship's pardon, and that of course is an intolerable situation, I'm sure Your Worship will agree. It's through no fault of the Defendant that he can't have his matter heard earlier, my instructions are Your Worship to object to any adjournment for any period longer than eight days and indeed that is our position and we are ready to proceed to-day. There is similarly ^{a provision} in the Justice's Act, as Your Worship is well aware and as Your Worship pointed out to the unrepresented Defendant that with no consent forthcoming the matters can only be adjourned for eight days,

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MR. HAZELWOOD: CONT'D: or for no period in excess of eight days and interestingly enough Your Worship that is similarly a provision that is embodied in the New Bail Act and whilst that Act hasn't come into operation, I'm sure Your Worship would be aware of the fact that it has been assented to and there is a similar provision in that Act. Now, that would give - I would submit Your Worship, would give Your Worship some idea as to the way the legislatures certainly guard persons interests when in custody on indictable offences. Now, I don't know how many weeks there are between now and the eleventh of June, but I'm sure Your Worship would agree that that becomes farcical. If we come down here every week saying that we are ready to proceed and the Prosecution refused to call their witnesses or proceed with the matter. My friend tells me there is some twelve weeks, well it makes a complete farce of the situation, Your Worship and under those circumstances I would ask Your Worship to grant bail and to grant bail that is not beyond this Defendant's reach.

BENCH: Sergeant are you able to indicate why the matter can't proceed until June?

PROSECUTOR: I think in relation to this Your Worship that it was indicated on the last occasion we would be in a position to proceed in approximately three weeks, but from memory the Court calendar was such that the eleventh of June was the first available time for the - a case such as this nature and length as a Court would be available, and -

BENCH: Was that ^{fact} indicated on the last occasion Mr. Hazelwood?

MR. HAZELWOOD: Yes, it was Your Worship.

PROSECUTOR: As a matter of fact so much so Sir that Mr. Webb was disturbed as to the length of time he adjourned particularly to ascertain that situation.

BENCH: Yes, I think I recollect that he mentioned this matter to me now.

MR. HAZELWOOD: And of course, one cannot backtrack as it were Your Worship by saying that well I wouldn't normally grant bail if the matter was proceeding to a hearing next week, well I certainly wouldn't grant bail in relation to this matter, but because it goes over for longer than that, well then that is a matter that changes my view on it.

BENCH: Well, I think that Mr. Webb was most unhappy about the situation, but he took the view that I think that he wasn't

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BENCH CONT'D: going to be blackmailed into granting bail because -

MR. HAZELWOOD: Because of the delay and that is against all the authorities Sir, I would submit Your Worship and against certainly Cables Case where bail was granted to a person charged with murder, he was ultimately convicted also I might add Your Worship, but he was and I think it was the late Chief Justice Sir Lesley Herron who sat on that occasion and where this question of delay arose and it was - that point that arose and that was exceptional circumstance upon which he granted bail in that case and that was a delay of some three or four weeks. We've got three - four times that length now.

BENCH: Yes, Mr. Amor-Smith.

MR. AMOR-SMITH: Your Worship will recall that on the last occasion of this Court on Wednesday the twenty-first February, 1979, I made certain submissions in relation to my Client.

BENCH: Well, unfortunately I don't have a transcript -

MR. AMOR-SMITH: Unfortunately Your Worship, you don't so unfortunately I now have to recanvass that area. Your Worship my Client was born on the third of June, 1951, is presently aged twenty-eight years of age, nearly twenty-nine. He came to Australia in late 1969, early 1970. My Client is not a naturalised Australian, Your Worship my Client was married and some fifteen months ago divorced his wife, who is now a resident in Victoria and subsequently re-married. In relation to that union, Your Worship I am instructed that my Client had a child, a boy son, who the last time he saw was just prior to the new year period. I am instructed further Your Worship that my client would like to see his son as soon as possible, as a family connection. The boy is only three Your Worship, and my instructions are that my client would like to visit Victoria and see his son if possible, otherwise his son could come to New South Wales. Your Worship, on the last occasion I advised the Court that my client was the owner of premises situated at 6 McCauley Street, Lithgow, my instructions are at this juncture Your Worship that my Client was a resident for a five year period there, prior to the request by the Police to visit the Sydney area and only this week Your Worship, my Client's property was sold by my instructing Solicitor and my instructing Solicitor has the funds in trust account. Your Worship prior to this unfortunate incident my Client was

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MR. AMOR-SMITH CONT'D: a labourer employed by Ralph Lee Constructions Contractors at Woolerawang and had been in that occupation for some four months. I am further instructed Your Worship that my Client has no criminal record and that if Your Worship were to consider the aspect of bail and come to the conclusion 'yes', under the circumstances my Client should be allowed bail, he would be prepared to report to the Police on a half daily or daily basis at Lithgow between the hours of 6 p.m. and 8 p.m. each day and if required a surety or sureties in the sum of say One thousand dollars (\$1000.00). Your Worship on the last occasion mentioned of the fact that my Client was suffering from ill health. I am instructed further Your Worship that my Client too, had suffered an injury at work, some fifteen months ago and his Worker's Compensation application has been successfully resolved. However Your Worship my Client still suffers from migraine headaches and other associated neurological problems and at this time requires medication. On the last occasion Your Worship before His Worship Webb I requested that my Client receive medication in relation to his medical problem. I am advised at this time Your Worship that that situation has not come to fruition and that my Client is not receiving corrective medication at the Parramatta gaol. Your Worship, my Client also has property in the nature of a 1964 Valiant Station Waggon and has bank accounts in the Lithgow area. My Client's mother is a of - Croatian National aged fifty-six and residing in the Croatian State, the father died in 1977 and he has two brothers residing in Germany ages thirty and twenty-nine respectively. He has no other relatives in New South Wales or the Commonwealth of Australia. Your Worship other than this particular matter my Client on instructions has a good and clean character and has no antecedents in relation to the Police of New South Wales. Your Worship I now wish to address Your Worship in relation to the charges that my Client has been charged with and as Mr. Hazelwood has said, My Client in his situation has been charged with five matters Your Worship, the first is under S.117 of the Crimes Act, that's relating to explosives with a maximum penal servitude of five years, the second once again is under S.117 maximum penal servitude of five years, the third matter Your Worship under S.249 of the Crimes Act related to certain explosive substances with a maximum ^{penalty} of three years imprisonment. Your Worship the fourth matter is

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MR. AMOR-SMITH CONT'D: the matter under S.26 that Mr. Hazelwood referred you to the conspiracy to commit murder and the fifth matter being the Common Law misdemeanour. Your Worship I now refer Your Worship to the Australian Law Journal Volume Forty-five at page One hundred and ninety-three and onwards and I refer Your Worship to an examination of the bail situation by a Mr. Douglas Brown, senior lecturer in Law University of Western Australia, and Your Worship in that thesis the following matters are canvassed and my submission is based on the matters relating thereto. Your Worship in the case REGINA versus B-O-R-S-B-O-N-N 1887 4W.N., N.S.W., p.14, it was said by His Honour, Mr. Justice Long-I-N-N-E-S it would require a very exceptional state of things to justify him ⁱⁿ admitting an accused charged with murder to bail. However it has not been doubted that the Court may grant bail in a case of murder or manslaughter, exceptional circumstances have been held to exist where a child of thirteen years of age was committed for trial on a charge of murder, when a protracted trial the applicant was in ill health. Now, in my submission Your Worship you heard from the Bar Table admittedly that my Client did suffer a Worker's Compensation injury some fifteen months ago and is now, on my submission suffering from neurological problems and is not receiving the correct medical attention. Your Worship - exceptional circumstances were held not to exist where the applicant was aged and in poor health, I must be fair to Your Worship. Your Worship the next matter I wish to dwell on is the probability of my Client's appearance before the Court. Your Worship it is my submission that the applicant in these proceedings has not at any time had a criminal conviction or charged recorded against him in the State of New South Wales and that it would be my submission Your Worship that my Client would appear if Your Worship were to grant bail on the conditions as annunciated a little earlier. Your Worship has heard the nature of the particular charges and other than for the S.26 situation, the charges are with respect, of not so serious a nature when one compares the two situations. Your Worship also has to consider the severity of the sentences which perhaps could be laid in relation to these matters. Well, I have already indicated to Your Worship the various sentences that one could have for these matters, three, five and life imprisonment, but the life imprisonment is only in relation to the one matter that is a conspiracy to commit a murder Your Worship.

8.

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1st March, 1979.

MR. AMOR-SMITH CONT: Notwithstanding the fourth section of twenty six, Your Worship, of the Crimes Act, it is a conspiracy to commit murder, there was not any murder, there is no evidence that there was a conspiracy, it is just an allegation by the Police at this stage. On that basis, Your Worship, you have no evidence before you other than an allegation by the Police that there could be an apprehension of danger to property and or to members of the community. Other than that, Your Worship, there is no evidence. Your Worship then has to look at the aspect of the probability of a conviction being recorded with my submission, Your Worship, how can Your Worship indicate or make a submission, or how can Your Worship judge that aspect when there is no evidence at this stage. There has not even been a committal. What we are asking for, Your Worship, is that my client be allowed bail on the basis that there is no evidence before the Court that he has no prior criminal record and that/^{the}only really insignificant matter is the Section 26 situation which, as I have already indicated, is a conspiracy with no evidence. Your Worship, the next aspect that I address Your Worship on is the aspect of the antecedence of the applicant. The police this morning, through Sergeant Brady, indicated that my client clean skin, that he has no convictions, no record in New South Wales or the Commonwealth let alone any other International Jurisdiction. Your Worship, my submission is in relation to the preparation of a defence. Your Worship has heard that the police indicated before His Worship, Kevin Webb, that the police would be ready within three weeks. Today they still indicate, perhaps, the three week period. Your Worship has also heard further that the matter had been adjourned for other people in relation to the situations until the 11th June, 1979. Your Worship it is my submission, my client is in Parramatta, incarcerated at Parramatta, my instructing solicitor at Lithgow, his counsel is in Sydney, the disadvantage that all three parties has in preparing the case are paramount when one considers that one has to continually make arrangements to enter either the Parramatta Gaol or Long Bay Gaol, you have very limited time in which to make records and to carry out interviews with your client, you are not in a "free" situation. Your Worship, you are surrounded in a situation where the capacity to talk and discuss things freely without interference from the authorities is not one hundred percent assured and on that basis, Your Worship, I further submit that my client should be allowed bail. Your Worship, Your Worship

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MR. AMOR-SMITH CONT'D: has heard that in relation to the situation there is a lengthy delay of another three months before these matters will come on before the Court. Your Worship, I now refer you to page one hundred and ninety seven of the Volume 45 of the Australian Law Journal, in the case of, Your Worship, R -v- Clarkson, 1879, 2 S.C.R.(N.S.) (N.S.W.) page 101 and the charge is "rape", Your Worship, this application, it had received more consideration when applied with some other factors. In R -v- Clarkson a delay in the trial of four months and some doubts in the prisoner's favour were held to justify bail. Where an appeal against a conviction for larceny could not be heard for two months, the delay was sufficient to say to grant bail. I then refer you, Your Worship, to the decisions in the Australian cases are similar. In R -v- Southgate, 1960 New South Wales Reports at page 477 where owing to a short vacation the appeal could not be heard for four weeks, allied to the additional factor of there being substantial grounds for appeal, bail was granted. A delay of one month before the hearing of appeal had been accepted as special circumstances. That is for an appeal, Your Worship. In my submission that is when the evidence has been heard and a prima facie case has been established, when my client is being charged and then the appeal on conviction goes to the Appeal Courts. We have a situation here, Your Worship, where we have no prima facie, where we have no committal proceedings, where we have no appeal and in the Appeal Courts, Your Worship, have held that a month's delay was sufficient extenuating circumstances in special circumstances to grant bail.

BENCH: ^{I doubt} That is the modern situation.

MR. AMOR-SMITH: Beg your pardon, Your Worship.

BENCH: I doubt if the Superior Courts are in such a favoured position now.

MR. AMOR-SMITH: Well, Your Worship, the situation is in the Canadian Courts of course they take a similar view to us, that a person who has been charged to offence should be allowed bail unless there are very, very extenuating circumstances. Now the heard submission from Sergeant Brady. He talks about allegations in relation to his involvement, in relation to the Newton Theatre, in relation to the City water supply, they are allegations, Your Worship, there is not one

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MR. AMOR-SMITH CONT'D: scintillar of evidence, there is no evidence, it is just a pure surmise, that it is an allegation. I now refer Your Worship to the case of R -v- Mahoney Smith, 1967 Weekly Notes at page two fifty four, the last paragraph. Your Worship the general approach to the determination of applications to this Court for bail in circumstances and then further down but His Honour then Mr. Justice O'Brien stated this Your Worship, "but it is I think important to keep in mind that the grant or refusal of bail is determined to the evidence led against him upon the proceedings for his committal for trial". And at the bottom of page two hundred and fifty five Your Worship Mr. Justice O'Brien says further, "there seems also to have been some confusion if it can be described as to the legal and the circumstances in which it was obtained". Well Your Worship admittedly there are records of interview against my Client and I say this Your Worship at this juncture that records of interview as such at this juncture are worth absolutely nothing. Your Worship of course appreciates the fact that in the committal proceedings Counsel has the right to cross examine on the voir dire in relation to the admissibility of records of interview, records of interview at that juncture might not be allowed into evidence, that being the situation Your Worship other than the so called records of interview, there is nothing against my client. Your Worship the next aspect that I wish to address on is the social status of the accused or my client. Your Worship has heard that he was in gainful employment prior to this unfortunate situation, that he was a healthy member of the community in the sense of his work situation. Your Worship has also heard that the Crown or the Police Prosecutor opposes bail and the reasons given there to. I have already addressed Your Worship in relation to the health of the applicant and I must be fair Your Worship, bail has been refused on the last occasion. There has been no suggestion Your Worship that my client would flee from the local area, flee from New South Wales or would himself from the Commonwealth of Australia. And Your Worship I am instructed that if Your Worship grants bail the surety or sureties would not receive any recompense from my client. The sureties would be completely independent persons Your Worship in relation to the matters pertaining to misdemeanours and the lesser offences, there have been no pleas

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MR. AMOR-SMITH CONT'D: at this juncture in relation to S.51A of the Justices Act. My client maintains that he is completely innocent of all charges. And I submit further Your Worship when you consider this aspect, my client has been incarcerated now for some weeks. The matter will not get on before 11th June, 1979. That is a further involuntary incarceration for a period of three months. Admittedly not at the behest or request of either the defence or the prosecution but because of the Court situation is as it were blocked. It just cannot accomodate our case. Well Your Worship notwithstanding what your brother said on the last occasion, in my submission that is not sufficient reason why my client should not be allowed bail, allowed to prepare his case adequately just because the Court says "I am sorry Mr. Applicant, we just haven't got the Courts for you. You will just have to wait until there are Courts available." If that is the only reason Your Worship, if that is the only reason Your Worship, then Your Worship should allow my client bail. Your Worship in relation to the reasons for granting bail, it must take these matters into consideration; one, the presumption of innocence; two, the time and the time and the necessity of a proper procedure for the preparation of a defence; three, the mental and psychological effects of this involuntary incarceration on my client; four, and in my submission Your Worship a most valid submission, the pressure on my client during his incarceration both from a civil and political point of view. Your Worship, being short it is my submission that my client should be granted bail and if Your Worship deems fit that a surety or sureties will be provided and they will be independent persons. Thank you Your Worship.

PROSECUTOR: Sir could I just inform Your Worship of a certain matter that came to my attention during the address by Counsel.

BENCH: Yes.

PROSECUTOR: As I understand it Your Worship on the last occasion before this Court a person by the name of Joseph Cockockovich was remanded by consent to 11th June and His Worship, your Brother Worship Mr. Webb refused bail. The Supreme Court application was made for a review of bail Sir and as I understand it Mr. Justice Maxwell at the Supreme Court today after some two hours hearing has refused bail upon Mr. Cockockovich. I did take the liberty of informing Counsel of this when this came to my attention Sir.

BENCH: Sergeant you have made some general allegations about

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BENCH CONT'D: all of the persons charged.

PROSECUTOR: Yes Sir.

BENCH: Are you able to indicate so far as the two defendants that are now before me what further allegations are relied upon in relation to them.

PROSECUTOR: Without traversing into the area of supplying particulars Your Worship I would rely upon the general allegations made because we allege Sir that each of the seven persons were equally guilty of the conspiracies.

BENCH: Well I think one of the matters that I must have regard to is the strength of the Crown case and if you do not want to disclose that well it is a matter for you.

PROSECUTOR: I appreciate Your Worship does not have the previous depositions before you but that particular aspect was canvassed and on that occasion Sir we informed the Court we consider that a strong Prima Facie Case would be established in relation to each of the defendants and I indicate further in relation to Virkez and Bebitch, the two defendants now before this Court, signed records of interview.

BENCH: Yes I am sorry, just a minute, we are not dealing with Bebitch we are only dealing with Virkez and Zvirotic.

PROSECUTOR: Yes Sir but Bebitch is also before this Court today.

BENCH: Yes well I am not considering his bail at the moment.

PROSECUTOR: In relation to Virkez Sir we as I understand it signed records of interview admitting their, complicity in relation to these

MR. AMOR-SMITH: I object.

PROSECUTOR: I press.

MR. AMOR-SMITH: I object Your Worship.

BENCH: I am not going to go into a voir dire on a record of interview Mr. Amor-Smith. I am of the opinion that I can accept and inform myself about matters relevant to bail,

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BENCH CONT'D: other than by evidence upon oath.

MR. AMOR-SMITH: Your Worship it is my submission, may I submit Your Worship?

BENCH: Well, I will hear what the Sergeant has to say first.

PROSECUTOR: Continuing Sir, we allege that in those records of interview that the Defendant has admitted his complicity in these conspiracies. Further in relation to Mr. Hazelwood's Client as I understand it, there are admissions made by the Defendant in relation to his complicity together with certain property found in his possession. Thank you, Sir.

BENCH: There was something you would like to say, Mr. Amor-Smith.

MR. AMOR-SMITH: Yes, thank you Your Worship. Your Worship in my respectful submission Your Worship I submit once again that what purports to be like records of interview at this juncture, in my submission have no weight whatsoever. Your Worship has to at this juncture, inform himself I submit, the Crown Case and the situation in relation to the Defence. Your Worship has heard an allegation by Sergeant in relation to records of interview, certain admissions, it is my submission Your Worship that Your Worship can take into consideration that there are records of interview and that's as far as you can go with it, Your Worship. Your Worship can't address yourself to the fact, well they have made submissions and they have made admissions. In my submissions Your Worship can say there are records of interview and leave it at that and can't go any further.

BENCH: Perhaps so, but as I say, I think I am entitled to have regard to the fact that the Police alleged that they have admissions made by the Defendant. Now that is a matter for the Court hearing the matter.

MR. HAZELWOOD: If Your Worship would just hear me for one moment Sir, I just want to ask you one thing. The Sergeant has indicated to Your Worship that there is another Defendant charged and that he was refused bail this morning, by His Honour Mr. Justice Maxwell. Well, might I just say this about that particular Defendant, Sir, that he was here on the last occasion along with six other accused - co-accused and he consented to the dates, the eleventh of June as the Sergeant told you Your Worship, he was quite happy to consent to that.

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MR. AMOR-SMITH: summons and with Affidavit evidence and you are subject to cross examination on that Affidavit. Neither Counsel, neither Mr. Hazelwood nor myself had seen or read the summons or had an opportunity to look at what's in the Affidavit. You haven't seen the Affidavit, Your Worship, none of us know what's being said up there, reasons why the application was refused and in my submission Your Worship, Your Worship should not take that into consideration at this juncture. Your Worship could only take that into account if Your Worship has been appraised of what took place up in this Court. Just because Your Worship has been informed that a two hour application for bail has been refused, Your Worship shouldn't allow that to interfere with Your Worship's decision this afternoon.

BENCH: I agree but I just wonder what Counsel's attitude may have been had bail been granted, I think it might have been brought to my attention by Counsel.

MR. AMOR-SMITH: Well Your Worship I must say to you in all sincerity - until it was said to me at the Bar Table I did not know that the application in the Supreme Court had been complet

BENCH: No, I do not criticise you for that Mr. Amor-Smith -

MR. AMOR-SMITH: And I do apologise if Your Worship indicated that in Court -

BENCH: NO, it seems to me that - it is a matter that perhaps you may have attempted to gain some strength from had bail been granted, but I agree that the matters have to be looked at individually and -

MR. AMOR-SMITH: Your Worship when you play cricket at Lords you play cricket at Lords, I say no more Your Honour.

BENCH: Well the first matter I think that must be dealt with is the charges that are before the Court obviously the seriousness of the charge is the one under S.26 of the Crimes Act alleging a conspiracy to murder and I think that it is fair to say the manner in which it is alleged this conspiracy was to be carried out is a matter that must be taken into consideration. It is alleged that the use of explosives -

MR. HAZELWOOD: There has been nothing said about how that is suppose to have been done, all the other facts relate to the Common Law misdemeanour charge of conspiracy.

BENCH: Well, if it is alleged that these Defendants and others

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BENCH CONT'D: conspired to place bombs in places where the public might be expected to meet -

MR. AMOR-SMITH: Your Worship that is so correct there is an allegation of the conspiracy but there are no facts before Your Worship in relation to that allegation of discrepancy. It is just an allegation, I could go in the Street and yell out A-B-C and D the Police have come into this Court and said A-B-C and D in relation to a conspiracy, that's all, there is no -

BENCH: Well am I to disregard what the Police say that they will be alleging and what they will be adducing evidence about.

MR. AMOR-SMITH: Your Worship it would be my submission that the because by the very nature of their silk, their ilk, their oak must say this, there are serious allegations, we believe that the public are in danger. This and my submission is a formula they must go through. /Police

BENCH: Well, I am sorry you feel that way, but I don't, now I think also it is a matter for consideration as to the likelihood of the Defendant not attending on bail and I think that it has been the experience of Courts that persons facing serious charges and facing the possibility of a long prison sentence are apt not to appear on bail. So far as the domestic situations are concerned, each of the Defendants have established fairly lengthy residence in Australia, although each of them apparently, their recent work situation. I think one has been employed for about four months the other - that particular person has apparently has recently sold his home, the other man he's apparently on Worker's Compensation at the present time. It hasn't been said Mr. Hazelwood but I gather that Zvirotis is he a married man or what is the situation, it wasn't mentioned as to whether he was married or not?

MR. HAZELWOOD: No, he is not.

BENCH: Apparently the other man Virkez, he has recently been divorced and apparently has no domestic association at the moment.

MR. AMOR-SMITH: Oh very much so, Your Worship he has his son, a three year old son.

BENCH: He is not re-married?

MR. AMOR-SMITH: He hasn't re-married -

Q.O.B.

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BENCH: The son is where?

MR. AMOR-SMITH: His Son is in Melbourne.

BENCH: With his former wife?

MR. AMOR-SMITH: With his former wife -

BENCH: I would hardly call that a very stable domestic situation.

MR. AMOR-SMITH: Well, Your Worship with respect, he does see his son, he pays money for his son and he has a very permanent relationship with his son and that should be taken into account.

BENCH: Yes, well I do, the other matter that exercises my mind, is that the Prosecution say that they do have admissions from each of these Defendants. It has been argued very forcibly that I should take no notice of that, I do not agree that that is the situation. I must concede that I have taken no evidence to satisfy myself that these admissions of - have been properly obtained or that they would stand up in the actual hearing, but I do have some regard to the fact that the Prosecution alleged that admissions have been made, in one case a signed admission. It is also alleged so far as the Defendant Zvirotis is concerned that certain property was found in his possession upon which the Prosecution will be relying. The Defence of - raised that - so far as Virkez is concerned that he does require some medical attention again that is a statement, there is no evidence to support it. It is said that each of the men can raise some surety, that they would be prepared to report and that if they are remaining in custody that the preparation of their defence will be hampered. These are all matters that obviously do cause some concern, the main strength of the defence submissions has been the length of the adjournment and that is a matter that does cause me a great deal of concern and had the adjournment been to a relatively short date, I would have had no hesitation in refusing bail.

Q.O.B.

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BENCH CONT'D: But it is a matter of concern that these men may have to remain in custody for a period of another three months. I am mindful of the fact that there are other defendants involved and they also have been remanded to a date in June. I take it that bail has been refused in relation to all defendants?

PROSECUTOR: Yes Sir.

BENCH: Despite the length of the adjournment I am of the opinion that bail should again be refused and on the charge under S.26 I will mark the matter bail refused. Bail is not required on the other matters.

BAIL IS REFUSED

ADJOURNED TO THIS COURT ON FRIDAY,
9TH MARCH, 1979, AT TEN A.M. FOR MENTION

*JOHN F. MOD. SMITH
4/174 PHILIP ST
SPDNRY.
N. SW. 2093.*

*PH 231-4988
may I have a copy of the
above.*

I/We, the undersigned, being (a) Transcription Typist(s) for the sound-recording of proceedings at the Central Court of Petty Sessions, Sydney, held before **K.W. Jones** Esq., Stipendiary Magistrate, who directed that the depositions be so recorded, and being duly authorized in this behalf by the Clerk of Petty Sessions, DO HEREBY CERTIFY that the within written transcript is a correct transcript of the recording of the proceedings in the matter of

POLICE

-v-

DEFENDANT **Vico VIRKEZ**

- C.C. 43 "Stealing"
- C.C. 44 "Stealing"
- C.C. 45 "Possess Explosives"
- C.C. 46 "Conspire to Murder"
- C.C. 47 "Conspire to Cause Injury"

DEFENDANT **Anton ZVIROTIC**

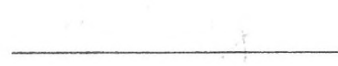
- C.C. 48 "Possess Pistol without License"
- C.C. 49 "Possess Explosives"
- C.C. 50 "Possess Explosives"
- C.C. 51 "Conspire to Murder"
- C.C. 52 "Possess Explosives"

HEARING DATE:
1st March, 1979.

DATED AT THE CENTRAL COURT OF PETTY SESSIONS, SYDNEY,

this **SIXTH** day of **MARCH** 19**79** .

M.T. No. 2900/1 CASSETTES 1 to 5

NAME:	PAGES:	SIGNATURE:
M. HAWORTH	1,3,	
M. PERRY	2,4,	
S. GODDARD	3,5,	

DE:MF:4.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

No. 7123 of 1979.

CORAM: YELDHAM, J.

THURSDAY, 5th April, 1979.

REGINA v. BRAJKOVIC VJEKOSLAV

MR. BYRNE appeared for the Crown.
The applicant appeared in person.

HIS HONOUR: Are you Brogkovic Vjekoslav?

APPLICANT: Yes.

HIS HONOUR: Are you appearing for yourself or is anyone appearing for you?

APPLICANT: I am appearing for myself.

MR. BYRNE: The applicant was arrested on 8th February, 1979. He first appeared in court on 9th February and again on the 21st. He is charged with conspiracy to murder under s.26 of the Crimes Act. He is also charged that with others between 1st November, 1978, and 8th February, 1979, did cause by explosive substances explosions in the State of New South Wales of a nature to endanger life or to cause serious injury to property.

He was remanded in custody until 21st February, 1979. He was then remanded to 11th June for hearing and that was subsequently changed to 17th May. On that date the police will be ready to proceed.

KELVIN EDWARD TURNER
sworn to answer:

TO MR. BYRNE: My full name is Kelvin Edward Turner. I am a detective sergeant of police attached to the special breaking squad at the C.I.B. Sydney.

On 8th February this year as a result of information received police visited premises at 16 Restwell Road, Bosley Park where they arrested the applicant and his brother. A search of that building resulted in the finding of a quantity of explosive substances, including detonators, electronic timing switches and two large bags of nitrogen fertilizer. This fertilizer can be used as a bomb if mixed with other substances. There was no other reason for the person to have this particular fertilizer on his premises.

When interviewed the applicant admitted being involved with six other men. They planned to place time bombs at various places throughout the Sydney Metropolitan area on the night of their arrest. They were to have met one of the co-offenders at his house where the proposed victim's premises were to have been allocated to each team assigned for that purpose.

HIS HONOUR: Q. Who were the proposed victims? A. Various places, commercial places throughout Cabramatta. Mainly Yugoslav people.

Q. It was a vendetta, was it? A. Yes. It was a conflict between the Yugoslav and the Croatian community. This applicant was aware of seven places where time bombs were to be placed that night, one of which would have been the Elizabethan Theatre. At this theatre a bomb was to have been placed within the building with a delayed action time switch that was to detonate the bomb during the performance of a visiting Croatian group, that group being from Yugoslavia. This applicant and the co-accused had a grievance against that group and they believed the group was earning money in Australia to take home to Yugoslavia to fight the Croatian movement. A similar bomb was to have been placed in the switchboard of this same theatre to detonate that same night. Both these bombs have been located in the possession of one of the accused persons.

Q. Whose house was it where these things were found? A. Some we found were allocated to Lithgow on that same afternoon, one of the persons there being a man by the name of Virkez. He was also in the company of a person called Bebic. We raided premises at Lithgow and we found four bombs, each consisting of twelve and a half kilograms of an explosive substance. In addition we found time clocks already prepared to be made into a time switch together with detonators. The two men at Lithgow were to have left there with these bombs, met up with this applicant and four other men who also had more explosives, and the team of seven were then to be allocated various premises to place bombs that night, these premises being mainly of a Yugoslav supporting person.

Getting back to the Elizabethan Theatre, had the offenders been successful in placing the bombs in the theatre and such bombs detonated at the planned time, there would have been widespread damage to that building and death or injury to the patrons therein. This has been supported by expert evidence from the police department. In actual fact the night the performance did take place there were 1,000 men, women and children in that same building.

Q. Is it said the applicant admitted to the police his involvement?
A. Yes.

Q. Orally or in writing? A. In an unsigned record of interview. The two co-offenders arrested at Lithgow made signed admissions of their involvement and also the part played by the applicant here. I could continue with further descriptions of the places involved.

MR. BYRNE: Those are the facts. The applicant has one prior matter, offensive behaviour.

HIS HONOUR: I will not take that into account.

MR. BYRNE: Discharging a marine flare at the Yugoslav hall.

APPLICANT: I don't know. CROSS EXAMINATION

APPLICANT: Q. I would like to ask you, did you find explosives when you came into my house? A. I didn't personally. To answer your question, I didn't go to your place. Other police did, visit your premises and found explosives there.

Q. You are representing the people and you don't know?

HIS HONOUR: You can only ask questions. This sergeant said he did not raid your premises but other police raided them and found explosives there.

APPLICANT: Q. Do you agree you found explosives in my house?
A. I understand the police who visited your house found explosives on your premises, yes.

Q. On my premises? A. Yes.

Q. The things that were supposed to be a bomb - where did the police find me? A. I understand the police found you hiding behind a bush in the back yard.

Q. What is the bush? A. A tree or a shrub.

Q. A tree is a bush? A. A shrub or a tree.

APPLICANT: I could not understand, your Honour.

HIS HONOUR: He said you were hiding behind a tree or a bush.

APPLICANT: The questions about the places I couldn't understand, the description of the places which are supposed to be bombs this night.

WITNESS: There was the Balkan Travel Agency. The Avio Tourist Travel Agency. General Tourist Travel Agency. The main supply line which supplies water from the Warragamba Dam to the Prospect Reservoir. The Elizabethan Theatre. The Serbian community hall.

APPLICANT: Q. Do you mean the building, the club? A. Yes. They were the particular premises mentioned for that particular night, but there were other premises planned for a later stage.

Q. Those are the charges that concern me, all these buildings?
A. Yes.

Q. Any others? A. There was a later plan by you and your colleagues to hijack an aeroplane at Mascot for the purpose of demanding a ransom of \$1,000,000 to \$2,000,000 and also the release of Croatian prisoners in America.

Q. Not all over the world? A. No, just America.

Q. Was there any question when you appeared at the court last time that someone threatened to kill you? A. Yes, that was a point I want to bring to your Honour's attention. On 21st February whilst appearing at court with the seven offenders this applicant in person threatened my life. He used the words "We will kill you."

Q. I used the words "I kill you"? A. That is what you told me.

Q. Where was this? A. This was in the cell section of the Central Court.

Q. Do you mean in the cells? A. You know, you were there.

APPLICANT: I don't know.

HIS HONOUR: You can ask questions but do not debate about it.

APPLICANT: I am sorry, it is the first time in court.

HIS HONOUR: The sergeant has said in the cells you threatened his life by saying "I will kill you". Ask your next question?

APPLICANT: Q. What kind of involvement was on that night, the bombs and these things? A. I am sorry, I missed that question.

Q. You said I am concerned with bombings with some other people?
A. Yes.

Q. Could you describe what the kind of role of action was supposed to be taken by me? A. It will be alleged in court that you will be one or that you are one of the leaders of the group of seven who were arrested.

Q. Do you mean all seven are the leaders or there is leaders? A. We maintain there are two leaders of this particular group of seven.

Q. Could you please tell us, you say you make the record of interview. Did this happen or not? A. You were interviewed by Det. Sgt. Wilson in the presence of Det. Snr. Const. Hardy and they typed that document in the course of a conversation with you.

Q. Was someone else present? A. I don't know.

Q. You claimed that I had been in this process of this so called interrogation, being beaten or anything else, you claimed when I came into the office to make a record of interview which has been conducted by Sgt. Williams that the presence of Const. Hardy, there is no mention that I be beaten and I spent five days in the hospital after this? A. This is the first time I have heard of that.

Q. There is the document and there is the witnesses.

HIS HONOUR: Just ask your questions.

APPLICANT: Q. Do you agree that night you find out that some two men of the Croatian community supposed to be murdered or some threat made to them? A. That was the basis of the charge of conspiring to murder. As you know it was your group's plan to murder these two men, who are Croatians, to throw the blame on other particular parties in the Croatian movement.

Q. Are these men known? A. You know both the men.

Q. I am just asking the questions? A. Known to whom?

Q. Are these men known to the community? Are they known to the police? Did you find them? A. You mean the two murder victims, do you?

Q. You said there is some record of interview with the police?
A. Supposed to have been made.

Q. Yes, supposed to have been made, and you said you also plan a hijack of a plane, also plan to kill two Croatian men. Is there any mention of their names? A. Yes, they told the names of the men to be murdered.

Q. When you find out did you protect these people?

HIS HONOUR: This does not help.

APPLICANT: It is very important about the record of interview.

HIS HONOUR: You just hear me for a moment. I am not the jury trying the case. That has nothing to do with me. I am not trying your case. A judge and jury will try your case. It does not help me on this application to hear all this. You can ask it if you want but it does not help me. Do you want to ask anything else? You ask him anything you want provided it bears on this question of bail, but just remember I am not trying your guilt or innocence.

4. Det. Sgt. Turner.xx. peaceful

5. Det. Sgt. Turner, ret'd.

APPLICANT: Q. On this night I was arrested, didn't my wife and my daughter and my brother-in-law --

A. I was not at the house that night.

Q. Did you mention it to my brother? A. Your brother-in-law was there, I think.

Q. Was it the same night my wife and my daughter be arrested and conducted to headquarters at the C.I.B.? A. I am not aware of this situation. When you were arrested I was in Lithgow and I did not come back from Lithgow until the following day. What happened at your place is what I have been told.

Q. Are you presenting the case from your knowledge or you don't know the case which is made by someone else? Is the case known to you? A. The basis of the case is known to me.

Q. You can't understand the things you are talking about?

HIS HONOUR: What he is saying is some of the things he has spoken about he was told by others because at that time he was in Lithgow. Other things he knows from his own knowledge.

Q. Is that so? A. Yes.

APPLICANT: I cannot conduct the questions. He is not concerned about the case and there is no conclusion what is going on about these things. He says if such a thing is good, yes, I can't find the conclusion of this.

HIS HONOUR: I am concerned with the serious nature of these charges and the question of whether you are likely to turn up at your trial. Those are the things that concern me.

APPLICANT: I am very much concerned about these things.

HIS HONOUR: Do you want to ask anything else?

APPLICANT: I have nothing to ask.

HIS HONOUR: You can address me in a moment, but if you want to ask the sergeant any questions --

APPLICANT: No.

WITNESS: There is one point I must raise; we do have fear of witnesses being intimidated. At this early stage we are experiencing difficulty with some of the witnesses who are withdrawing from assisting us going to court.

MR. BYRNE: One of the co-accused, Joseph Kokovic was refused bail in this court by Maxwell, J.

(Witness retired)

HIS HONOUR: What do you want to say as to why I should grant bail.

APPLICANT: Excuse me but I am confused about my appearance.

HIS HONOUR: There is nothing to apologise for.

APPLICANT: There is a different matter which concerns the prosecution in the case. There is a claim that I am supposed to do such bombings that night and I would say that the detective which represented the C.I.B. has been following me, he has been watching my house. He has been in my house. He comes in to ask me about demonstration which is supposed to have occurred on the Saturday and I told him I want to go in demonstration, I want to be peaceful

HIS HONOUR: You can present all these things before the jury.

and go to the birthday of my daughter on Saturday. He didn't believe this and he watched my house. On that day when I was arrested I was shopping. I spent Thursday with my wife and I go about ten past nine from shopping. I see the detective watching house and I by the lights of my car see him and recognise him, his name is John. I said this man has been in the house. Something is wrong. Why he watching. When I am in the house I meet my brother-in-law and I tell him the same thing and I said - he said "I saw the detective, he see me today and ask me what is doing." I said, "I am a musician. He asked me about politics. I am going to see this detective out in the street and see if anything is wrong and how we stand."

When I go out I couldn't believe it, four, five police cars just coming to me. I hide behind the tree and the police is going in the restaurant and when they come close to my house they come slowly. I couldn't believe such things happen. I wonder why these things happen to the Croatian people. I screen behind the tree. I go under the tree when the detectives come. I just been looking at what is going on. Many voices, jumping on the garage and all these things, back on the door. There is this big man. When I see the car it has been watching my house come behind the tree I recognise the man who is been in my house and I say "You are here." I said "What is this all about?" He said "Come in, we explain everything." Then the man who conducts it, he said you Brogkovic Vjekoslav." I said "Yes, what is going on? My brother-in-law and my daughter sitting in the house." I said "What is this searching, what is going on? My wife and brother-in-law don't know what is going on. I said "No worry, we tell you." They put handcuffs on and they say "Shut up." After this time I said "Could I use the telephone, could I tell lawyer what these things happen?" They said "No worry, come and sit down and shut up." The police were searching all over the house. The detective in charge say "Come here. What all these things." They find electronics. I said "I am going to electronics school. They are things I need. If you need something you just ask me. I can show you the books and everything." He said "All right." After this we go to police headquarters.

I there said "Vic, I tell you what this all about." He said "You sposed to go bombing, this argument, this water supply." I said "What bombing. I just come from shopping." He said "At 11 o'clock you s'posed to be bombing the things." I said "What it is all about?" He said "Earlier today we arrest two men in the Lithgow and they give your numbers and another two men." I asked "What it all about". He said "Look mate, we know everything." I said "I don't know nothing." They said to another one all right. He said "Vic, you want some coffee, a cigarette." Then he comes out and at the same time two detectives come in. I said just do that (demonstrates). After that they show you upstairs. They hit me and another man hit me and another man threw me down. I lost consciousness. After that I find myself sitting on the chair. One rips my hair. Another man from the back and they strangle me. I have big marks and I have five nights in the hospital. After all these things I don't know anything that happened.

After the solicitor comes. I said "Look, he give me this record of interview, eight pages"(reads p.8). That is supposed to be the record of interview, the record of interview which is to be conducted. But I see from the evidence that actually this record of interview took the police six days to make, six days, not only one day. Six days.

Your Honour, I have witnesses. They are in the office and when I go to Long Bay the sister sent me as an emergency case to the hospital.

6.
for legal aid. Do you understand that?

HIS HONOUR: You can present all these things before the jury.

APPLICANT: Yes. After this my wife came. She lost the job. The reason she lost the job because I transport her to job. We live on farm. Me and my wife plan future in this country. When she lost the job and I be arrested we lose everything. We can't pay anything this block of land. Before we be arrested I am in the school making electronics, planning the things to be better. That is the reason why I applied before for bail but I wasn't successful, the solicitor, the barrister present this case.

HIS HONOUR: It is not my function at this stage to decide whether you are guilty or not guilty. But you have been charged with serious charges.

APPLICANT: Very serious charges.

HIS HONOUR: The principle of the law is except in very exceptional circumstances at this stage before the magistrate has heard the evidence bail is not normally granted. You must understand I am not here to decide whether it is a strong case, a weak case, a good or bad case. My function is to determine at this early stage of the proceedings whether I should grant you bail or not. The case comes on in four weeks time.

APPLICANT: My wife could not raise the money for paying the block of land. She is without transport. All these things are catastrophic. My case is very dangerous for me if I can't defend it. They are asking an enormous sum of money. My solicitor has been two times to Long Bay. No one could defend me. No one could worry about myself except me.

HIS HONOUR: Who is your solicitor?

APPLICANT: Mr. McCarten.

HIS HONOUR: He has the right to go and visit you in gaol whenever he wants to.

APPLICANT: I don't have no money. Everything I got, I got \$240 per week.

HIS HONOUR: Have you applied to legal aid?

APPLICANT: I don't know how to do these things.

MR. BYRNE: I am instructed the public defender will be appointed for the co-accused, probably for this accused too.

HIS HONOUR: Have you signed an application for legal aid?

APPLICANT: No I have not.

HIS HONOUR: Before you leave here today, ^{whether} you are granted bail or not, you had better sign an application for legal aid. That is free legal aid. I take it you want that if you can get it.

APPLICANT: Any time. I am to give evidence in court at my charges.

HIS HONOUR: Do you want legal aid? If you have the money you may pay for your own private solicitor or you may get legal aid.

APPLICANT: I don't have no money.

HIS HONOUR: Once this matter is disposed of you had better sign an application form for free legal aid, because it is a serious charge. You ought to have representation. Your co-accused have legal aid. When I have dealt with this application you can sign an application for legal aid. Do you understand that?

IN THE DISTRICT COURT

DC:BD(4)

APPLICANT: Yes.

HIS HONOUR: Do you want to say anything more?

APPLICANT: I want to say about my wife. The police threaten my wife and daughter. It is not nice. It can't be used in evidence. My wife has been thrown out at 2 o'clock in the morning, they say getting out. The police put their legs on the table and they drink beer from the fridge. It is out of control. I am so lost.

HIS HONOUR: Is there anything else you want to put to me?

APPLICANT: There are a lot of things.

HIS HONOUR: I am only concerned with whether I should grant you bail, because of the serious nature of the charges and the fact they are going to be dealt with by a magistrate in four weeks.

APPLICANT: These charges are very dangerous. I cannot express myself to the people who come to visit me. If I have the case prepared I can do it. I cannot say I am not guilty, you believe me please. I must bring evidence.

HIS HONOUR: If you apply for legal aid you will find you are competently and expertly defended. These people go to the gaol each week and see people who are in custody and help them present their cases. You would not be disadvantaged if legal aid was presented to you.

APPLICANT: I beg you to take these things into consideration, about my family.

HIS HONOUR: Do you want to put anything else to me, or have you said it all now?

(The applicant made no reply)

(For his Honour's judgment see separate transcript.)

LIONEL ROBERT GEORGE BERNIE

Sworn to answer

TO HIS HONOUR: My full name is Lionel Robert George Bernie, Det. Sgt. of Police, attached to Flemington Police Station.

CROWN PROSECUTOR: Q: You have satisfied yourself the prisoner has no prior criminal convictions? A: That is correct.

Q. What is known about him? A. The prisoner was unknown to me prior to his arrest. However, I have ascertained he is a single man born on 21st November, 1955 in Rome, Italy. He is the eldest of three children having two sisters and he arrived in Australia in April 1972 at the age of sixteen years after completing his schooling in Rome.

He further informed me he obtained a school certificate equivalent to the Higher School Certificate in this country and this allowed him admission to the National Airforce to be trained as a pilot in Rome. On arrival in Australia he attended night school at Randwick Technical College where he obtained the Higher School Certificate. To assist his studies the prisoner worked part-time in a Pizza restaurant in the city area.

The prisoner then attended the Thorn F.V. School at North Ryde, and was successful in obtaining two certificates in that field. After completing this course he obtained employment with a local t.v. station as a production assistant and is in receipt

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

No. 7072 of 1979

CORAM: MAXWELL, J.

THURSDAY, 1ST MARCH, 1979

REGINA v. JOSEPH GEORGE KOKOTOVIC
(Application for Bail)

MR O'DONERTY appeared for the Crown.
MR SCOTT appeared for the applicant.

- - -

MR O'DONERTY: Your Honour, the Crown opposes bail in this matter. The applicant is aged 26. The applicant has been charged with two offences, one that the applicant conspired with others between 1st November, 1978 and 8th February, 1979 at Sydney to murder two men, a charge under s. 26 of the Crimes Act carrying a penalty of penal servitude for life; secondly, that the applicant conspired with others between 1st November, 1978 and 8th February, 1979 to cause by explosive substances explosions in the State of New South Wales of a nature to endanger life or to cause serious injury to property. It is a common law conspiracy, Your Honour. The applicant was arrested on 8th February, 1979. He first appeared at Central Court of Petty Sessions on 9th February, 1979. Those were two minor charges of possessing explosives. He was remanded without bail to appear at Central on 13th February, 1979 and was again remanded without bail to appear at Central on 21st February, 1979 where the two conspiracy charges were laid against him. He presently stands remanded to Central on 11th June, 1979 for committal proceedings. These committal proceedings have been listed for three weeks and I believe that is the first available date, Your Honour.

(Applicant's criminal history tendered to
His Honour without objection)

KELVIN EDWARD TURNER
Sworn to answer:

MR O'DONERTY: Q. Detective, could you give your full name, rank and station? A. Yes, sir. My full name is Kelvin Edward Turner. I am a Det. Sgt of Police attached to the Special Breaking Squad, Criminal Investigation Branch, Sydney. In this matter, Your Honour the facts surrounding this accused's arrest are as follows. On 8th February this year, as a result of information received, police visited premises at 9 Lixington Road, Furwood which were occupied by the accused and his brother, Ilija. A search of the building resulted in two half cartridges of industrial gelignite, four electric detonators and five relay-delay connectors being found. When interviewed, this accused person admitted being involved with six other men who had planned to place time bombs at various places throughout the Sydney metropolitan area on the night of his arrest. They were to have met at one of the co-offenders' places where the proposed victims' premises were to have been allocated to each team assigned for that purpose. This accused was aware of seven places where time bombs would have been placed that night, one of which was to have been the Elizabethan Theatre at Newtown. At this theatre, sir, a bomb was to have been placed within the building with a delayed action time switch that was to detonate a bomb during the performance of a visiting Croati

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singing group, that group being from Yugoslavia, sir. This particular accused and his co-offenders had a grievance against this group in that they believed the group was earning money in Australia to take home to Yugoslavia to fight the Croatian movement. A similar bomb was to have been placed in a switch board at the same theatre on the same night.

Now, both these time bombs, sir, have been located in the possession of one of the accused persons or co-accused persons, and each bomb had high explosive gelignite of 124 kilograms in weight. Had the offenders been successful in placing the bombs in the theatre and such bombs detonating at the planned time, there would have been widespread damage to that building and death and injury to the patrons therein. In actual fact, sir, the performance did take place after the arrest of these offenders and that building contained approximately 1,000 men, women and children.

One of the other places they were to bomb on that particular night was the main water pipe line travelling from Warragamba Dam to Prospect Reservoir. It was their intention to place a time bomb on that particular pipe, thus destroying it and cutting off the main artery of water. The six co-accused have made admissions of their involvement in this conspiracy, such admissions being obtained in signed records of interview, unsigned records of interview and verbal admissions. Each of the offenders have implicated each other, including the co-accused person, as equally being involved in this conspiracy. A total amount of gelignite of a high explosive type weighing in the vicinity of 60 kilograms, together with timing devices, detonators and other electronic equipment, was found in the offenders' possession on the night of their arrest four time bombs, each consisting of 12.4 kilograms of high explosive gelignite together with timing devices and detonators properly constructed and ready to be set, had been built from this material and was found in the car of one of the co-accused that night.

Now, this accused person, sir, together with his co-accused has admitted to the police that in the event of the bombs being activated causing widespread damage, death and injury, it was their intention to murder two Croatians with whom they had a grievance. The reason for both these men to be murdered was to have the blame passed from them upon other sections of the Yugoslav community in relation to the bombing. The murders were to have taken place at the victims' home or in the street that night. The two men to be murdered, sir, named by this accused and the co-accused have been located and interviewed and evidence to support the reasons for these victims being selected will be made available to the judicial hearing.

This accused, sir, has also admitted being involved in a conspiracy with his co-offenders to hijack an American Airliner in Sydney - - (objected to; evidence allowed) - - for the purpose of demanding the release of Croatian prisoners in other countries and also for the purpose of seeking a ransom demand of \$2 million. His co-offenders have also admitted their involvement in this particular matter but no definite plan or date for the offence has been mentioned. This plan was only in its early stages, as their main concern was to detonate the mentioned bombs and murder the two Croatians.

Now, sir, in the event of being granted bail, I have been informed by the same informant who instigated these arrests that the accused and his colleagues - that is the persons also arrested with him, sir - will continue their acts of violence and terrorism, thus endangering the lives of innocent persons. The proposed acts of

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which they were arrested, sir, support these allegations. Also, it is believed that if all the offenders are allowed bail, they will interfere with witnesses. Even at this early stage, Your Honour, difficulty is being experienced with witnesses as they fear for their lives if they assist the police. I also fear for the welfare of the investigating police in this matter, because I have been threatened personally by one of the co-accused persons. My life was threatened at that time, sir. I consider, sir, the Crown evidence in this matter is of a very strong nature which in my opinion, sir, will eventually lead to conviction. I consider this conspiracy, had it been carried out, sir, to be one of the most alarming acts of terrorism this country has ever seen.

CROSS EXAMINATION

MR SCOTT: Q. Officer, you might assist me. I take it you are aware that Mr Joseph Kokotovic has been in this country since 1973, are you aware of that? A. I think, yes, that is true.

Q. And I take it you have been placed before His Honour today his background by way of convictions? A. Yes.

Q. And you will agree that there is, certainly as far as the allegations made by the prosecution in this case, there is nothing in his background to indicate, certainly by way of these explosives or these allegations of conspiracy, such a disposition? A. Yes, I agree with that.

Q. Now, you might just assist His Honour. You say you personally have been threatened by a co-offender. I take it when that threat was made, Mr Joseph Kokotovic was not then present, was he? A. He was present, yes.

Q. Whereabouts do you say this took place? A. This took place in the cells at Central Police Station after the last remand on 21st February this year.

Q. And you have documented this, have you? A. Yes.

Q. Were you by yourself as far as any other police officer was concerned at that time? A. No.

Q. Who else was present? A. Det. Senior Const. Milvroy.

Q. Was any comment made at that time by Mr Joseph Kokotovic? A. No.

Q. What was said to you by this other man? A. The exact words used, sir, were "We will kill you".

Q. "We will kill you"? A. Yes.

Q. If I can just take you back for a moment - this took place, these events took place on 8th February, is that right? A. Yes.

Q. And you have indicated to His Honour that they took place as a result of some informant's information? A. Yes.

Q. And that same informant, you have indicated, has passed on information as to what the future might hold, is that right? A. Yes.

Q. And acting on that, did you go down in fact to this address at Turwood? A. No.

Q. Do you know what events transpired there at the house? A. I know the facts and the details of the arrest, yes.

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Q. You know, for example, that it is not accurate to say that the only occupants of the house at that time were this applicant and his brother? A. That is correct.

Q. You know there were there at that time a number of other people? A. The exact number I don't know.

Q. Have you read the affidavit sworn by Mrs Lydia Kokotovic, the applicant's wife? A. Briefly.

Q. Have you read what she has had to say as to the activities of the police; when I say "activities", the production of guns, searching, and the lack of any allegations made of the finding of any explosives in anybody's presence that night at this house? A. Yes.

Q. When did you read this affidavit? A. Yesterday afternoon.

Q. Did you bring this to the notice of any police who were there at that house so they might rebutt these allegations? A. I spoke to them, yes.

Q. Are any of them here today? A. No, they are not.

Q. Now, officer, you indicate, I think, that in relation to this allegation of conspiring to cause damage, that some plan was afoot, certainly in relation to the Elizabethan Theatre and some water supply, is that correct? A. That's correct.

Q. And there was no device, no timing device found at this address at Hurwood, was there? A. No, there was the explosives and the detonators and the relay-delay mechanism.

Q. In relation to Mr Joseph Kokotovic, what are the nature, do you say, of any admissions? Do you say they are by way of a signed record of interview? A. No, they are oral admissions, verbal admissions.

Q. What you are saying is that in relation to any participation of this applicant, the prosecution will rely on oral admissions only by way of admission statements? A. By admission statements - -

Q. I am not talking about any other evidence? A. I understand you now

Q. It is verbal, is that right? A. Yes.

Q. Where do you say these verbal admissions took place, as far as you know? A. I don't know.

Q. So verbal admissions took place at a place you are not able to say, is that right? A. That is correct.

Q. And might I take it that it is implicit in that statement you have made to His Honour that there is no adopted or signed record of interview by Mr Joseph Kokotovic involving him in any complicity in any of these charges, is that right? A. That is correct.

Q. I think in relation to your personal evidence you have given to His Honour in relation to opposition to bail, you say firstly that as far as he, that is Mr Kokotovic, is concerned, you have information from this informant that acts of terrorism, as you put it, will continue, is that right? A. That is correct.

Q. Now, certainly you have indicated there is nothing prior to 8th February but this informant gave you this information, is that right? A. Yes.

Q. Is that informant involved in any way as far as you know with these two named persons against whom it is alleged there was a conspiracy to murder? A. No, he is not.

Q. You also indicated to His Honour that these two people about whom the conspiracy is alleged have been interviewed, is that right? A. Yes.

Q. And statements taken from them? A. From one only. One will not make a statement because he is frightened to.

Q. & One is Tomo Mlinaric? A. That is correct.

Q. The other is Fabian Lovokovic, is that right? A. Yes.

Q. Which one of these gentlemen has made a statement? A. I decline to answer that question for fear of the safety of the other man.

Q. You have already indicated to His Honour that one has made a statement and one has declined to make a statement, is that right? A. That is correct.

Q. You know, of course, that Mr Lovokovic is the editor of a Croatian newspaper? A. Yes.

Q. You might assist us in this. The statement that was taken from one of those persons, was it taken prior to 27th February, that is a couple of days ago? A. Yes.

Q. It was taken prior to that? A. Yes.

Q. And you are aware, as you have indicated, that Mr Lovokovic is the editor of one of the local Croatian newspapers? A. Yes.

Q. Have you read the last edition of his newspaper? (objected to; question allowed) A. No.

Q. You are now aware of the editorial and anything written in that newspaper as at 27th February concerning these allegations? A. That is correct.

Q. I take it your inquiries have revealed that Mr Joseph Kokotovic has no passport and has never applied for one since he has been in Australia? A. I am not aware of that.

Q. If I was to suggest it to you, there is no information you have to the contrary, that he has no passport and that he has never applied for one? A. That is correct.

Q. And in fact, since arriving in Australia, he has not left Australia at all on any visit outside the country at all? A. I am not aware of that.

Q. If I was to suggest to you that he became a naturalised citizen, both he and his wife, are you able to suggest to the contrary? A. That is correct.

Q. You mean that as far as you know, he is a naturalised citizen of this country? A. Yes.

Q. Officer, I think you were present in court when the date of 11th June was seized on at the Central Court of Petty Sessions as the date on which these proceedings against Mr Joseph Kokotovic should commence, is that right? A. Yes.

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Q. And I think you heard His Worship the Magistrate suggest an earlier day in May and then heard the Police Prosecutor indicate that was a date not convenient to him? A. To be personally, not to the Police Prosecution, and unfortunately, in that period in the middle of May, there is only two or three days set aside.

Q. Certainly you would agree with the statement made by the Crown that it would seem the first available date that the court could commence these matters is 11th June? A. That is correct.

Q. And you heard it suggested in court there that the police apprehend calling some 80 witnesses, is that right? A. At least that, yes.

Q. At least 80, so it is purely speculation to suggest that possibly, bearing in mind the number of witnesses and the number of allegations against the accused to be made, that the matters may not terminate then in that period of time? A. There is a possibility of that.

Q. And then there may be a kindred problem in so far as further dates later ahead of a consecutive nature being found on and seized on down there at the court? A. No, I cannot see that difficulty at this stage at all. We are seeing the court officials this afternoon in relation to that to set aside a period of two weeks after the first hearing.

Q. At this stage it is only set down for three weeks? A. That's right, yes.

Q. Who were the officers to whom these verbal admissions, as far as you know, were made by Mr Joseph Kokotovic? A. Yes, Det. Senior Const. Cunsel and Det. Senior Const. Grady.

Q. Do you know when they were made? A. On the night of the arrest.

Q. If you know that, is there any reason why you cannot assist in telling us where they were made? A. No. I should have found that out, I agree, but I didn't find that out.

Q. Is it that they have not prepared their statements yet? A. No, their statements have been prepared.

Q. You have seen them, have you? A. No, I have been told.

RE EXAMINATION

MR O'DONERTY: Q. Detective, you heard Mr Scott asking you whether there was any disposition by the applicant as to the crimes of this nature and you answered "No". Have you seen the applicant's criminal record? A. I have seen it. There has been no crimes involving explosives. There has been acts of aggression against the Yugoslav consulate and this is what we base the whole thing behind these particular acts of violence, the conflict between the Croatians and the Yugoslav Government.

(Witness retired)

(Case for the Crown closed)

(Mr Scott moved on the affidavit of James McCrudden sworn 23rd February, 1979)

JAMES McCRUDDEN
Sworn to answer:

MR. SCOTT Q. Your name is James McCrudden, is that correct? A. Yes.

Q. And your residential address? A. No. 8, Royal Place,
Wentworthville.

Q. I think you carry on practice on the 13th Floor, 175
Pitt Street, Sydney, and you are a solicitor of the Supreme
Court of New South Wales, is that right? A. Yes, I am.

Q. I think you read this morning the affidavit which you swore
and which is now before his Honour and are the contents of
that document true and correct? A. They are.

Q. Mr. McCrudden, you may assist me in relation to the arrest
of Mr. Kokotovic. When did you first speak to him? A. I
first spoke to him on the Sunday morning following the
arrest. I went out to Long Bay Gaol that morning.

Q. He was arrested on the evening of 8th February and you saw
him on the Sunday, is that right? A. On the Sunday morning,
yes.

Q. The eighth being the Thursday evening, apparently and you
were there on the Sunday which would have been the 11th, is that
right? A. Yes.

Q. And did you take instructions from him then as to what
had transpired on 8th February? A. I took some instructions,
yes.

Q. Did you ask him in relation to his arrest what, if anything,
he had said to any police officer? A. That was my primary aim
at that stage.

Q. What response did you get from him? A. He told me he had
made no statements whatsoever.

Q. Mr. McCrudden, in relation to par. 2 of your affidavit,
you are aware that matters are set down at the present time for
11th June for three weeks. You have a deal of experience in
the Lower Courts of Petty Sessions, is that right? A. Yes.

Q. And that being the first day that could be made available
when the matter was last before the Court, would you expect
if the matters were not completed then that there would be any
difficulty about further dates? A. I have just had a case
involving two accused with approximately the same number of
witnesses which ran at its preliminary run for approximately
five weeks. It was subsequently adjourned for a further two
weeks, which was eight weeks after the first adjournment, and
then adjourned again for a further two weeks. The whole thing
will take approximately a time span of four months from start
to finish.

Q. Is that the other one you are talking about? A. Yes.

Q. On the basis of? A. On the basis of the same number of
witnesses.

Q. I think at the present time you are gathering statements from
witnesses who were present at this address at 9 Livingstone
Street, Burwood on the evening of 8th February, is that right?
A. Yes.

Q. There were apparently a number of other people residing there

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at the house? A. I have been told that. I have not got the statements in yet.

(No cross-examination).

(Witness retired).

LYDIA KOKOTOVIC
Sworn to answer:

MR. SCOTT Q. Madam, your name is Lydia Kokotovic, is that right?
A. That is correct.

Q. You reside at No.9 Livingstone Street, Burwood and your occupation is that of housewife, is that correct? A. That is correct.

Q. Madam, I think you swore an affidavit that is before his Honour and you read a copy of that this morning and made changes, is that right? A. Yes.

Q. Are the matters that are contained there correct in their detail? A. They are correct.

Q. I think the only mistake is that in par.1, the spelling of your child is not "Biserka" but "Biseka", is that right?
A. Yes.

Q. Except for that, it is accurate? A. Yes.

Q. Madam, as you have indicated to his Honour in that affidavit, your husband since he came to Australia in 1963 has been in constant work? A. That is right.

Q. And that he has finished an electrical trades course in this country? A. That's right.

Q. And has worked for nine years continuously with Email at Waterloo? A. That's right.

Q. I think the position is that right at the present time, he could not go back to work because in fact the company is on strike, is that the position? A. They are on strike but they do have workers working there.

Q. His job is there but they are on strike at the present time? A. Yes.

Q. His job is in tact, as far as you understand? A. Yes.

Q. You were present at the home on 8th February when a number of police arrived at the home? A. That's right.

Q. Where had you been that night? A. We went to his uncle's place.

Q. What time approximately did you get home? A. Well, we got home at 10.30.

Q. Had your husband indicated to you whether he was going out again that night or whether he intended to remain at home or

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Mr. McCrudden ret'd.

L. Kokotovic, x.

or what was the position? A. No, we were dishing out ice cream.

Q. Had your husband said anything about wishing to go out later that night to go anywhere else? A. No.

Q. As you have indicated in par. 5 of your affidavit, some seven or eight police arrived at the house? A. That's right.

Q. No search warrants were produced? A. No.

Q. Guns were produced? A. Yes.

Q. And eventually apparently you say as a result of some complaint, some uniformed police officers arrived at the home to find out who these men were who had invaded the property, is that right? A. Yes.

Q. And you saw these plain clothes police produce some identification to the uniformed police officers? A. Yes, Det. Rogers did.

Q. And as a result, the uniformed officers left? A. Yes.

Q. I think you were present from the time they arrived until the time these uniformed officers left, is that right? A. Yes.

Q. They were going in and out of various rooms? A. Yes.

Q. Did you go with one of them into one room? A. I went with Det. Rogers into my room while he was searching.

Q. I think from the time they arrived until the time they left with your husband, did anybody suggest to you or say to you that anything had been found in the house? A. No.

Q. I think in par. 6 of your affidavit, you set out what the police said as to whether they were taking your husband away? A. Pardon?

Q. Did anyone say anything to you as to whether your husband was being taken away? A. Just "for questioning."

Q. Did you ask the police for what period of time he was to be questioned? A. Yes.

Q. What answer did you receive? A. Det. Rogers, that is the tall one, he said "About one hour or so," and another of the policemen or detectives just yelled out "one hour or 24 hours."

Q. I think you then had to go down or went down to Burwood Police Station to find out where these police had taken your husband, is that right? A. Yes, to find out. I thought they were the Commonwealth Police, and to find out who they were and where they were taking him.

Q. Were you given any information or not? A. They just told me that they were the hold-up squad or something like that but they wouldn't give me any other information and he said they were just down there for questioning, the policemen that phoned up.

Q. And that is the only information you could get, is that right? A. That is all I could get.

Q. I think relations, friends, and yourself as well, there can

be a total amount of surety bail found of about \$1,000, is that right? A. Yes.

Q. And if granted bail, your husband of course will be living at the address at Livingstone Street, Burwood, is that right? A. That is correct.

Q. Who else resides at the home? A. My brother in law and mother in law and father in law and sister in law and two small children.

Q. It is quite a large home, is that right? A. Yes, very big.

Q. Of course Burwood is the closest police station to that home? A. That's right.

Q. And I think you are aware that your husband could report at the police station on a daily basis? A. That is correct.

Q. Madam, I think you are naturalised? A. Yes.

Q. And your husband? A. Yes, both.

Q. Both are naturalised? A. Yes.

(No cross-examination)

(Witness retired).

DRAGA JURIC
Sworn to answer:

MR. SCOTT Q. Your name is Draga Juric, is that right? A. That is correct.

Q. And I think you reside at No. 9 Matlock Street, Camberwell, which is in Victoria? A. Actually No. 1.

Q. No. 1 Matlock Street, Camberwell? A. Yes, Camberwell.

Q. In Victoria, is that right? A. That is correct.

Q. And sir, I think you have undergone formal training at the University as a metallurgist, is that right? A. That is correct.

Q. Which university? A. Melbourne University.

Q. And have you also completed a course of interpreting? A. I have not actually completed --

Q. I am sorry, undergone? A. Yes.

Q. Where was that? A. R.M.T., Special course for Interpreters and Translators.

Q. You didn't complete the course, is that right? A. Well, I didn't find any future in it.

Q. Do you have any difficulty translating the Croatian language into the English language? A. No, because I have my formal training in Croatian as well as English.

Q. I think you brought to our notice an article in a magazine,

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a local Croatian newspaper in Australia, is that right? A. That is correct.

Q. Published on 27th February, a couple of days ago, is that right? A. That is correct.

Q. Might this be shown to the witness, your Honour? (shown). I think on the front page there is a picture of a gentleman and I think there is an article inside, is that right? A. That is correct.

Q. And I think you have translated for us that particular article, is that right? A. That is correct.

Q. Would you just follow me as I read this and correct me if I am reading it incorrectly. I think it is headed "Who is behind all that?" Is that right? A. That is correct.

Q. And does it say "Sydney Daily Newspaper Sydney Morning Herald of Thursday 22nd February"? A. That is correct.

Q. "Published an article," is that right? A. That is correct.

Q. "About charges of conspiracy against seven Croats". A. That is correct.

Q. "Newspapers specify that they are all supposedly members of the Croatian Republican Party"? A. That is correct.

Q. "Each of them has been charged with conspiracy to murder," is that right? A. That is correct.

Q. "Tomo Milinovic and Fabian Lovokovic," is that right? A. Yes, that is correct.

Q. "Between 1st November 1978 and 8th February, 1979"? A. That is correct.

Q. "Such and similar news"? A. Actually it is "8th February this year."

Q. 1979? A. Yes. "This year" it says in the newspaper.

Q. "Such and similar news has been published by almost every newspaper in Australia"? A. That is correct.

Q. "Radio station"? A. That is correct.

Q. "As well as some evening editions of television news"? A. That is correct.

Q. "It is too early to give any sort of commentary"? A. That is correct.

Q. "Because the trial has not been held"? A. That is correct.

Q. "But it is necessary to cause some thoughts"? A. That is correct.

Q. "And views on the newest happenings in Australia"? A. That is correct.

Q. "Especially in Sydney"? A. "City of Sydney."

Q. "City of Sydney"? A. Yes.

Q. "Mr. Tomo Mlinaric is the long-standing president of the Croatian Club, Marrickville"? A. That is correct.

Q. "And the second person is the editor of this newspaper"? A. In actual translation "The second person is the editor of ..."

... and it names a newspaper and specifies "Croatian newspaper in Australia."

Q. "The seven accused are also Croats and now we put the question 'Is something like this really possible?'" A. Yes, that is correct.

Q. "We cannot believe that Croats would come to such an idea"? A. That is correct.

Q. "Of blowing up the Sydney water supply"? A. That is correct.

Q. "We do not believe that Croats could plot the murder of other Croats"? A. That is correct.

Q. "Why don't we believe?" A. That is correct.

Q. "Because in the first place we are convinced"? A. That is correct.

Q. "That Croats are not fighting a war against Australia"? A. That is correct.

Q. "A country which has given us refuge and freedom"? A. Well, "A country which has given us freedom", but in Croatian the word has two meanings and needs another word in English".

Q. So you translated it as "Refuge and freedom"? A. Yes, to clarify.

Q. "These are the acts of UDBA, the Yugoslav Secret Police"? A. Actually there is a sentence missing - "Croats do not kill Croats."

Q. That is just above that, is it? A. That's right. It says, "Refuge and freedom," then a second sentence, "Croats do not kill Croats, these are the acts of UDBA".

Q. "The Yugoslav Secret Police"? A. Well, it doesn't say in the newspaper.

Q. "Not only in Croatia but in the free world as well"? A. That is correct.

Q. "Yugoslavia until now has not been successful"? A. That is correct.

Q. "In destroying freedom supporting Croats in Australia"? A. Of Australia" or "in Australia", that is correct.

Q. "But with these moves, it is unquestionable"? A. That is correct.

Q. "That they want to morally destroy the credit of Croats as a community as well as all individuals"? A. That is correct.

Q. "In the case above, we will continue the above case within the limit of our capabilities and laws of the country"? A. That is correct.

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Q. "As the court case does not permit us to write more than has been said"? A. That is correct.

Q. "Than has been said and brought forward and has not been proved"? A. That is correct.

Q. To the best of your knowledge, sir, certainly it is stated there that the editor of the paper is one of the named persons against whom this conspiracy is made? A. That is correct.

Q. And this paper referred to? A. That's right, and to the best of my knowledge, this newspaper stands on the principle that all unsigned articles are the responsibility of the Editor.

CROSS-EXAMINATION.

MR. O'DONERTY Q. Mr. Juric, are you Croatian? A. Yes, I am.

Q. And these statements you have made in this newspaper are your own beliefs as a Croatian? (objected to) A. It is Mr. Lovokovic's statement.

Q. Do you know whether the Editor, one of the people who it is alleged in the murder charges that the applicant was to murder or conspired to murder, was there any altercation between the editor and the applicant? A. Not to my knowledge.

(No re-examination).

(Witness retired.

APPLICANT

Sworn to answer:

MR. SCOTT Q. Your name is Joseph George Kekotovic, is that right? A. That's right.

Q. And you reside normally at 9 Livingstone Street, Burwood? A. That's right.

Q. You have heard your wife give evidence as to your arrival, your marriage and your child and also the fact that your child is expected and in fact your wife should have given birth already to the other child, is that right? A. That's right.

Q. I think you have worked with the one company for nine continuous years, at Lmail? A. Yes.

Q. And you have informed your solicitor that as far as these allegations are concerned, you intend denying them all, is that right? A. Completely.

Q. If granted bail, you would reside with your wife I take it? A. Yes.

Q. Have you got a passport? A.No.

Q. Have you left Australia since you have been in this country for any overseas trip? A.No.

Q. I think you did have the intention of going overseas at one stage? A.Yes.

Q. Was that with your wife? A. Yes, we had some plans to go to Canada.

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Q. I think she comes from Canada, does she? A. She went with her parents for a visit to Canada and she planned to stay there but she couldn't stay there.

Q. You had some thoughts about going to Canada and staying there? A. Yes.

Q. Did anything happen about that? A. No.

Q. I think as far as your work is concerned, you are able to report at the Burwood Police Station between 6 p.m. and 8 p.m. every day except Friday and then you would report between six p.m. and nine p.m. because of overtime? A. That's right.

Q. You know what bail means, it means you have to appear when June comes up, on 11th June at that hearing? A. I do.

Q. And as far as the preparation of your case is concerned, I take it you have a number of things to tell Mr. McCrudden to prepare your case? A. I do, yes.

Q. You are not going to leave the country if you are granted bail, are you? A. I don't think so, no.

(No cross-examination).

(Witness retired).

(Case for the Applicant closed).

(Counsel addressed his Honour).

HIS HONOUR: This is an application for bail on behalf of Joseph George Kokotovic who, on 8th February, 1979, was arrested and charged with possession of certain goods, but the subsequent charges which bring him before me relate to a conspiracy to murder two men and a common law conspiracy which involved the placing of bonds in a number of areas in the Metropolitan area. It suffices to name two of them, the Elizabethan Theatre and the main Sydney water pipeline supply. He has been in custody since his arrest and I am informed that the committal proceedings have been fixed as far ahead as 11th June, 1979, a period of three weeks having been set aside. The details relating to both of the charges appear in the evidence before me of Det. Sgt. Turner.

Apart from stating the facts, Det. Sgt. Turner said that the police feared, in respect of a grant of bail to any of the accused persons, that further acts of violence may be committed

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apparently along the lines of those proposed in the alleged conspiracies. It is also feared, he says, that if bail is granted, witnesses may be interfered with and, indeed, he went so far as to say that he himself had been threatened by one of the co-accused on the occasion of the last remand.

As the applicant has not yet been committed for trial, the principles which I must apply at this stage are those which were summarised by Sugerman, J. in R. v. Ladd, 75 W.N. p.431.

I interpolate to say that I have been referred to part of a speech made by the Attorney-General when introducing the new bail bill into the Legislative Assembly. However, I cannot allow any decision I make here to be influenced by what the Attorney-General said in the Legislative Assembly, nor am I bound by the Bill which is before the House and which has not yet been proclaimed.

Reverting to R. v. Ladd, it has to be observed that Sugerman, J. applied, amongst other things, what Walsh, J. had said in R. v. Pett which is reported as a note to Ladd's case at p.434. Walsh, J. said, and I quote:

"Although it is clear now that this Court has power to grant bail in remand cases, which seems previously to have been doubted, there is considerably authority for the view that that power would be sparingly exercised and that as a general rule this Court does not interfere in such cases pending the period of remand."

The considerable authority to which Walsh, J. referred included a number of cases dealt with in the judgment of Sugerman, J. in Ladd's case. In the course of his judgment, Sugerman, J. at p.432 said as follows:

"The broad principle which appears from these cases in relation to applications such as the present is that while the Court, that is to say the Supreme Court, has the jurisdiction and power to grant bail in remand cases the power is one which should be carefully and sparingly exercised. It is a power which the Court has and a power which the Court should exercise in a proper case but, as it has been put, the position is more delicate than when

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the whole of the evidence has been taken and the accused committed for trial," (I omit a sentence).

"The principle is that is to say that the power should be exercised in those cases when some special or unusual ground appears for exercising it such as, without professing to exhaust the possible grounds, that the remand has been for an unreasonably long period."

In a charge of murder, bail is only granted where special circumstances exist. However, for the purposes of this application, I propose applying the principles to which I have just referred both to the charge of conspiracy to murder and the other conspiracy. It must be said, without deciding the guilt or innocence of the applicant, that the details relating to the two charges are very very serious. The only matter which gives me some concern is the fact that the committal proceedings will not take place before 11th June, 1979. However, I think that the other matters to which I have referred outweigh anything which could be said to lie in the applicant's favour in relation to the length of the remand. I am not, I hope, to be taken to be in any way interfering with the administration of the Court below but it seems to me that special efforts should be made for the committal proceedings, if they commence on 11th June, 1979, to be concluded in one sittings. In any event, the matters referred to by Mr. Scott on behalf of the applicant are matters which, no doubt, the Magistrate presiding over the committal proceedings might well take into account, having at some stage seen the strength or otherwise of the Crown case, and if the matter were to be remanded for any lengthy period beyond the three weeks set aside in June of 1979, that would also be a matter which the Magistrate at the time could take into account.

However, as presently disposed, I refuse the application.