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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 SIXTH DAY: THURSDAY 28 MARCH 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

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HIS HONOUR: Yes.

15

WOODS: Your Honour, before we proceed. May I just mention the fact that Mr Milroy has been here all week, and the only flight he can get requires that he leave by 2.30 today. He's got to go to Queensland. He's been staying in a hotel down here at his own expense for four days, and he would appreciate any indulgence that can be shown in that regard.

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HIS HONOUR: All right. Yes, Mr Buchanan.

BUCHANAN: Thank you, your Honour.

<ALASTAIR MACDONALD MILROY, CONTINUING(10.02AM)

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<EXAMINATION BY MR BUCHANAN

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Q. Mr Milroy, thinking of the night of 8 February and the morning, afternoon of 9 February, that period of time. You were in Lithgow except when you were in the bush around Lithgow on the ninth. Are you able to tell us when it was that the first of the detectives who had come from Sydney to Lithgow departed Lithgow to return to Sydney?

A. I believe that - well, on the morning of the ninth when we got to the police station Etienne, Simmons and O'Brien were not there.

35

Q. Not there?

A. Not there on the ninth, no.

40

Q. Is it possible that they returned to Sydney on the night of the eighth?

A. It's possible, yes.

Q. Do you know whether they took with them to Sydney any explosives?

A. No.

45

Q. What time was it that you returned to Sydney?

A. On the tenth.

Q. I'm sorry, I didn't quite catch that.

A. On the tenth.

50

Q. On 10 February?

A. Yes.

Q. Changing the subject, if I can, please. At some stage you heard of the Croatian Republican Party. Is that right?

5 A. That's correct, yes.

Q. The Croatian Republican Party became a significant feature of the Crown case against the Croatian Six, didn't it?

10 A. I believe it was - it was mentioned. That's correct.

Q. Each of the accused were cross-examined up hill and down dale about it, weren't they?

A. Yes.

15 Q. Detective Jefferies gave detailed evidence about it?

HIS HONOUR

Q. You're nodding. Is that yes?

20 A. Yes. Sorry.

BUCHANAN

Q. When did you first hear of the Croatian Republican Party?

25 A. At some stage when we were initiating enquiries, if you recall from my evidence. We executed a search warrant, I think it was on the Croatian Council Committee, I think it was, where we obtained the books on the basis of a search warrant, but I would have been - back, when we were back in Sydney and we were getting our enquiries together, and talking to the Special Branch people, that's when it - that sort of information would have come up, but that's
30 the best of my recollection.

Q. Could the witness please be shown Exhibit 4.2-1?

35 EXHIBIT 4.2-1 SHOWN TO WITNESS

Q. Were you thinking of that search warrant, or some other search warrant?

A. That's - this is the search warrant. I recall the address as well; we were at Wollstonecraft.

40

Q. It was for records from the Croatian Inter Committee?

A. The Croatian Inter Committee Council.

45 Q. No admissions were attributed to any of the accused or Mr Virkez which mentioned the Croatian Inter Committee Council. Does that accord with your memory?

A. Yes.

50 Q. In what circumstances did you first hear of the Croatian Inter Committee Council?

5 A. As I indicated, as we were pulling all this together, and I believe some of that background information would have come from the Special Branch, and that led to the issue of the search warrant to - as I indicated - to seize the books that was there, and they were subsequently, I think, translated by Detective Radalj, who is a Croatian.

Q. Is that how you pronounce his name; R-A-D-A-L-J is how it's typed?

A. R-A - Radalj, yes.

10 Q. Did anyone from Special Branch give you intelligence on the Croatian Republican Party?

A. I can only recall speaking to Jefferies in relation to some of the others. Sergeant Turner may have had dealings with more senior staff at the Special Branch, but that's to the best of my recollection.

15

Q. Did you hear mention of the Croatian Republican Party from Roger Cavanagh?

A. No. No.

20 Q. Did you hear anything from Roger Cavanagh about any of the Croatian Six accused?

A. No, I think it was only where Roger Cavanagh spoke to Ted Turner, I think, shortly after he spoke to Virkez, in a brief conversation which related to his activities in the community, providing information to the - to the Yugoslav Consul, but that's all I can recall.

25

Q. Just for clarification; when was that?

A. Sometime in February.

30 Q. When you were in Sydney?

A. Of course. That's right. It would have been after the 20th because we were in Lithgow on the 20th, so it had been - I believe it would have been sometime after that.

35 Q. You have no memory of Cavanagh giving you and Detective Sergeant Turner intelligence about any particular of the Croatian Six that he had encountered in his career?

A. No.

40 Q. Could the witness please be shown Exhibit 11.18? That's all in relation to the search warrant, thank you.

EXHIBIT 11.18 SHOWN TO WITNESS

45 Q. 11.18, commencing at page 65. I won't be asking you about the whole of that, but if you can read enough of it to satisfy yourself that it's a copy of a report, apparently written by Detective Sergeant Turner, in response to a request from some superior in the police force, that he provide information in relation to Mr Virkez, and is there mention there that it's arising from - might
50 not mention it. Do you recall police were asked to provide information

pursuant to a letter that Mr Virkez had sent to the Prime Minister in late 1979?

A. Well, I've seen this - this document via Sergeant Turner. I mean, we're 44 years later. I can recall there was - there were quite a lot of requests to provide information to our superiors, and that's all I can really say.

5

Q. You can see that there's a number of mentions of the Croatian Republican Party in that report.

A. Yes. Yeah.

10

Q. Do you know where Detective Sergeant Turner got the information from about the relationship between the Croatian Six and the Croatian Republican Party?

A. He would have received that background information from the Special Branch.

15

Q. You don't recall being present when that was supplied?

A. No. No.

20

Q. Just for clarity, you don't recall being present when any information about the Croatian Republican Party was supplied by anyone from Special Branch to you, and or Detective Sergeant Turner?

A. No, not - not specifically about the Croatian Republican Party, but I would have been present when Jefferies, I recall, would have given some overview of the - the issues in the Yugoslav community at that time, background information, but not specifically about the Croatian Republican Party. I can't recall exactly that taking place.

25

30

Q. That's all in relation to that document. Yesterday you told us - page 295 of the transcript - that you believed that Special Branch told you - or you're aware from Special Branch - that Mr Virkez had been in contact with the Yugoslav Consulate about the allegations that he made about this bomb plot.

A. That's correct.

35

Q. Were you aware that the Commonwealth Police had informed New South Wales Police on 8 February that Virkez, using the name Misimovic, had informed an officer of the Yugoslav Consulate about the alleged bomb plot?

A. No.

40

Q. Could the witness be shown please, Exhibit 11.50, page 208?

EXHIBIT 11.50 PAGE 208 SHOWN TO WITNESS

45

Q. I'm showing you again a document you saw yesterday, but I'd like to take you to another part of it. If we could enlarge the image? First of all, this is an occurrence pad entry or running sheet entry dated 12 March 1979, apparently recorded by Detective Jefferies?

A. Yes. I can see it.

50

Q. After the heading, can I take you to the second paragraph. Were you aware of a Detective Prythcherch, P-R-Y-T-H-C-H-E-R-C-H--?

A. No.

Q. --in relation to this matter?

A. No, that doesn't ring a bell with me.

5

Q. Or a Detective Senior Constable Blades, from the Commonwealth Police?

A. Well, I think I read the reference to Mr Blades being with Mr Cavanagh, but that's - that was when I was reading the papers that related to the setting up of this Inquiry, so--

10

Q. All right, but not otherwise?

A. --that's - not otherwise, unless it's - unless there's a record in the occurrence pad entries, or other documents that says that he came and saw us, or saw Sergeant Turner with Cavanagh, no.

15

Q. Would you just excuse me a moment? Were you aware of whether Detective Jefferies was ever left a message by Detective Prythcherch of the Commonwealth Police on 8 February?

A. No.

20

Q. To say that Misimovic had been in touch with the Yugoslav Consulate and retailing the allegation about the bomb plot?

A. No, I can't recall that, no.

25

Q. If it's recorded in one of these occurrence pad entries, you would have seen it, wouldn't you?

A. Yes. I would, yes.

30

Q. Who had access to the occurrence pad or running sheet entries; apart from you and Detective Sergeant Turner?

A. Nobody else would've had access to them. I think we worked on the basis that, like any major investigation, they're kept in folders and are locked away, and if, for example, as you see by some of these occurrence entries, there are police officers' names mentioned who have gone out to do enquiries and they've submitted, and they would submit them, hand them to us, we would index them and put them in a file and lock them away. And Sergeant Turner would have had responsibility for the security of these documents and other related material pertaining to this enquiry.

35

40

EXHIBIT 11.5 SHOWN TO WITNESS

Q. You can see that the document is headed, "Preliminary report concerning the arrest of nine Croatians on 8 February 1979 at Lithgow and various suburbs of Sydney", and is addressed to the Officer-in-Charge, Special Branch?

45

A. Yes, I only have what looks like the second page--

Q. Yes, that's the second page, I think.

A. --but I - I look at it on the screen. Yes, Mr Buchanan.

50

Q. And it's apparently authored by Detective Jefferies and a Plain Clothes Constable McNamara?

A. Yes.

5 Q. Can you see that the report says that three people were arrested at Macaulay Street, not just two as you've told us about? That the third person was Stephan S-T-E-P-H-A-N, Topic T-O-P-I-C. What can you tell us about that?

10 A. Well, as you know, Mr Topic was arrested by the local police on the eighth and charged with the possession of the break, enter and steal and the theft of the explosives on the first occasion. I don't know if this report is submitted on 8 March, so nearly a month after the event, so I guess it's an intel report by the Special Branch to the commissioned officer.

15 Q. To the extent that it reports that three people were arrested, the third being Mr Topic, at 6 Macaulay Street, the report is incorrect?

A. Yes, he wasn't arrested at Macaulay Street, Mr Topic.

BUCHANAN: That's all in relation to that document.

20

Q. Your evidence was that on 9 February, after Sergeant Pringle had, on your evidence, purported the senior officer role of verifying Mr Bebic's first Record of Interview, that is to say the two-day Record of Interview that police have given evidence about and taken any complaints. Mr Bebic declined receipt of the documents, saying "I no want it. You give my solicitor", and Turner said, "Who will be your solicitor", and that Bebic said, "No know", as in N-O K-N-O-W, "my party will get".

25

A. I recall that, yes.

30 Q. Now, I could be wrong, and please tell me if I am, but other than that statement, "my party will get", there was no evidence that Mr Bebic was a member of a political party, was there?

A. Not that I - we were aware on 8 February.

35 Q. I'm sorry?

A. Not that we were aware on 8 February.

Q. No. Did you try to find out if he was a member of a political party?

40 A. I think that would've been in whatever information we were receiving from Special Branch in that regard.

Q. Did you ever find out whether Bebic was a member of a Croatian political party?

45

A. If we had, it would've been either recorded in the running sheets or in our tasking book that we were running at the time.

Q. You don't record in your statement that anyone asked Bebic what he meant by "my party will get"?

A. Nobody asked him that.

50

Q. Is there any reason he wasn't asked?

A. No. I guess it was just one of those questions that in hindsight you could've asked at the time, or the next day, but we didn't.

5 Q. There is an alternative possibility, isn't there, and that is that it was a verbal--

A. Definitely wasn't a verbal.

Q. --you attributed, you fabricated evidence that he said that?

10 A. There was no fabrication of the evidence in relation to our interviews with Mr Bebic.

Q. It seems extraordinary that you would fail to pick up that he was saying he was a member of a party; don't you agree?

15 A. Well, as I--

Q. If that really happened.

A. --as I indicated, there were a lot of comments made, and we - when we got back to Sydney we sat down and looked at all the enquiries that we had to make, and, as you know, we re-interviewed Mr Bebic on the 20th to try to clarify a few things that came up from some of the other investigations, and that's probably just a question we could've asked or we could've followed up, but in - in hindsight, but we didn't.

25 Q. You must have come to an appreciation at some stage in the matter that police had uncovered a politically motivated bomb plot?

A. Well, there were comments made by Mr Bebic, that it was political, when he'd made the reference about not wanting to kill Australians, so yes, it appeared to have some political issues surrounding it, yes.

30 Q. It was the impression you gained that I'm asking about.

A. Yes. Yes.

35 Q. In 1979 you were aware, weren't you, of longstanding animosities between people of Croatian descent and people of Serbian descent?

A. Well, yes. As I indicated, I used to be at Liverpool and Fairfield as a detective before I went to the CIB, and I played sports and coached in that area, so I was fully aware of the - the issues surrounding the Serbian community and the Croatians and others, and a lot of other ethnic groups, and the feelings that they had between each other, and a lot of incidents occurred.

40 Q. You were aware that those animosities were quite bitter?

A. Of course. Yes.

45 Q. That they sometimes manifested in the eruption of physical violence?

A. Yes, I believe there were numerous media reports of violence and fires and things like that yes.

50 Q. You were aware, weren't you, in 1979 that one of the differences between people of Croatian descent and people of Serbian descent was that the

religion of most people of Croatian descent was typically Roman Catholic?

A. That's correct.

Q. And that the religion of Serbian descent was Serbian Orthodox?

5 A. That's right.

Q. When you were dealing with Virkez, what did you understand his ethnicity to be?

10 A. We're talking about Virkez?

Q. Yes?

15 A. Well, initially I think we'd had him as from Croatia, Croatian, and then - I'd have to sort of - trying to recall what was in his Record of Interviews and things of that nature, but there was an issue of whether he had his family name, Misimovic, was more - I might be wrong here--

Q. More of a?

20 A. --more of a Serbian or - but I didn't really go into it, and I'd - it's too long ago now to be thinking back as to what we were aware of.

EXHIBIT 11.47, PAGE 197, SHOWN TO WITNESS

Q. You see that this appears to be a set of facts in relation to Mr Virkez--

25 A. Yes.

Q. --for a bail application?

A. Yes.

Q. Did you prepare that?

30 A. I don't recall, actually, whether I would have signed them, but whether it was Sergeant Marheine or Sergeant Turner, I'm afraid I can't comment one way or the other.

35 Q. I'll assist you with that in a moment, but do you see a passage indicating that Mr Virkez was Serbian by birth, and for unknown reasons changed his surname to Croatian nationality?

A. Yes. Yes, I note that.

EXHIBIT 7.1-2 SHOWN TO WITNESS

40

Q. Can you see that this is the first page of a transcript on a bail application conducted on 17 January 1980 in the Supreme Court?

A. Yes.

45 Q. Do you see that on the next page, red page 3, you were sworn to give evidence?

A. Yes. I see that.

50 Q. You presented the facts on the bail application, and they were admitted as an exhibit?

A. Yes. It says there, yes.

Q. Now that you've seen that, do you think it's possible, or likely, that you prepared the set of facts that you presented on that bail application?

5 A. Well, this - the previous exhibit that you showed me, of course it's got no date on it, so I take that based on the fact that the - this application for bail was on Thursday 17 January, and this undated document--

10 Q. I can assist you. My attention has just been drawn to about point 4 on that page. Can you see the question:

"Q. Would you please relate to the Court shortly the allegations in relation to this matter?

15 A. Yes, sir. To assist you, I have prepared facts in relation to the matter, and there is a copy there for the solicitor appearing for the applicant."

A. Yes. I see that.

20 Q. Just before we leave that, do you see that the person appearing for the Crown is a Mr White?

A. Yes.

25 Q. He was the solicitor in the Office of the Clerk of the Peace who had carriage of the prosecution for the Crown, wasn't he?

A. I can't even recall, unfortunately. I can't recall the actual - the lawyers for the Crown that were appointed early in the stage. I can recall Mr Viney for the trial, but unfortunately I can't recall the names of the individual lawyers, which I apologise for that.

30 Q. You can take it from us, you can take it from me, that Mr White was the solicitor instructing Messrs Viney and Shillington throughout.

A. Okay. Thank you.

35 Q. Can we go now to the next bail application, Exhibit 7.1-3. What we just looked at a moment ago was a bail application on 17 January 1980. What I'll now show you is a transcript for another bail application by Mr Virkez on 31 January 1980. Can you see that the first page is a transcript of such a bail application before Yeldham J?

40 A. Yes.

Q. Mr White appearing for the Crown again?

A. Yes.

45 Q. Then could we go to the next page, please. Do you see that you were sworn to give evidence?

A. That's correct.

50 Q. Then a little lower down, can you see that you, in fact, then read out some of the facts in relation to the matter?

A. Yes. It would appear so, yes.

Q. Do you recall any more than two bail applications being made by Mr Virkez?

5 A. Sorry, no. I can't recall how many others there were.

Q. Certainly at this stage, Mr Virkez was not cooperating with police or the Crown, as he later would do, was he?

10 A. I can't recall the actual date when he--

Q. He pleaded guilty on 25 March.

A. 25 March 1980. Sorry, and the question?

15 Q. He wasn't, as at the time of these bail applications, cooperating with the police and the Crown, as he did later in 1980.

A. That's correct.

Q. Where did you get the information that Vico Virkez was Serbian by birth?

20 A. Again, it'd probably be from the information we were able to glean from the - the information that the Special Branch held. I know we sent a Telex overseas to Interpol to get some background checks on all six of the accused, but I don't think we got that information from them. They were from - whether we made enquiries with the Immigration Department, but I can't - I can't recall where we actually uncovered that.

25 Q. Did Mr Cavanagh tell you that actually Mr Virkez was Serbian, not Croatian?

30 A. As I said, the only - I can only recall being in the room with Mr Cavanagh when he first spoke to Sergeant Turner following his visit to see Virkez, where he inferred that Virkez was a - more of a community source more than anything else, and any other conversations that Mr Cavanagh had with Mr Turner, I - I wasn't present.

35 Q. After you found out that Mr Virkez had reported, apparently, to the Yugoslav Consulate his allegation of his bomb plot on the morning of 8 February, and after you found out that he was Serbian by birth, you started to have some doubts about Mr Virkez's authenticity, didn't you?

40 A. I can't really recall whether - what I thought, you know, all those years ago. It wasn't--

Q. Were you - I'm sorry, go on.

45 A. It wasn't unusual, I suppose, when you're doing background checks on people from Europe - that came from Europe and foreign countries. You sometimes had to double check, but the - where they were born, where they were naturalised, et cetera. So - but I can't give any detail on that.

50 Q. Didn't the fact that Virkez had apparently reported to the Yugoslav Consulate this allegation of the bomb plot before he spoke to New South Wales Police, and the fact that he was Serbian by birth sound alarm bells to you as to whether he was telling the truth?

A. It's not something I can comment on now about.

Q. Why would a man of Serbian birth join the Croatian National Council in your mind?

5 A. Wasn't he spending time with Croatian people? Didn't he claim he was Croatian? Some people shift their allegiances. I don't know. I can't comment on what was - Mr Virkez was thinking at the time.

10 Q. It wasn't something that, to you, was a bit of a worry? His Serbian origins? Never worry for the integrity of the police case?

A. I'm sorry, I can't recall how much detail we went in to in relation to that.

EXHIBIT 7.1-6 SHOWN TO WITNESS

15 Q. Can you see that this appears to be a set of antecedents prepared in respect of Mr Virkez.

HIS HONOUR: Are we looking at the same document?

20 WITNESS: I'm not sure whether - they're not antecedents.

BUCHANAN: Maybe it's not.

25 HIS HONOUR: This is a transcript of 25 March when the plea was entered.

BUCHANAN: Sorry, page 15 I should have asked for. My mistake.

30 Q. The first page showed that it was the first part of Mr Virkez's sentence proceedings. If we could go to red page 15. You can see at the bottom of page 15 that the witness is Detective Sergeant Turner.

A. Yes.

Q. He presents Mr Virkez's antecedents.

35 A. Yes. He gives the facts.

Q. It says in about the fourth line on that page, "He informed me" that "he was born in a village called Jablanica in Yugoslavia on 3 June 1954." And then goes on to talk about his family.

40 A. Yes.

Q. There was nothing in that document suggesting that Mr Virkez was Serbian by birth.

A. Where is the reference to where he was born? Is that at 15 or--

45 Q. The fourth line on page 15.

A. Sorry. Up the top. Right. Yes. I know it's there.

50 Q. It appears the fact that he was Serbian by birth, which was knowledge of yours at the time, because you'd previously spoken about that in January, was omitted from the information provided to the Court sentencing Mr Virkez in

March 1980. Do you know why that would have been?

5 A. As I say, this is the fact presented by Sergeant Turner, and as I said earlier, a lot of the background information on all of the - of those that were charged, arrested and charged, was provided by the Special Branch, as a result of their knowledge of their activities in the community, and the more general knowledge of the ethnic groups, so I can't comment as - as the facts by Sergeant Turner, so.

10 Q. In Exhibit 4.2-8, please? While that's being got, you've read Mr Virkez's Records of Interview, didn't you?

A. Yes, I had read it, I think.

EXHIBIT 4.2-8 SHOWN TO WITNESS

15 Q. Page 298, question 38. The question that's asked of him, Mr Virkez, is, "Why were you going to plant these bombs in those positions?" Answer, "To keep fighting for our country that is it. Bit of politics too."

A. Yes, I see that.

20 Q. When you read that, did you ask yourself what did he mean by "our country"?

A. Well, this was an interview by Sergeant Marheine. I--

Q. Yes, but having read it--

25 A. But I read it in Sydney when we were going through looking at all the enquiries that we would have to do, all the outstanding matters.

Q. Did you wonder what Virkez had meant by "Fighting for our country that is it"?

30 A. No, I can't turn my mind back to 1979 to work out whether we looked at clarifying that point.

Q. On all of the information available to you know, what do you think he meant?

35 A. Well, he ..(not transcribable).. "fighting for our country", and as you know at that stage Yugoslavia was a federation which was made up of five or six different national groups, or people, and - which included Croatia, Serbian and quite a number of others. I suppose he might have been referring to that - that as a country, as such.

40

Q. There are three possibilities, aren't there? One is Yugoslavia?

A. That's correct.

45 Q. That can't possibly be right, can it, given what the bomb plot is meant to have been all about.

A. That's right. The bomb plot was about the fact of the Yugoslav--

Q. The remaining alternatives, the remaining options, are Serbia and Croatia.

50 A. Well, again, it's all speculation. He said, "his country", and at that stage Yugoslavia was made up of a number of different states, and quite rightly,

there was feuding amongst all of them, between each other, but particularly against the atrocities committed by the Serbs.

5 Q. But on all of the information available to you, those are the only options, aren't they, that he could have meant, if that's what he said - "Fighting for our country." He must have been referring to either Croatia or Serbia.

10 WOODS: I object to that, your Honour. It's not a mathematical exercise, and that's really unrealistic 45 years later.

HIS HONOUR: I'll allow the question.

BUCHANAN

15 Q. Those are the only two options, aren't they?

A. Well again I'm not - if that's the words that he used, and what he meant by it, it was a matter really for him. We didn't do an investigation to clarify, and anyway, he was interviewed by Mr Marheine, and that could have been followed up by him.

20 Q. You didn't read that and think to yourself, well, it can't be Serbia. I know he's Serbian by birth, but it can't be Serbia, because that would mean that he was fighting the Croatians, wouldn't it?

25 A. As I said, I can't comment any further than what I've said about speculating about what he meant by "his country".

HIS HONOUR

30 Q. Thinking about it now, which is the way the question was posed a little while ago. Thinking about it now, if it wasn't Serbia or Croatia, what could it be?

35 A. Well, if you think about it now, of course it would be the fact that that's why they - they - he wanted to participate in the bombing, to ensure that the Yugoslav communists were - were blown up because of what they had been doing to the Croatian people. That's my understanding of it.

BUCHANAN

40 Q. If he meant Croatia, that would have been a lie, wouldn't it? To your knowledge? Because Croatia was not his country.

A. Yes, but as I indicated, people show allegiances. People can be born in one country, move to another country, become an Australian citizen, and they would fight for Australia, not perhaps for the country that they were born in. I mean - I mean, it's a fairly wide question you're asking me to comment on.

45 Q. But you knew that there was long-standing enmities between people of Serbian descent and people of Croatian descent?

A. Yes.

50 Q. Generally.

A. Generally. That's correct.

Q. When you read that reference by Virkez to "our country", you knew that he was pretending to refer to Croatia, didn't you?

5 A. No, I didn't form that opinion when I read it.

Q. Did you do anything to ensure that the fact that Virkez identified as Serbian, or was of Serbian descent, was disclosed to the defence in the Croatian Six trial?

10 A. All of the information that we gathered during our enquiries were provided to the Crown. I can assure this Court that there was nothing withheld in relation to what enquiries we carried out.

Q. So you say the Crown knew, the Crown lawyers knew, that Virkez was of Serbian descent?

15

A. I can't comment. Perhaps the - the DPP file would clearly show what information was provided in relation to them; what led to the Crown preparing their - their presentation for the trial, and their knowledge. As I indicated, they clearly understood there was no - no information that was to indicate that
20 Virkez was an agent, as such, so they had that information, so the files that's held by the DPP should at least clearly indicate what knowledge they had, and how they came to draft their - their paperwork and submissions to the trial.

Q. But on the documents I showed you, of the transcripts of the bail applications, the office that Mr White held; the fact that you were going to give evidence of those facts that Virkez was Serbian by birth in front of him; meant that the true answer to the question is, the Crown must have known that he was Serbian by birth.

25

A. If that's what's--

30

Q. That's correct, isn't it?

A. If that's what's in the facts that was given to the Court; that's correct.

Q. So you did nothing to disclose anything about Virkez that might have assisted the Croatian Six in their defence. That wasn't your responsibility. You just gave everything to the Crown. Is that the gist of your evidence?

35

A. Well, that was the situation. It's not - it wasn't as an individual officer to go bypass the Crown and give it to yourself and some of the defence lawyers. I mean, we - we had lengthy meetings with the Crown from - through the Petty Sessions all the way through to the trial. Meetings, numerous meetings, where we sat in conferences and they wrote down issues, so all of that should be recorded by - in the files of the DPP and the Crown. But I can assure this Court, your Honour, it was - we provided all the information to the Crown
40 during - for all of the matters - Petty Sessions right through to the trial. Never withheld nothing.

45

Q. You knew it would have been wrong to sit on information that might have assisted the defence in any case at all.

50

A. That's correct.

Q. Did you draw to Mr White's attention or Mr Viney's attention, or Mr Shillington's attention, material to the effect that this man was essentially a Serb, not a Croatian, and suggest this should be passed on to the defence?

A. As I've indicated, Mr White knew from the facts that he was Serbian, so--

5

Q. But did you propose that should be--

A. I mean, I--

Q. --passed on to the defence?

10 A. Well, I mean, for me to turn round to a QC and say you'd better do this; I mean, really. I mean, they are professionals. They - the Crown was running a very professional case, in my opinion, and it was a very detailed matter, and it's not for a low constable to turn around and tell a person, head of the Crown department, you'd better do this and you'd better do that. I'm fairly confident that they're professionals and they would have - they would have passed on, and their files should reflect that. We kept files. We kept running sheets and other reports, then the DPP should have had notes of the relevant meetings we had, and they should have kept them, and they should be produced out of their archives.

15

20 Q. You knew, didn't you, that the fact that Virkez identified as Serbian could indicate a motive by Mr Virkez to lie about his - in making these allegations that he made. You knew that, didn't you?

A. That he lied?

25

Q. No, that he indicated he may have a motive to lie.

A. Well, I really can't comment on - a lot of people who are arrested have a motive to lie, but I can't really comment on that after all - all this time, and speculate on what someone was thinking.

30

Q. Could the witness please be shown another document now. I think I've finished with those that are in front of him at the moment. 9.1-26. Just while that's coming; did it ever occur to New South Wales police to your knowledge - so either you or the people you were working with - to investigate Vico Virkez, to test whether he's telling the truth?

35

A. Well, as part of our reviewing his interview, that Mr - Sergeant Marheine conducted with him, and as I indicated, we went through all of the other information from all of the other investigations, the addresses, et cetera, and prepared lists of enquiries that we had to carry out. Send his name over - with the rest of them - over to Interpol, to see if there was any background information, and then we re-interviewed Mr Bebic to clarify some of the issues that we felt he could clean it up, if possible, and he volunteered to participate in interview. But really, that's about all I can recall of the - of the matter.

40

45 Q. You don't recall that it ever occurred to New South Wales police to investigate Vico Virkez, to test whether he was telling the truth?

A. Well, as I said, you know, we checked his version of events, if you like. Looked at laying the - his Record of Interview and the answers that he gave to them compared with what Mr Bebic said, and then looked at some of the gaps that we felt, then we went back and clarified some of those things

50

with Mr Bebic. But in relation to delving into his background or what other enquiries we could possibly have carried out to determine whether he was lying, I can't really comment any further.

5 Q. So far as you know, police simply took Virkez's information at face value and acted upon it in the investigation and prosecution of the Croatian Six; would that be fair to say?

10 WOODS: Your Honour, I object to that question. Your Honour, the witness has just, twice, answered that question by explaining the reviewing of the papers, the enquiries of Interpol and so on, and it's repetition.

HIS HONOUR: I understand. No, I allow it.

15 BUCHANAN: I'll ask the question another way.

Q. What Virkez said directed the New South Wales Police investigation and the subsequent prosecution of the Croatian Six, didn't it?

20 A. Well, Mr Virkez, as you indicated, on the facts so far, he contacted the consulate, then he goes to the police station and he tells the police what he believed was going to be carried out, and then he was interviewed when he was arrested, I went to arrest him, I personally took him from the house with Mr McDonald before handing him over to Mr Marheine, so he was arrested and he was interviewed no different to Mr Bebic as to his participation in this
25 venture and breaking in and committing a criminal offence by breaking into the mine with Virkez and with Bebic and stealing explosives. So, really, it's - he was no different to Mr Bebic. Mr Bebic gave his version of his - his version of how he was involved in committing a criminal offence, and where he hid the explosives and what he was going to do with the bombs, and so he was
30 treated the same as the rest of them. He was a criminal, we arrested him, he was charged and he gave a statement or such by providing information in a Record of Interview, and that's really where we were.

35 Q. Apart from personal details which appear in Mr Bebic's interviews, those interviews are one great big verbal; aren't they, by you and Turner?

40 A. They - they're definitely not. Definitely not. That's just totally incorrect. You can see in the interviews where - you can see in the interviews where Mr Bebic provided us with all this information that we didn't know. On 8 February we had no idea where the explosives were buried, how he was going to set up the bombs, and even he himself took us to - to the places at the forest that Virkez had never been to, and showed us where he had detonated a practice device. I mean, how could it be fabricated? I mean, this guy, would volunteer the information. He took very great pride in indicating his expertise and how he could make bombs and why he was doing it.
45

Q. Isn't it the case that you came back to Lithgow on 20 February with a sheath of papers comprising records of interview and persuaded Mr Bebic to sign them?

50 A. I mean, this question was raised yesterday, your Honour, to suggest that - bearing in mind there was a lawyer in attendance in the police station

and came in and saw Mr Bebic, and the Record of Interview was in the typewriter while Mr Bebic was sitting there, and the lawyer sat beside him and he even said to me, "Don't include this conversation on the Record of Interview", and you're suggesting that we have these 11 - ten or 11 pages all
5 typed up with all the questions and answers, laid them out and say to somebody, put your name down, sign your name. I mean, that's just ridiculous, Mr Buchanan. Really.

10 Q. The raids that were undertaken in Sydney by CIB detectives were all directed as a result of the report of the information that Mr Virkez had supplied to Lithgow police. That'd be a fair take on the relationship between Virkez and the raids in Sydney, wouldn't it?

15 A. The information that Mr Virkez provided to Ingram and Marheine, that was communicated to Sydney, you're correct, and Mr McDonald had meetings with other senior people, I don't know who he had meetings with, before he came and told us to hightail it up to Lithgow in a SWOS team, and the information that we obtained from Mr Bebic at the house, when Mr - later on Mr Turner indicated that when he'd left the room, left Mr Bebic with me and he went out, he passed on the information that was in his notebook to Mr McDonald who
20 was still there. So there was communication and then we did the Record of Interview and finished at 11 o'clock at night. So Sydney was provided with snippets of information that came from the operation at Lithgow.

25 Q. Weren't the names of the Burwood three, Ilija and Joseph Kokotovic and Mile Nekic, furnished to you and Detective Turner, and you incorporated them in the verbal, the verbals plural, of Maks Bebic?

30 A. That's totally incorrect. Mr Bebic actually provided the names, he sat next to me in the lounge and he could see me writing them as I wrote them down as best I could, based on what he was saying, and, as you can see, I didn't write - spell their names correctly. And then in the Record of Interview he actually writes down the names on a piece of paper himself, and those names were included, Mr Buchanan, I'm sorry.

35 Q. You know that he gave evidence that he was shown those names and told to write them down on a piece of paper in his own way?

40 A. That's incorrect. I mean, most of them what, unfortunately what, with respect, what Mr Bebic has - gave at the trial, not prior to that, was a reversal of everything happened and it was like I took - he took everything that Virkez had alleged to have taken place and then blamed it on - on what he's supposed to have done, blamed it on Virkez and then claims that all of these police did certain things to him in terms of assault, and denied everything that we claimed took place. I mean, it's just - a fantasy really.

45 Q. In that era, 1979, you know that it was a practice of CIB detectives to verbal suspects, don't you?

A. You're referring to what came out of the Royal Commission?

Q. No, I'm referring to the practice of verballing suspects on the part of CIB detectives.

50 A. It was not a practice, as far as I'm personally concerned, in the matters that

I was involved in. And you say CIB detectives, well, there were detectives across the State, yes, there were media reports from cases where detectives were alleged to have, as you say, verballed someone. So it was known, yes.

5 Q. It was a known practice to assault suspects in the custody of CIB detectives in that era, wasn't it?

A. Well, I've never assaulted anybody at the time of arrest other than when you've had to put their handcuffs on them, but I've never had an allegation that I've assaulted someone to obtain confessions. Yes, it might've been referred
10 to in cases that have gone before the Court, it was in the media, and it was raised at the Royal Commission that these sort of things could have occurred. You can't go around tarring all police officers with the same brush just because of mistakes made by others.

15 Q. It was also practice to load people up with explosives and firearms; don't you?

A. Those allegations have been made in cases that have been reported in the media, yes.

20 EXHIBIT 9.1-26 SHOWN TO WITNESS

Q. Is that in front of you at the moment, red page 37 I think might be the number?

A. Yes.

25

Q. Could I ask you to go to page 38 - sorry, just so that you can satisfy yourself as to what it is I'm showing you, if we could go back to the first page, thank you. That it's a record of a conversation between Roy Whitelaw, Assistant Commissioner of New South Wales Police, and some people whose
30 names have been redacted, can you see that?

A. Yes.

Q. Turning to the next page, paragraph 8 I'm reminded, can you read that to yourself?

35 A. Yes.

Q. "It also appeared that the informer", talking of Virkez, "was a man prone to violence and that he has been known, over some two years, to a police officer stationed at Lithgow, New South Wales Police, one Detective Sergeant
40 Marheine."

A. Yes.

Q. Was that knowledge shared with you, that he was a man prone to violence?

45 A. I can recall at the briefing in Lithgow, before we deployed to carry out the raid that Marheine indicated that he knew the guy, that Virkez had been living in Lithgow for a period. But I don't recall the issue about violence. I knew we were advised that one of - there was a rifle on the premises, but, no.

50 Q. If it had been known that Virkez was a man prone to violence, that would

cast him in a different light from the character that he presented to police and in the trial, wouldn't it?

A. If it was proven, yes. If he - if it had been proven in the past that he had committed violence, yes.

5

Q. It has to be proven? Police don't ever act on intelligence?

A. No, I mean - I - sorry, if there was intelligence and it was allowed to be admitted in a Court, yes.

10

Q. Wouldn't it affect your investigation to have intelligence--

A. Well, it would've--

Q. --that he was a man prone to violence?

15

A. --it would've affected us at the time of taking in - we'd have taken that into consideration when we deployed to raid the premise. This would be something we would've taken in from a risk point of view. But if we had have known that he was prone to violence during the enquiry, I can't really recall that, but unless it's recorded somewhere that we would have done some research in his background, but it - I can't recall at the moment.

20

Q. Wouldn't it suggest that Virkez was somewhat different from the picture that he painted of himself in the Record of Interview and in the trial?

25

WOODS: Your Honour, I object. This document involves something said by Mr Whitelaw but there's no basis for connecting this document to the witness.

HIS HONOUR: I think it's being put as a theoretical matter; is that right?

30

BUCHANAN: Your Honour, I won't press that question.

Q. Could you go to paragraph 11, please, of that document, on that page, this is red page 38?

A. Yes.

35

Q. Were you aware of the Head of Police Prosecutions Branch being briefed by Mr Whitelaw of the import of the ASIO information in this case?

A. No.

40

Q. Were you aware of Mr Whitelaw having any contact with Mr Turner?

A. No. As I indicated, I - to tell you the truth, I didn't even know who Mr Whitelaw was.

45

Q. Mr Turner might have known who he was, particularly if--

A. I would--

Q. --Mr Whitelaw rang him?

A. I would say so. Mr Turner would have - would have known him, but I didn't.

50

Q. Do you know whether Vico Virkez was ever an informant of Roger Cavanagh?

A. I didn't know that, if that's correct. If that's alleged, no.

5 Q. Cavanagh never suggested, in your presence, that Virkez had been reporting to him, or providing him with intelligence on the Croatian community, particularly the nationalists?

A. No.

10 Q. Were you ever aware of whether Mr Virkez spoke with Mr Cavanagh, or vice versa, in Lithgow on, say, the 8th, but possibly the 9th or 10 February?
A. Mr Virkez and Cavanagh you're talking about?

Q. Yes.

A. No.

15 Q. You shook your head meaning "no"?
A. No.

20 Q. Do you know whether Mr Cavanagh was in Lithgow on any of those days?
A. No.

WOODS: What does that mean?

BUCHANAN: It means he is not aware.

25 Q. When did you find out that Mr Virkez would plead guilty?
A. I'm afraid I can't recall, actually. I can't even recall, actually, how I came to know that he was going to plead guilty. Whether it came from the Crown, because I hadn't - I hadn't been to see him in prison. I had been requested to see him in prison, or Sergeant Turner. So whether it's Sergeant Turner found out, I don't know.
30

35 Q. Do you remember in conversations with the Crown Law authorities, the prosecution team, in the first four months of 1980, any anxiety as to whether Mr Virkez would plead guilty and give evidence for the Crown?
A. I'm sorry, I can't comment. I can't recall any of that conversation.

40 Q. Did you ever have the view that Mr Virkez was critical to the police case, or the Crown case, against the Croatian Six?
A. Well, initially they - he was charged, just like everybody else, and as you indicate, there was never - during all his bail applications, there was never an indication that he was going to plead guilty and give evidence, and we had - we firmly believed that we had a - a strong case against all six of the accused, so I can't comment any further than that, really.

45 EXHIBIT 9.1-38 SHOWN TO WITNESS

50 Q. If you could go to page 56, please. First of all, I should just ask you to have a look at the first page, so that you can familiarise yourself with the sort of document it is. It's a letter to the Secretary of the Department of Prime Minister and Cabinet dated 11 March 1980. Could you turn to the next page,

please. Can you see that the author is Assistant Commissioner Farmer of the Commonwealth Police. It might have been the AFP by this stage.

A. Yes.

5 Q. Could you have a look at the first full paragraph, which is a bit over halfway down that red page 56. Can you see that it says:

10 "The New South Wales Crown Law authorities are anxious to come to some form of arrangement with Virkez, as his voluntary testimony is considered to be vital to the successful outcome of the case."

Can you see that?

A. Yes. I see that.

15 Q. That's the New South Wales Crown authorities. They never conveyed that to you?

A. I can't recall that sort of conversation, I'm sorry. I'm not saying--

Q. Who - I'm sorry, go on.

20 A. I'm not saying it didn't take place.

Q. The people who would try to get, or find out, whether Virkez was going to plead guilty and testify the Crown, were the police, weren't they?

25 A. Well, we weren't doing anything in relation to this matter without conferring with the - the Crown.

Q. Certainly. And so--

30 A. Which would - which would have included, "Please go and see so-and-so", or whatever it might be.

Q. My attention has been drawn to the last paragraph, which reads:

35 "The New South Wales Police are anxious to have some form of commitment by the Commonwealth to the effect that Virkez could be deported upon conviction."

Do you see that?

A. Yes, I do.

40 Q. Do you know where Mr Farmer would have got that idea from?

A. No. I mean, it would be unlikely that, if there was any representations there made, Sergeant Turner would have initiated, but he, himself, wouldn't be writing to Assistant Commissioners. He would have had to put something through the senior officer at the CIB.

45

Q. You see, if what Mr Farmer records in that letter that I've drawn your attention to is correct, then the New South Wales Police, the people in charge of the investigation, would have been anxious themselves to secure Mr Virkez's cooperation in the Crown case, would they not?

50 A. I think as an investigator, there's always - very good, actually, to have a

5 situation where you had a number of offenders who have committed an offence, and - and either one, or more than one, would suddenly turn around and say, "I'm prepared to plead guilty and give evidence." I mean, as you know, there's been plenty of cases where criminals will turn against their own kind, just for their own benefit.

Q. You and Mr Turner were, essentially, work partners in putting the brief together in this case?

10 A. That's correct.

Q. Mr Virkez, on what Mr Farmer says, was considered vital to that brief?

A. Based on what this document says, yes. And if it had have been one of the other accused who wanted to turn around and plead guilty and give evidence, it would have been seen as the same.

15

Q. Isn't it silly for you to sit there and pretend that you don't know that, at least in March, you and Turner were anxious to get Virkez to plead guilty, and agree to testify for the Crown?

20 A. It would have been welcome, but I'm not sure about being anxious, but I don't remember. As I indicated, I don't remember what discussions took place with the Crown, or what discussion Sergeant Turner had at that particular stage, and we're talking March 1980, which effectively is a long time after the arrest, and I was putting a brief together, and I think - I'm not sure - yesterday when - when they were asking me questions about Parramatta Gaol, how many visits, it was appearing when I was - I went on to a Special Inquiry for a - quite a while, so I did indicate in my evidence yesterday that there were times when we were not both fully committed, because there was a period - once it went to committal proceedings, there was this spasmodic requirement to keep coming back together to do further enquiries, as requested by the Crown. So it wasn't a situation where you were there 100% of the time from February 79 right through till the end of the trial in 81.

25

30

Q. If we could have a look at the gaol visitors' book records, please.

35

EXHIBIT 12.6 SHOWN TO WITNESS

Q. Could you have a look, please, at red page 83. Can you see against the date, or under the date, 21 February?

40 A. Yes.

Q. There is an apparent visit to someone at the gaol by Cavanagh and Blades?

A. Yes.

45

Q. From what you know, that would have been seeing Mr Virkez, would it not?
A. Well, that's my understanding, yes.

Q. Did New South Wales Police, to your knowledge, find out what happened on that occasion?

50 A. No. As I indicated, at some stage in February, it would have been after the

20th, because I can't recall meeting Roger Cavanagh in the intervening period, that's up 'til the 20th, and he came in that one visit to see Sergeant Turner, and I just spoke to him briefly and mentioned that he spoke to Virkez, and that in his opinion, Virkez was a - just a - an ordinary person giving information to the - to the Consulate, and that was it really. Just very--

5 Q. Are you sure that's what he told you?

10 A. Well, it was along those - it was along those lines. It was only the fact that he was a - an informant in the sense of providing general information about the, if I can recall, about the activities of the groups in the - in the Yugoslav community, and that was all. It was just basically a, "Hi, how are you going?" Just stood there. I think Ted said to him, "Have you got any record of all that?" And I think he indicated he didn't make notes or something. I can't remember.

15 Q. Yesterday you told us there was only one visit--

A. That's - that's - that was--

20 Q. --by Mr Cavanagh to CIB?

A. --that's the visit.

Q. You told us it was in early February.

25 A. I indicated it was in February at some stage. I did say I thought it was after the 20th when we got back from Lithgow.

Q. After the 20th would be late February, wouldn't it?

A. After the what?

30 Q. After 20 February would make it late February, would it not?

A. That's correct, yes.

HIS HONOUR

35 Q. I think you used the term yesterday, "the early weeks".

A. Your Honour?

Q. You described it as "In the early weeks", at page 300 of yesterday's transcript.

40 A. In - in February. Well, the early weeks, of course, was the first week, but the operation hadn't even taken place, so I probably was wrong in saying the earlier weeks, because the operation didn't happen until the eighth of February, so.

BUCHANAN

45

Q. Could I ask now could we have a look at another visitor's book record. I've only got the record for the book itself, 249, red page 84, please. Can you see that a bit above middle of the page entries for a J F Wilson, and a M R O'Brien?

50 A. Yes.

Q. Detective Sergeant Wilson's given names were John Francis, weren't they?

A. That's correct.

Q. Mr O'Brien and Mr Wilson were both in the Special Breaking Squad?

5 A. At that time, yes.

Q. They were both involved in this matter?

A. Mr O'Brien went to Lithgow, and I believe, yeah, that's right, Mr Wilson was involved in one of the operations.

10

Q. Bossley Park.

A. That's right.

Q. Are you aware of whether Mr O'Brien and Mr Wilson on that occasion, 6 March, visited Mr Virkez?

15

A. No.

Q. Were you informed of any outcome of any visit that they made on that occasion?

20

A. Not unless there's anything in the occurrence pad.

Q. Was there any delegation made by you or Turner to other detectives to try to manage Virkez to get out of him a plea of guilty and an agreement to testify for the Crown?

25

A. No. The only person that I can recall that we spoke in relation to Virkez would be Sergeant Marheine, on the basis that he interviewed him. He had - he was preparing his statement for - for the brief, so that's all I can recall.

Q. Could we go to red page 85, please? Can you see about - I'm going to pluck a figure out of the air - about eight or nine entries down - four entries. The first being J F Wilson, Detective Sergeant, CIB. Second being J Rad - you know his name--

30

A. Radalj.

Q. R-A-D-A-L-J. The next being R F Cavanagh, and the fourth being J S Blades.

35

A. Yes.

Q. You wouldn't have any doubt at all, would you, that Mr Wilson and Mr Radalj visited Virkez on that occasion?

40

A. That's right.

Q. That would cast the record of their visit to Parramatta Gaol on 6 March, the day before, in a different light, wouldn't it? It would suggest they were visiting Virkez.

45

A. On the sixth?

Q. Yes.

A. You're talking about where O'Brien and Wilson?

50

Q. No, O'Brien and Wilson, the day before.

A. That was on the sixth, yes.

5 Q. So Wilson had gone to see Virkez on 7 March, and O'Brien was also involved in the Croatian Six, and he accompanied Wilson on 6 March. The chances have to be that, on 6 March, O'Brien and Wilson saw Virkez, don't they?

10 A. I don't know. I have no recollection of that, or for what reason they were at Parramatta Gaol and who they were visiting.

15 Q. Radalj could speak Croatian, couldn't he?

A. Radalj, yes. That's right, he was - he was used to translate some of the documents. That's right.

20 Q. Are you aware of what the outcome was of the visit by Wilson, Radalj, Cavanagh and Blades to the accused on 7 March 1980?

A. No. Other than what I read in the documents that led to the establishment of the Inquiry, so, you know, for me to comment, I'm actually commenting on a document that I read in the last two weeks, so it would be inappropriate for me to comment on what I knew then, 40 years ago.

25 Q. There'd have to be a very high probability, would there not, that those visits - particularly the visit of 7 March involving the identities that we've gone through - were with a view to persuading Mr Virkez to plead guilty and to give evidence for the Crown?

30 A. Well, I can't comment on - on that. You would expect that Cavanagh and those that went with him would have put in a report as to their conversations, or what the reason they were going to - who - why were they were authorised to go there. I don't know.

35 Q. But you've seen the official documents saying that the Crown law authorities were anxious about what Virkez was going to do, and that he was vital to the Crown case.

A. That's correct.

40 Q. It's inevitable that that's what the police were there to do; to sort out, to solve that anxiety.

A. But do we know actually what - what Mr Cavanagh and the others were doing on that day, why - isn't it reported in the documents that led to the establishment of the Inquiry, why they were there? I mean, I can't comment, it's a meeting they had, and whatever they reported, which is referred to in the submission made to the establish the Inquiry. Doesn't that say why they were there?

45 Q. No-one gave you an impression that Mr Virkez had to be touched up a little bit at Parramatta Gaol by the police? Be they a combination of Commonwealth Police and New South Wales police or separately?

A. Definitely not.

50 Q. Bashed?

5 A. Definitely not. I mean, when you go to - in those days when you went to visit any prisoner in any of the gaols in New South Wales, a prison officer was there. You couldn't go in and say beat it, give us half an hour with this guy with the door closed. That just didn't happen. That's just fantasy, I'm afraid.

10 Q. Prison officers have never countenanced violence in gaols. Is that what you're telling us?

15 A. I'm not saying - I'm talking about the allegation you're making that you could go to a prison, or these people went to the prison to give him a touch up, and then members of the Commonwealth Police and State Police are going to - to - I mean, there must be a report as to why they were there. We didn't send them there, as far as I'm concerned, I'm aware. Unless there's other documents that indicates that that's the case.

20 Q. You're still unable to give us an explanation as to how it came to pass that by 25 March Mr Virkez pleaded guilty?

25 A. That's right, yeah.

30 Q. That also is ridiculous evidence, isn't it? Given the anxiety that the police and the Crown law authorities had, as to what Mr Virkez was going to do, and given the importance of Mr Virkez to the Crown case.

35 A. I mean, when a person decides that - to change and decide to plead guilty, to give evidence against others, it is a major breakthrough, but you were asking me did we feel anxious, and how did we manipulate him to do it. I mean, I - I'm afraid I've got no information on that.

HIS HONOUR: Is that a convenient point, Mr Buchanan?

40 BUCHANAN: Yes, it is, your Honour.

45 HIS HONOUR: Unless you want to complete on something?

50 BUCHANAN: There is, but I need to go to another document to do that.

HIS HONOUR: All right. We'll take a morning break now, Mr Milroy.

SHORT ADJOURNMENT

EXHIBIT 9.1-26, PAGE 37, SHOWN TO WITNESS

BUCHANAN

45 Q. Do you see from the first page there that it is a record of conversation that some people with their names redacted had with Mr Roy Whitelaw - I think there's material elsewhere to suggest that the people - sorry, that "LA" at the end of "officers present", stands for "legal advisor", and this comes from the ASIO file. So the inference is this is a meeting involving Mr Whitelaw and the ASIO legal advisor.

50 Turning to the second page, which is red page 38, if you just scan

paragraphs 4, 5, 6, 7, 8, that it's all reference to what Mr Whitelaw was saying?

A. Okay.

5 Q. And bearing in mind that the date of this, back on the first page, is 16 March 1979. So it's before the committal proceedings, after the arrests, when you and Detective Sergeant Turner are putting together the brief.

A. I understand.

10 Q. Paragraph 5 records that Mr Whitelaw is explaining that:

15 "For some years there had been allegations and rumours to the effect that the official Yugoslav Government representatives in Australia had been attempted to discredit Croatian nationalist organisations by the use of agents provocateur among their own people or that 'incidents' had been staged at the instigation of those representatives and then blamed on them."

Is this something that passed through your mind at any stage when you were either investigating this matter or putting together the brief of evidence?

20 A. No. There was nothing in - that I'm aware of, to tell you the truth.

Q. No-one drew to your attention a concern on the part of very senior police that the nature of the matter might dovetail into allegations and rumours that official Yugoslav Government representatives in Australia had been attempting to discredit Croatian nationalist organisations?

25 A. No. I had no knowledge of that.

Q. Paragraph 6 records Mr Whitelaw is expressing the view that, "It was, at least, likely that this incident would give rise to similar allegations." Nothing like this was drawn to your attention?

30 A. No.

Q. Then Mr Whitelaw is recorded as going on to say:

35 "For that reason, the ASIO information should be available to the Police Prosecutions Branch so that the Police Prosecutor would be aware of all the circumstances and must avoid 'blundering' into a possible untoward situation during the committal proceedings."

40 Are you aware of any contact that was had by yourself, or Mr Turner, or anyone else working on the police brief of evidence with the Police Prosecutions Branch in relation to this matter?

45 A. No. As I indicated very early in the piece, we, because of the complexity of the case, we basically dealt with the DPP. I mean, they, we - other than perhaps the first - you know, as the first court case there, Mr White from Mr Shillington's office, so he could see that we were - talk about the police prosecutors' office. Well, then if that's - if this is what has occurred, then the police prosecutors' office should have referred it to the DPP, or to Mr White and Mr Shillington.

50

Q. Do you know who represented the prosecution in the committal hearing?

A. No. I can't recall.

5 Q. You were working on the preparation of the police brief of evidence. The police brief of evidence, first and foremost, had to be used by the prosecutor in the committal proceedings; correct?

10 A. That's correct. But I understood from the documents that you showed me yesterday that the - that the committal proceedings were run by Mr Shillington and Mr White. So there was no actual police in the - normally the police prosecutor, your Honour, would - would run the Petty Sessions for most matters, and I understood from the documents that were shown to me, and I can't recall, going back 45 years, but I was under the impression that the - the DPP ran the Petty Sessions.

15 Q. Irrespective of who ran the prosecution case at committal, it's inevitable, isn't it, that if your job was to prepare the police brief of evidence for that person, or that entity, that you would have had contact with them?

A. Of course.

20 Q. Was anything said about the risk of blundering into a possible untoward situation, or anything along those lines, as to how Mr Virkez was represented at the committal? By which I mean portrayed at the committal hearing?

A. Well, at the committal hearing, he was actually one of those charged with committing a criminal offence.

25

Q. Yes. Yes.

30 A. So, he was treated no different to the others. We put the brief together. In - in those days, your Honour, you would put the brief together. You would then go to the police prosecutor, who had legal training, to make sure that this brief of evidence is suitable, and they've got to present it at the Petty Sessions, and in this case, we had - we dealt directly with the DPP, because it was such an important and complex case.

35 Q. Can I take you to paragraph 9, which records the following, "The discussion ranged at some length over the ways in which the police could be embarrassed during the Court hearing should allegations of the type mentioned in paragraph 5." – namely, the rumours and allegations that Yugoslav Government representatives in Australia had been attempting to discredit Croatian nationalist organisations of that type – "be raised". Are you

40 aware of any discussions about the risk of anything which occurred in the committal hearing dovetailing into that problem of allegations and rumours to the effect that official Yugoslav government representatives in Australia had been attempting to discredit Croatian Nationalist organisations?

A. No.

45

Q. You never heard the question of whether Mr Virkez might be seen as an agent provocateur being aired in the Court proceedings, be they at the committal or trial?

50 A. I think, as you were in the trial for the duration, there were questions raised, I think, around those lines, but I can recall the - the opening address by the

5 Crown at the trial, that he indicated there wasn't a skerrick of evidence to
indicate that Mr Virkez, I understand, was anything other than a community
source, or what you might call an informer; and as you know, in intelligence
circles, they use this word "agent". In the police service, if a person's an
10 informer, they're an informant. They're either an official informant registered or
they're just a community source, or someone that walks into the police station
with information. We don't - that term, "agent", is not something that's
common. We don't call - even today, they don't call an informant an
agent. They say spy environment. They're the terminology, but I understood
15 from what Mr Viney said that - and that was based on information we gathered
from Mr Jefferies, and Cavanagh's comment - brief comments - that there was
a belief that Mr Virkez was no more than a loose informant providing
information to the - to the Consulate.

15 Q. I'm not asking you about what was aired in open Court. I'm asking you
about concerns to which you might have been party, that police might be
embarrassed during the committal hearing or the trial, should allegations of
agent provocateur be raised. There was a concern on the part of the police
putting together the brief of evidence.

20 A. I don't - to tell you the truth, I cannot recall applying my mind, or even
Sergeant Turner raising the issue that Virkez could be an agent provocateur, in
the sense that he encouraged and enticed these - these others to actually
commit these criminal offences. I don't think that ever came to our
25 thoughts. Mine it didn't, and I can't speak for Sergeant Turner - based on
information we had that we passed on to the - to the Crown. I can't say any
more than that, Mr Buchanan, I'm sorry.

30 Q. There's more than one sense in which the expression "agent provocateur"
is used. Isn't that the case? You can have an agent provocateur who comes
along and gives false evidence - who implicates others--

A. That's correct.

Q. --in something about which he tells lies.

A. That's correct.

35

Q. Could the witness please be shown Exhibit 10.2-4?

EXHIBIT 10.2-4 SHOWN TO WITNESS

40 Q. Mr Milroy, this is - if you could take it from me, and judging from the
documents before and after - a Prime Minister and Cabinet Department file
note. It's dated 17 May 1982. Can you see that?

A. Yes.

45 Q. According to the file note and paragraph 2, the paragraph commencing "In
the course of these interviews"; can you see that?

A. Yes.

50 Q. "In the course of these interviews Virkez admitted he had been approached
by the Yugoslav Consulate to obtain information, and this he had done on

several occasions, but it was always 'low-level intelligence information'."

A. I see that, yes.

Q. Does that sound familiar to you?

5 A. That actual comment, that - no.

Q. You, in preparation for your appearance in this Inquiry, would have seen that Roger Cavanagh is a person who used the expression "low-level intelligence", wouldn't you?

10 A. I read the - the documents.

Q. You've seen that Roger Cavanagh attended meetings attended by the Prime Minister and cabinet people, who became involved in this matter, or at least became involved with Virkez.

15 A. Yes, I saw that, there was.

Q. Is it the case that as far as you know it wasn't just a case of Virkez providing information to the Yugoslav Consulate, but that he had been approached by the Consulate to obtain information? In other words, recruited.

20 A. Yes, that's what they say this is.

Q. Does that accord with your memory of what you understood about the status of Mr Virkez and his relationship to the Yugoslav Consulate?

25 A. No, as I said, I indicated that other than what the comments that Mr Jefferies indicated, and likewise Mr Cavanagh, just a one-line comment that he was just basically a - a low-level - not a low-level, that's not the word - a sort of a community source, and he was passing on information to the - to the Consulate about the activities of the groups, and that. Handing out pamphlets and things like the - I mean, that's - that's all I knew, nothing else.

30

Q. You would accept, wouldn't you, that if Virkez had been recruited by the Consulate to provide information on the Croatian community, that would give a somewhat more sinister aspect to the role that Virkez was playing in this matter, wouldn't it?

35 A. Well, I can't comment on that. That's a speculation or a view that you've formed.

Q. Taking into account the meetings that appear to have taken place at Parramatta Gaol between police and Vico Virkez, including amongst those police Detective Sergeant Wilson and Radalj, and given the material that you've seen in this cross-examination, Virkez is starting to look to police like not just an informant to the Yugoslav Consulate, but a Yugoslav intelligence agent. Wouldn't you accept?

40

45 NEEDHAM: Your Honour, can I object to that. The document upon which that question is based is a document which is prepared between Mr Walsh and Mr Farmer. Mr Farmer is AFP and Mr Walsh was Federal Attorney-General.

HIS HONOUR: Yes.

50

NEEDHAM: When the word "police" is used there should be more specificity about it.

5 HIS HONOUR: I take it you're referring to whether he's aware of.

BUCHANAN: Indeed.

HIS HONOUR: Confined to his knowledge of police generally, of course.

10 WITNESS: Are you able to give me the question again?

BUCHANAN

15 Q. Yes. Taking into account the meetings that appear to have occurred between police and Virkez at Parramatta Gaol, including amongst those police Wilson and Radalj, and also O'Brien, and this material from the document that's in front of you; it's starting to look to police, isn't it, like rather than just an informant to the Yugoslav Consulate, Virkez was a Yugoslav intelligence agent.

20 WOODS: The same objection, your Honour.

HIS HONOUR: Yes. It's the same thing. You really can only ask him about his awareness, and your question doesn't include that. "It's looking to police" is inviting him to really express an opinion about something, which is not really helpful.

BUCHANAN

30 Q. You deny any thoughts or concern or apprehension that Virkez might have been a Yugoslav intelligence agent?

A. None. Other than what I knew at the time, and what we provided to the prosecution, no.

35 Q. Do you know whether anything was done in relation to Mr Virkez to ascertain if he gave evidence what he would say?

A. No.

40 Q. It was rather important to know if he was going to give evidence what Virkez would say, wasn't it?

A. Well, I never had any meetings with him. I'm not aware of Sergeant Turner having meetings with him to actually go through what evidence - where there is proof by the - by the - by the Crown before he'd actually given his evidence. That would be in the files that I've mentioned, that the Crown should have, and other than that one meeting I had with him prior to him giving evidence, to say to him what the arrangements would be in relation to going to the trial and his transportation, and you'll be in the Court; this is the process; that was it. As far as I'm aware.

50 Q. This had been rather important to you and Detective Turner, as the

officers-in-charge of the police brief of evidence, to know what Virkez was going to say?

5 A. Well, I can only speak for myself. I never got involved in any discussions with Virkez. That's something that may have been initiated by the Crown, and it could have been carried out by Sergeant Turner, but I'm not aware of what took place.

Q. You're not answering my question.

10 WOODS: Your Honour, with respect. My friend is entitled at some point to make submissions about these matters, but this particular question is more in the nature of a submission. He's answered the substance of the question.

15 HIS HONOUR: Yes. There's some force in that. Mr Buchanan, at what point in time are you directing these questions to? Is it a point when the preparation of the brief of evidence was still an on-going task, or is it after the point where the matter had been placed in the hands of the prosecuting lawyers from the Crown Prosecutors and the Solicitor for Public Prosecutions' office?

20 BUCHANAN: It's at the time when, on the evidence, the Crown law authorities were anxious about what Virkez would do. As to whether he would plead guilty; as to whether he would testify for the Crown.

HIS HONOUR: Yes.

25 BUCHANAN: This man was involved in the preparation of the brief of evidence.

30 Q. I'm just asking the witness as a person who must have prepared briefs of evidence before, isn't it essential to know what a witness is going to say?

A. Yes, I agree with that.

Q. Right. Was anything done by New South Wales Police to find out what Mr Virkez would say in Court?

35 A. I don't have any recollection. I believe Mr Virkez had a lawyer at that stage. Whether there was meetings held between him and Sergeant Turner and others on the instructions of the Crown, I don't know, I can't comment. I have no recollection.

40 Q. There's a series of meetings--

WOODS: Your Honour, with respect, the witness has answered the question. It's not a matter of in this case making submissions at this point?

45 HIS HONOUR: No. Continue with your question, Mr Buchanan.

BUCHANAN

50 Q. There's a series of meetings that occur in February/March 1980 between Mr Virkez and police. Weren't any of those meetings used to find out whether

Mr Virkez would plead guilty or to persuade him to?

A. Well, I can only comment on the times that I met Mr Virkez, which would have been referred to in my statement.

5 Q. You can comment on more than that, can't you, Mr Milroy?

A. Well, if I had the answers you wish, I would say, Mr Buchanan, but I have got no recollection of those sort of discussions.

10 Q. But you weren't just a post box, you weren't just a post office box, receiving information, statements from police witnesses; you were putting together the brief of evidence, this was the vital witness, according to your Assistant Commissioner.

15 A. That is correct. We were - we were putting the brief of evidence together, but you're talking about a period after we had finished preparing the brief, given it to the prosecutors, and he's going to the - for the committal process. You're talking about the period when suddenly he'd changed from being an accused pending a trial to actually changing his plea to guilty and preparing to give evidence. I mean, I don't have any knowledge or records of actually holding any meetings with him in the presence of anybody to discuss
20 how he's going to plead.

25 Q. Is this the thrust of what you have to say, it is a mere coincidence that these meetings between police and Mr Virkez occurred in the period February/March 1979 and him changing his plea to one of guilty and signalling that he would give evidence for the Crown; just coincidence, is that the thrust of your evidence?

30 A. Well - well, as I indicated, they're not being a coincidence. I asked the question that if Mr Cavanagh and the other Commonwealth officer and the two New South Wales police went there and there must be a report of their discussions with Mr Virkez, it was not relative, as I understood, to do with the case that we had already completed and submitted. So, I don't know what they went, I don't know what discussions they had with him, and they didn't report back to me about what they did.

35 Q. Wilson and Radalj did meet with Virkez, didn't they?

A. You - Wilson and Radalj and Cavanagh and Blades met with him, that's right.

40 Q. Yes.

A. On, what was it, the date?

45 Q. It'd be reasonable to assume, wouldn't it, that Wilson and Radalj were in the same room as Cavanagh and Blades, with Virkez, on 7 March?

A. That's right.

50 Q. Yes, and you got--

A. And Cavanagh had--

Q. I'm sorry?

A. I'm sorry, Cavanagh and Blades and Radalj were not involved in the

investigation in any shape or form, and in the sense that they were - well, they don't have statements in the brief of evidence; they weren't at the arrest; they didn't--

5 Q. Well, sorry, there was a statement by Mr Radalj, he gave evidence in the--
A. That was in relation to the documents that he was requested to translate.

10 Q. What report - sorry, are you telling us, are you asking us to accept that you got no report from O'Brien, Wilson or Radalj about what had happened in those meetings on 6 and 7 March 1979 with Virkez?

A. I've got no recollection, that's right.

15 Q. But it's likely you got a report, isn't it?

A. If there is a report it would be in the running sheet or we would've recorded it in the tasking book that we were running on enquiries, so--

20 Q. But if it was a sensitive subject that the police were canvassing with Mr Virkez, then you wouldn't put it in a running sheet, would you?

A. Well, all the enquiries that we were, we were putting them in the running sheets. We saw Jefferies went and - not Jefferies, the others who went and saw him put in running sheets. Others who went and spoke to other prisoners that were in - in gaol who go on to make comments about the accused were running sheets.

25 Q. Were you familiar, at any stage, with an address book that Mr Virkez apparently kept, just before his arrest?

A. I am aware that there was an address book, but I can't recall who actually found it.

30 Q. Do you recall seeing it or photocopies of it?

A. If you might show and then I might remember, but I can't visualise it at the moment, no.

35 Q. You gave evidence before Mr Virkez did?

A. I think I gave evidence at the trial in April, I think it was. You mean--

Q. March/April? You were an early witness.

A. Of course. That's right. I believe so. I - they--

40 Q. If you could accept from me that you did?

A. Yes.

45 Q. You were present for most of Virkez's evidence, and when you weren't able to attend, Mr Turner did; you told us yesterday?

A. That's correct. Yes.

50 Q. Were you attending because there was anxiety as to whether Virkez would stick to a particular version of his evidence?

A. No, it was a task on the basis that when the trial started we, Turner and I, were responsible and met with the Crown every day to find out what was

required, which witnesses, and then we would contact them. So we were basically the case managers, if you want to call it, for the duration of the trial.

EXHIBIT 2.1-36 SHOWN TO WITNESS

5

Q. Red page 1023, you see it's a cross-examination of Mr Virkez--

A. Yes.

10

Q. --that one page of the transcript, which is in front of you? Can you see at about half way down the page there's a question, "You have an address book, don't you", answer, "Yes"?

A. Yes.

15

Q.

"Q. Have you inside the address book any reference to a Yugoslav diplomatic mission inside Australia?

A. I did go on a number of times to demonstrations here and I had.

20

Q. And you had what?

A. The address.

25

Q. Were the demonstrations anti-Yugoslav demonstrations?

A. Of course.

Q. In that address book, did you put in it the phone number of any Yugoslav diplomatic mission inside Australia?

A. Maybe."

30

Skip a question, and going on:

"Q. If the phone number of the Yugoslav Consulate in Sydney is in your address book, why would it be there?

35

A. Possibly I have been calling them and swearing at them in all kind of manner.

Q. ... Not with a view to contacting them about spying on Croatians?

40

A. No."

Can you see that?

A. Yes.

45

Q. Were you present for that evidence?

A. Yes.

Q. You knew he was lying, didn't you?

A. In what regard?

50

Q. As to why he had the phone number of the Yugoslav Consulate in his

address book?

A. I'm sorry, what do you mean by that?

5 Q. Why, as you understand it, sitting there as you do now, indeed thinking of the time when Virkez was giving evidence, would Virkez have had the phone number of the Yugoslav Consulate in his address book?

10 A. Yes. Well, he was actually - he lived here in Australia and he came from Europe, and he had the phone number, as you say, in the - in his address book; if he was using it to ring them up and abuse them, then it's probably that was the reason he had the number. If that's true, yes.

Q. You knew that that wasn't the case, didn't you?

A. That he didn't ring up and abuse them?

15 Q. Yes?

A. Well, I don't have any - as you know, we've tried to make enquiries at the consulate, and they declined to cooperate. So I couldn't--

Q. That was about the phone call on 8 February.

20 A. But I can't - how can I verify that? He had the phone number in his address book, he probably had a lot of other phone numbers, but why he had it, why should he have had it, I don't know.

25 Q. Didn't you tell us that you were aware that Virkez was an informant to the consulate?

30 A. Based on what Jefferies and them had indicated, that's right, that he was - he said himself, I think, when he was interviewed by I think Marheine. I can't recall in the questions, but that he had passed on information to them, so he would be classified as a source or an informant.

Q. You knew, when you were present when that evidence as given, that Virkez had the address - sorry, had the phone number of the Yugoslav Consulate in his address book in order to use it to supply information about Croatians to the consulate, didn't you?

35 A. Well, as you indicated there, in evidence, he had it to ring up and abuse them. So I'm - and I mean, what you're talking about is what I knew at the time, while I'm--

Q. You knew that was a lie by Virkez, didn't you?

40 A. The fact that he rang up and abused them using the phone number, or?

Q. The fact that that was why his phone number was in his address book?

A. I can't comment whether I thought it was a lie at the time, I'm sorry.

45 Q. You see, you've got a problem, haven't you; if you were present and Virkez gave evidence which you knew was false? And your problem is that you didn't tap the Crown on the shoulder and say, that man's evidence just then was a lie.

50 A. If I - if I thought that he had lied or he's passing on information, I would've said to the Crown, or Sergeant Turner and I would've said to the Crown,

he's - he's not telling the truth, or he's wrong about that address, or that information. But, as I say, I can't recall.

5 Q. You knew - and that was important information, because the link between Virkez and the consulate was important to understanding whether Virkez's motives were as he suggested; that he had been working with Croatians to ferment a plot to explode bombs, or whether he was trying to set them up. Whether he was trying to frame them, and that he had a motive to do that.
A. I mean, that's--

10 Q. That's why it was important, isn't it? That piece of evidence?
A. But that's your view of why he was contacting them. I mean, I can't comment, I'm sorry.

15 Q. You're trying to play dumb, aren't you, Mr Milroy?
A. No. I'm not trying to play dumb at all. I mean, I'm trying to recollect the conversations of incidents that occurred 46 years or 45 years ago, and all I've got to rely on is my statement and some record of interviews, and some sort of recollection, and the documents you're showing me. I'm afraid I'm trying to be
20 as helpful as possible.

Q. You're trying to avoid the fact that you passively engaged in the concealment of evidence which might assist the defence of the Croatians in their trial, at the best.
25 A. That's not correct. That's not correct.

Q. I'm going to change the subject now. Fingerprints. So far as concerned events at Lithgow, and the investigation conducted at Lithgow, who was responsible for deciding whether any exhibits would be submitted for
30 fingerprint testing?
A. Well, normally it would be Sergeant Turner in consultation with, as far as explosives were concerned, with Musgrave and the scientific guy to look at what was seized, should be the subject, or was capable of being fingerprinted.

35 Q. Were you aware of any consideration being given to submitting any of the explosives found at Macauley Street for fingerprint examination?
A. I was under the impression - well, not under my impression. I was previously aware that gelignite is not easy to obtain fingerprints from the - the actual cartridge as such.
40

Q. What about the tape binding them?
A. Yes. I mean, the fact that once someone handles, say, explosives, there's sort of a residue that can come off them, and if you actually touch something, of course, you would leave your fingerprints.
45

Q. Was anything done about preserving the integrity of the surface of these items to see whether they could be submitted to a successful fingerprint examination?
A. I think they were all photographed and put into storage, but I can't recall
50 any actual individual item being subjected to fingerprinting.

Q. What about trying to preserve Virkez's car for fingerprint examination?

A. I can't recall whether - when that was booked up, whether it had been fingerprinted, I'm sorry.

5 Q. Were you aware of any meeting that Mr Turner was going to, or had taken part in, in Canberra on 8 to 9 April 1980 that might have related to this matter.

WOODS: Do you mean the fingerprints or the case generally?

10 BUCHANAN: No. No.

Q. Mr Turner. Were you aware of any visit that he made to Canberra over the 8th and 9 April 1980 in relation to this matter?

15 A. No, I'm sorry. Unless there's some sort of document you could assist me with, I - from my recollection, I can't recall if that had occurred.

Q. He never told you about such a meeting?

20 A. I can't recall, no. If it happened, if you've got a document, it might be able to jog my memory, but I - there were a lot going on, of course, at that time.

Q. How long all together were you in the New South Wales Police Force?

A. I resigned in 97.

Q. What was the length of your career?

25 A. Sorry. From 66 to 97.

Q. Thank you.

30 A. But I - I actually spent five or six years on other matters outside the Police Service.

Q. During your time as a detective, were you ever aware of CIB detectives verballing a person in custody?

35 A. I think you raised that earlier and I indicated that it had - it was referred to in the media. You'd hear about it.

Q. Were you ever aware of CIB detectives verballing a person in custody? Say, from your own knowledge. "I know that Detective so-and-so, the evidence that they're giving about such-and-such a defendant" as a verbal?

40 A. Other than, as I indicated, what I read in the newspapers or around the Court circles, but specific identities, no, I can't recall. It happened. But it happened.

HIS HONOUR

45

Q. Mr Milroy, I think you're being asked whether you have direct knowledge.

A. No. No--

Q. Not indirect by reading it in the paper.

50 A. No. I don't have direct knowledge myself, or being present, when that took

place.

BUCHANAN

5 Q. If I can, with respect, to adopt his Honour's amendment of my question. During your time as a detective, were you ever directly aware of CIB detectives loading a person up?
A. No.

10 Q. Did you ever take part in a verbal?
A. Definitely not.

Q. Did you ever take part in a load up?
A. No.

15 Q. Did you ever take part in assaulting any suspect in custody?
A. No. And no suspect in custody has ever complained about how he was treated under my supervision.

20 HIS HONOUR

Q. It's not about whether they complained. It's about whether it happened.
A. No. It didn't happen. I can assure you, your Honour.

25 BUCHANAN

Q. You're aware that the Wood Royal Commission into the Police Service made some unflattering remarks about CIB and the heavy squads, the Armed Hold Up Squad and the Breaking Squad, as being known to engage in these practices: verballing, load ups and assaults.
30 A. I was aware, yes.

Q. What do you think of those findings?
A. Well--

35 WOODS: Your Honour, with respect, that question is an invitation to conduct another Royal Commission. With respect, it's too broad. He's given evidence about his own personal involvement and knowledge, and he shouldn't be asked to comment, as it were, at large.

40 HIS HONOUR

Q. Well, it would be interesting to know whether those findings came as a complete surprise to you, given your time in one of those squads.
45 A. Well, actually it was a - a surprise, and I think when the Royal Commission was - when - when did the Royal Commission complete its findings? It was in 19--

50 BUCHANAN

Q. 1997.

5 A. Yeah. Well, I actually was overseas, and I came back and I was appointed in charge of the Major Crime Department at that stage, and there were - it was a shock, and also there was a lot of - a lot of managing that we had to do, because you don't go retiring every police officer with these - they're not corrupt, or committed verbals and loads, as you indicated. There's a lot of hardworking police officers, and we had to actually spend a lot of time massaging and helping them to continue on with their work while some of their colleagues were being exposed at the Royal Commission for - for committing
10 these sort of offences that you require - referred to.

Q. Can I invite your response to this proposition: it is stretching credulity to imagine that if you, yourself, did not verbal, or load up, or bash anyone in custody, that you were unaware of it occurring in your squad?

15 A. I personally was not involved, or anyone that worked with me, I can assure you, and, yes, as you indicated, there were court cases that indicated that members of the squad were alleged of - carrying out what you suggest.

Q. Rogerson said it was, "A cult". As in, it was a culture. It was how your squad operated--

20 A. That might have been--

Q. --to fabricate evidence in these ways.

25 A. That may have been Rogerson's statement, which, of course, he made while he was going around hotels with other known notorious individuals, and I suppose they sensationalised some of these things. It probably did him very good for some of his performances, and people who turned up to listen to him, but I can assure you, if that was his view, that was his view.

30 Q. If what he said was right, and if what the Royal Commission found was right, it means everyone knew it went on?

A. Well, I didn't say that I didn't know. I said that we would hear about it in court cases, from the media, and reports in the media about allegations, so of course I knew.

35

Q. Did you work with Rogerson?

A. No. Other than - other than he may have been on a SWOS operation, but I've never worked directly with him, or interviewed anybody with him on any operation.

40

EXHIBIT 10.3-22 SHOWN TO WITNESS

Q. Just while that's being got together, you worked with Rogerson on this case, didn't you?

45 A. Which case are we referring to?

Q. Croatian Six.

A. Sorry. Well, that's--

50 Q. He was a team leader, wasn't he?

A. On one of the - on one of the raids, that's correct.

Q. You had to deal with him in relation to the evidence that he provided--

A. That's correct.

5

Q. --as to what his team had done and heard?

A. That's correct. As I indicated yesterday, that was - once we got back and we worked out who were involved in which of the respective Sydney raids, who was the team leaders, we spoke to them and said, "Right. We'll need statement from you, you, and you, and you, and what actually happened. Right. You'll need to provide a statement." And we had to chase people up, because of the delays in submitting them, because they were on holidays. So we dealt with each of the team leaders to ensure that they produced their statements from their respective teams.

10
15

Q. Can I invite your response to this proposition: it is difficult to believe that you didn't know that the admissions attributed to the Sydney accused had not been fabricated?

A. Not until the--

20

Q. That you didn't know that they had been fabricated, had you?

A. No. No. Not until it was the - the allegations were made at court.

25

Q. You, yourself, dealt with Maks Bebic, didn't you?

A. That's correct.

Q. Could I ask that you scroll to 123. This is a document, just to be quite clear, which is a report of a meeting between an ASIO agent and a source. That source was a member of the Croatian community, and when you read the report, he comes across as quite the activist. Senior in the community, and he knows each of the accused. Now, I only want to take you to what he says about Bebic, if I can, please. At the bottom of the first paragraph, commencing with:

30
35

"Commented that he believed Bebic's statement, and said that although it is possible that Bebic could put some explosives together, it would have normally been beyond his power to draw a diagram of it." His source "laughed cynically, and said that, 'Although I know nothing about explosives, I think if a gun is put to your head you'll be able to draw a diagram.'"

40

Then the comment is made by the person compiling the report, "This comment about Bebic is in accord with agent statements about Bebic being a simple man without much intelligence." That would be a fair comment to make, on your exposure to Mr Bebic in 8, 9, 10 February, 20 February?

45

A. What comment? In relation to his?

Q. Being a simple man without much intelligence, and given that the reporter is currently adopting or saying it's consistent with what his source is saying, that it would have been beyond his capacity to put explosives together.

50

A. This is the man who actually put together a device and blew it up in the - in the - at the quarry. He actually drew--

Q. That's what you say.

5 A. Well, that's what he said, and he showed by the photographs. We didn't take him for a walk in the country just to take some pictures. I mean, he actually showed us, and he actually drew the diagram with his own - with a pencil, which is already an exhibit.

10 Q. Don't you think that it was apparent on the material available to you, that you knew was available, that Bebic was no mastermind of the alleged plot, and that there was something more to Virkez than he was telling the police?

A. I think, as you know, in his Record of Interview, Bebic indicated that he wasn't the boss.

15

Q. I hope I haven't already asked you this, and I apologise if I have, Mr Milroy. Pero Saret. Does that name mean anything to you in this case?

A. No, that was the name that the Yugoslav Consulate. No.

20 Q. There's material before the Inquiry saying that this man lived in Lithgow, and had some connection with Virkez in relation to this alleged bomb plot - Pero Saret. Anything ever drawn to your attention in that regard?

A. Unless there's some document there that indicates that we spoke to him, but the name doesn't ring a bell.

25

BUCHANAN: Thank you. Those are my questions for the witness, thank you.

HIS HONOUR: Ms Needham?

30 NEEDHAM: I do apologise, your Honour. Could I interrupt?

HIS HONOUR: Yes.

35 NEEDHAM: We just wanted to raise a matter immediately before lunch time. Your Honour, there is a document that we anticipate will be tendered, but there is just a matter about its ability to be tendered at the moment. What we would seek to do - we have a bundle of three documents. If those documents could be Marked For Identification and an accompanying non-publication order be made?

40

HIS HONOUR: The three documents that you've handed up will be together Marked For Identification 5. Let me just look at this.

45 MFI #5 DOCUMENTS (3) HANDED UP BY MS NEEDHAM FOR THE NSW COMMISSIONER OF POLICE

I make the non-publication order in the terms that you've drafted.

50 COFFEY: Your Honour, it's a copy for the Commissioner, for the transcript. Could I just enquire; in relation to the material that's been handed

up to your Honour - I'm not talking about the item that had the police logo on it, or the judgment of Rendell. Can I just enquire, the item that's referred to as Exhibit 17.1 - it appears to be that there's only an extract that's being relied upon. Could I just make the application that your Honour make a
5 non-publication order over the entirety of 17.1, because the argument that's proposed, or the reason that's proposed to be advanced by the Commissioner is that the entirety of that document is not admissible, and so I'm just conscious that if your Honour's taking all of it, the NPO should be all of Exhibit 17.1, not just limited to 1A, which refers to one single witness.

10 HIS HONOUR: What are you asking me to do? To extend the terms of the non-publication order to the entirety of Exhibit 17.1?

15 COFFEY: Until further order. Just until the parties can continue to discuss about it and make either oral or written submissions about it. I don't wish to delay.

HIS HONOUR: No, all right. Is there any difficulty with that?

20 MCDONALD: I'm a little bit surprised by it, your Honour, but just to move things along we wouldn't object to an interim order.

HIS HONOUR: All right. If that could be amended. I can indicate that the non-publication order at least for the moment will be extended to encompass
25 all of Exhibit 17.1.

MCDONALD: Thank you, your Honour.

30 HIS HONOUR: Ms Needham, do you have any questions?

NEEDHAM: Yes, I do, your Honour.

HIS HONOUR: How are we placed for time? Dr Woods, you indicated earlier he's got a flight to catch.
35

WOODS: Your Honour, he does have. He's in some difficulties if he doesn't get it.

40 HIS HONOUR: What time does he need to get away?

WOODS: He needs to get away about 2:30, he told us before, and given the traffic the day before Easter.

45 HIS HONOUR: Yes. I think that needs to be factored in. You've got some questions, Ms Needham.

NEEDHAM: I do.

50 HIS HONOUR: Mr Brown, do you?

BROWN: I also have some questions, your Honour, yes.

HIS HONOUR: Ms Bashir?

5 BASHIR: No, your Honour.

HIS HONOUR: Dr Woods?

10 WOODS: Your Honour, I will have some re-examination, in effect.

HIS HONOUR: It's close to the time for the luncheon break, and then that only leaves us half an hour, if we cut it fine with that estimate you've given us now. We're not going to finish it.

15 WOODS: No, that's right.

HIS HONOUR: Why don't I release him now and we can resume with his evidence on Tuesday?

20 WOODS: That will be sensible. I'd like the indulgence of the Inquiry for me to speak with him over the subsequent days about matters that need to be raised.

25 HIS HONOUR: Yes. Does anyone have any difficulty with that occurring?

BUCHANAN: I do. In my submission, if these were adversarial proceedings the witness would be under cross-examination, be regarded as being under cross-examination, in my submission. It would not be appropriate for the witness to canvass with his legal representatives the content of the cross-examination to date.

30 HIS HONOUR: Yes, all right. I'll indicate no at this point, Dr Woods. If time is needed and you can persuade me otherwise, we'll just make that time available on Tuesday, but for the moment, no, with respect.

35 I'll adjourn now and we'll resume at 2 o'clock with another witness. You can stand down and we'll have you back on Tuesday.

40 <THE WITNESS WITHDREW

LUNCHEON ADJOURNMENT

AUDIO VISUAL LINK COMMENCED AT 2.01PM

45

<ROBERT BARRY MUSGRAVE, INTERPOSED, SWORN(2.01PM)

<EXAMINATION BY MS MCDONALD

5 Q. Please state your full name?

A. My full name is Robert Barry Musgrave.

Q. Mr Musgrave, are you now retired?

A. Yes.

10

Q. Can I take you back to 1979. In 1979, you were a police officer?

A. Yes. That's correct.

15

Q. Which particular unit or section of the New South Wales Police Force were you working?

A. I was with the - I was with the Ballistics Unit, which was then part of the CIB and the Scientific Investigation Section.

20

Q. As at February 1979, how long had you been working in the Ballistics Unit?

A. I had moved there, I think, in 1973.

Q. When did you leave the Ballistics Unit?

A. I was with them for 9 years. So that would be 1982.

25

Q. After 1982, did you continue working as a member of the New South Wales Police?

A. Yes, I did.

30

Q. Where did you move after 1982 within the police force?

A. I'm sorry, what? Where did I move?

Q. Yes. Which part of the New South Wales Police Force did you move to--

A. When - yes. I went back to uniform duties.

35

Q. The Ballistics Unit, in February 1979, where was it located?

A. It was located in Smith and Campbell Street in Surry Hills.

Q. Did you have any qualifications to work with the Ballistics Unit?

A. Not so much qualifications, but a genuine interest.

40

Q. During your time with the Ballistics Unit, did you receive on-the-job training?

A. Yes. As far as the firearms and crime scene side, it was basically on-the-job training. That was for a period of five years.

45

Q. As part of the Ballistics Unit, did you also deal with explosives?

A. Yes.

50

Q. Any expertise that you gained in explosives, was that developed through either attending courses, or any express training?

A. Yes. It means attending courses with the Royal Australian Army, Ordnance School and also attending the manufacturing factories for explosives, and that style of thing.

5 Q. Within the different work undertaken by the Ballistics Unit, did you have a specialty?

A. Not so much a specialty.

Q. Did you have a particular interest?

10 A. I developed an interest in tool marks towards the end.

Q. If I can take you back to 8 February 1979. You were on duty that day at the Ballistics Unit?

15 A. Yes.

Q. Do you recall receiving, or being contacted, about an incident, or something that was going to happen, at Lithgow?

A. Yes.

20 Q. Who contacted you?

A. That was Detective Simmons.

Q. Before he contacted you on 8 February, had you come across Detective Simmons before?

25 A. Yes. I knew - knew of him, yes.

Q. Had you worked with him on previous operations?

A. Probably, yes, but I can't specifically give you an example.

30 Q. When he contacted you, can you give evidence about what he told you was happening in Lithgow, and what your role was anticipated to be?

A. I can't recall the exact conversation, but it would have involved premises with possible explosives at Lithgow.

35 Q. After he contacted you did you have to raise with any superiors within the Ballistics Unit the request that had been made?

A. Yes.

Q. Who did you speak to?

40 A. I can't recall if the - I can't recall who was the senior officer at that time. The officer-in-charge at that time was, I think, Detective Sergeant Gibson, and I would naturally have spoken to the officer-in-charge, and informed him of what the phone call was and so forth.

45 Q. You said that you were told something along the lines of there were going to be explosives at Lithgow. At that point were you given any details about what type of explosives?

A. I don't recall. I don't - I don't think - I don't think they went into detail of the type of explosives, because I probably wouldn't know.

50

Q. With the knowledge that it was going to be something to do with explosives, did you take any particular equipment with you to Lithgow?

5 A. Yes, we had a - like you'd call a bomb kit, which comprised several instruments and so forth, to allow not only the opening of vehicles remotely, so it would have contained string and rope, mirrors, and that type of thing.

Q. You took the bomb kit with you?

A. Yes.

10 Q. How did you get to Lithgow?

A. We drove up that afternoon.

Q. Who's "we"?

15 A. I believe it was in - in my - my vehicle.

Q. You said, "We travelled up to Lithgow." Who's "we"?

A. Detective Simmons.

Q. You took your vehicle?

20 A. Yes.

Q. When you arrived at Lithgow on 8 February, did you first go to the Lithgow Police Station?

25 A. Yes.

Q. Roughly what time did you arrive?

A. I don't know. It was the afternoon. I don't know the exact time that we arrived there.

30 Q. When you first arrived at Lithgow Police Station, were there any other officers from Sydney present?

A. Yes. I believe that Detective Sergeant Donald may have been there. And, yes, he's the only one that I can recall that was - we spoke to at that time.

35 Q. Do you recall whether there were any local police at the police station at that time?

A. I can't actually recall, no. There would have been, but I can't - I can't name who they were.

40 Q. This first time at Lithgow Police Station, was there some kind of meeting or briefing?

A. Yes.

Q. What was discussed at that briefing?

45 A. It was an outline of information that had been received, indicating that there were possible explosives at a particular address, at 6 Macauley Street, Lithgow.

50 Q. You spoke about information received. Was anything discussed or any details given at this briefing of the source of that information?

A. I don't - I don't recall. No.

Q. At that point were you given any particular task or job to do?

5 A. At one point with Detective Simmons, we went to the rear of the premises, purely for a surveillance, to see what it looked like, and the surroundings and so forth.

Q. You nominated Detective Simmons. Did other detectives or police officers go with you?

10 A. I don't believe they did.

Q. When you said you went to the back of the premises, did you actually enter the premises, or were you on some adjoining property?

15 A. I recall the rear of the premises was perhaps elevated, and scrubby and bushy, and that was the limit of - we did not enter the premises.

Q. From where did you make those observations?

A. From - from that point.

20 Q. Which point?

A. I don't know how far back we were from the premises, but we could certainly see the vehicle and the rear of the premises. I don't believe we saw any person.

25 Q. After this surveillance of the rear of the premises, did you return to Lithgow Police Station?

A. Yes.

30 Q. At that time at Lithgow Police Station were there more officers from Sydney present?

A. Yes. There was Detective Sergeant Donald and Detective Milroy of the Breaking Squad.

HIS HONOUR

35

Q. Mr Musgrave, you are looking down at the table in front of you quite a few times. There seems to be one or more pieces of paper on the table. What is it that you're looking at?

A. It's a - my statement.

40

MCDONALD: All right.

Q. Mr Musgrave, can you just put your statement to one side; turn it over and put it to one side, please?

45 A. Yes.

Q. If you need to refer to it in answer to any question, just raise that, all right?

A. Yes.

50 Q. We're just trying to gauge what your recollection of the events at the

present time, all right?

A. Yes.

5 Q. When you went back to Lithgow Police Station you referred to, I think, Detective Milroy being present and Detective Sergeant McDonald. Any other officers from Sydney you can remember?

A. Only Detective Milroy perhaps, at that stage.

10 Q. Detective Sergeant McDonald, had you worked with him on previous operations?

A. I knew of him. I can't specify, no.

Q. What about Detective Milroy?

15 A. Again, we may have worked together, situations, but I can't specify anything.

Q. Do you recall on the evening a captain being present from the Australian Army?

20 A. Yes.

Q. Captain, I think it was Barkley?

A. Yes.

Q. Did you know him before attending Lithgow on that day?

25 A. No.

Q. When you had been told in Sydney about explosives and Lithgow, did you contact anybody within the Australian Army about it?

30 A. No, I don't believe I did at that stage, no.

Q. Do you know how Captain Barkley came to be present during the raid?

A. Someone would've contacted him. I can't say who that was, I don't know.

35 Q. Was that usual practice, if you had been alerted to possible explosives being at a site, that a bomb expert or an explosives expert from the Australian Army would be contacted?

A. Well, he was contacted. I may have contacted him, but I can't recall.

40 Q. No, I'm not asking you that, I'm talking about usual procedure at the time, and if there was an operation where you suspected that there were going to be explosives present, was it usual procedure for an expert from the Australian Army to be contacted?

45 A. It would be something to be considered, yes. And he was based at the Lithgow depot.

MCDONALD: Excuse me for a minute, your Honour.

50 Q. You've given evidence that you returned to the Lithgow Police Station and that Detective Sergeant McDonald was there, Detective Milroy, and at least yourself and Detective Simmons. This second time at the Lithgow Police

Station, was there another briefing?

A. Yes, there would've been.

Q. Do you remember what was discussed at that time?

5 A. Not precisely. It would've been discussed how we would approach the premises, the safest way to approach the premises, as we would always do.

Q. Can you recall at this briefing, was anything raised about how many people were expected to be at the premises?

10 A. I don't recall.

Q. Were you given any details about the person whose house was at Macaulay Street?

15 A. As far as details, um--

Q. For example, details of the person's name?

A. No, I I don't recall that.

Q. Details of what this person would be wearing?

20 A. No. I can't recall.

Q. After this second time at Lithgow Police Station, did you then go with other officers to Macaulay Street to conduct the raid?

25 A. Yes.

Q. When you arrived at Macauley Street, did you assume a particular position around the house?

30 A. I originally went to the front door, which wasn't really a front door. I think it was a side - a side door. And then on the side of the house, not the front, was Detective Simmons.

Q. Was there any other detective with you at the front of the house, or where you thought this front door was?

35 A. I believe - I believe there was. It may have been a Detective Sergeant McDonald was there.

Q. Did other officers, to your knowledge, go around the rear of the house?

A. Yes.

40 Q. How do you recall the raid commencing? Who called out anything? Who started it?

45 A. I think it was Detective Sergeant McDonald called for the occupants, and that we were police present, and I don't know the exact wording, but words to the effect of, "Leave the premises." And that wasn't complied with.

Q. At this particular time, are you armed?

A. Yes.

Q. What weapons do you have?

50 A. Apart from my side arm, I was armed with a - a rifle.

Q. After Sergeant McDonald called out, what happened next? What can you recall?

5 A. The door, I believe, was partly open, and Detective Simmons, I believe, went to open the door. I saw a male person inside, only one person, through the gap, and then I heard the - the door slam, which apparently struck Detective Simmons' hands, and I saw the person then move away from the door and appeared to run inside the house.

10 Q. The person that you saw in the house, who then appeared to run towards the back, were they holding anything?

A. I'm sorry? Was that?

Q. You said that you saw a person in the house who came towards the front door, then turned around and ran towards the back?

15 A. Yes.

Q. Did you see whether that person had anything?

A. No. At that stage, I didn't.

20 Q. You didn't notice anything?

A. No.

Q. At that point, what did you do?

25 A. I then went around to the back of the premises, and I took - there was a motor vehicle there, a Valiant motor vehicle. I took cover behind that with other police, and a male person came from the rear door of the premises, who was holding a rifle, and he was called upon to drop the rifle, which he did, and he was asked to move away from the doorway, which he did, and that was - I think I was - I don't know who was with me there. It might have been Detective
30 Sergeant Turner, I don't know.

Q. You said he had a rifle and he dropped the rifle. Where he did drop the rifle?

35 A. I believe inside on the - inside the doorway on the floor.

Q. Then did this person walk out of the house?

A. Yes.

Q. Was he then searched by Detective Sergeant Turner?

40 A. I - yes.

Q. Were you present when there was any discussion with Detective Sergeant Turner?

45 A. I'd have to - can I refer to my statement?

Q. Just a minute, Mr Musgrave.

EXHIBIT 4.2-29 SHOWN TO WITNESS

50 Q. You can see your statement?

A. Yes.

Q. Can you see up the top of page 2 it refers to the person you saw dropping the rifle?

5 A. Yes.

Q. Then in paragraph 4 you speak about Detective Simmons approaching you at the rear of the house?

10 A. Yes.

Q. You spoke with him, and then you say, "I then went with Detective Simmons and carried out a search of the inside of the house and afterwards we returned to the back yard where I saw Detective Etienne and O'Brien standing with the defendant Bebich."

15 A. Yes.

Q. The person that you saw with the rifle and who dropped the rifle, is that the person who you describe in your statement as the defendant Bebich?

20 A. I'm not - not certain of that. The person I saw through the door. It happened quickly.

Q. Can you go to the top of the statement? Two lines down can you see, "I then saw the defendant Bebich open the rear door and stand in the doorway holding a rifle"?

25 A. Yes.

Q. Then you say, "I said, 'Drop that rifle' and the defendant then dropped the rifle to the floor and walked out into the yard."

30 A. Yes.

Q. When you wrote your statement back in April 1979, your recollection of the person who opened the rear door and stood in the doorway holding a rifle was the defendant Mr Bebich?

35 A. Yes.

Q. Does that accord with your recollection today?

A. That is, yes.

Q. If you continue looking at your statement, the paragraph 4 that I took you to, you said that you'd go back into the back yard, and you see Detective Sergeants Etienne and O'Brien standing with the defendant Bebich.

40 A. Yes.

Q. "We had a conversation with them and then made an examination of a Valiant sedan, black, registered number" et cetera, "which was parked near the rear door."

45 A. Yes. Made a cursory examination of it.

Q. At that stage did you open any of the doors of the car?

50 A. I don't believe we did. We just made a cursory examination of the vehicle.

Q. After that cursory examination of the vehicle, do you recall a conversation you had with the accused Bebic?

A. With Simmons. I had a conversation with him, yes.

5 Q. You witnessed that? You were present?

A. Yes.

Q. During that conversation did the defendant Bebic raise bombs?

A. I'm sorry, you broke up there.

10

Q. You said that there was a conversation between the defendant Bebic and Detective Simmons.

A. Yes.

15 Q. You were present during that conversation?

A. Yes.

Q. During that conversation did the defendant Bebic say anything about bombs being present?

20

A. He did ask that question, yes.

Q. What, Detective Simmons asked the question?

A. Yes.

25 Q. What did the defendant Bebic say?

A. I don't recall the exact conversation without referring to the statement.

Q. If we could back to the statement, this time at paragraph 5. If you go down the bottom, can you see that you record in your statement, "Detective Simmons said, 'I have just been told that some bombs have been placed in this vehicle a short time ago. Is that correct?'"

30

A. Yes.

Q. Bebic says, "Yeah, you already find." Do you see that?

35

A. I'm sorry?

Q. Do you see down the bottom you recall that Mr Bebic says, "Yeah, you already find."

A. Yes, I believe so. Yes.

40

Q. Then Detective Simmons said, "Where are they?"

A. Yes.

Q. Then if we go to the next page, right up the top: "'Two on the floor in the back of the car there', which the defendant Bebic indicated, and 'Two more in the boot.'"

45

A. Yes.

Q. Then Simmons says, "What type of devices are they", and Bebic says, "You have to be careful, very big explosive."

50

A. Yes.

Q. Then there's a conversation where Bebic talks about "time clocks, but not connected".

5 A. Yes, that's correct.

Q. And also "what else is in the vehicle?"; "detonators".

A. That's correct, yes.

10 Q. That was your statement back in April 1979; giving evidence today, does that accord with your recollection?

A. Yes.

15 Q. At this point, Mr Bebic, according to this conversation, has indicated that there are explosives, time clocks but not connected, and also detonators in the car?

A. Yes.

Q. And he's also made the comment of "very big explosive"?

20 A. Yes.

Q. In those circumstances, where you have been told by a suspect that there are such explosive devices in a car, do you turn your attention now to evacuating the area and making sure people are safe?

25 A. Yes, I believe we did, yes.

Q. How did you do that?

A. I can't recall exactly how that happened, but the vehicle had to be checked by myself and made safe.

30

Q. Yes, but before you--

A. Yeah.

Q. --checked it and made safe, weren't other police officers at risk?

35 A. I believe the police officers did clear from the area.

Q. Who gave that direction for them to be cleared from the area?

A. I don't recall.

40 Q. Are you sure that other police officers were evacuated or cleared from the area?

A. Yes.

Q. You don't record it in your statement?

45 A. I'm sorry?

Q. You don't record that in your statement?

A. No.

50 Q. You didn't give evidence about that at the trial?

A. I'm - I'm not certain. It would be natural to clear people from the area.

Q. All right.

A. Yes.

5

Q. When you say clear people from the area, are we talking not only police officers, but other members of the public?

A. Yes.

10

Q. Were there houses nearby this house?

A. There were homes on either side, and I believe other police carried out that duty.

15

Q. With the being told that there were explosive devices in the car, what was the procedure for you and anybody who was going to assist you in checking the car?

A. The procedure would be to do a full inspection of the vehicle to make sure there was nothing attached to the doors, naturally open the doors, and the boot, and I believe also the glove box; I don't know which came first of course.

20

Q. Captain Barkley was either at 6 Macauley Street or close by by this time?

A. I believe he was, yes.

25

Q. Did you call for him immediately to come into the backyard?

A. I am not sure.

30

Q. Wouldn't have that been a sensible course, to bring in an expert from the army once you'd been told that there are explosives in a car?

A. Well, I - I don't know whether he was a - an expert as such, because he - he worked at the Marrangaroo base. I don't know whether he was trained in IED, he may have been.

35

Q. What was he doing there then, if he wasn't - had some kind of expertise in dealing with explosives?

A. I'm not sure.

40

Q. If you go back to page number 3 of your statement, it continues with the conversation between Simmons and Bebic, which you were present at?

A. Yes.

45

Q. At this stage you'd never met Mr Bebic before?

A. Had I met him?

Q. You didn't know him?

A. I'm sorry, did I meet him before?

Q. Did you know him before? Had you met him before?

A. Only - only from when he came out of the rear door.

50

Q. Before that, was he the one who slammed the sliding door against

Mr Simmons' hand?

A. I don't know. I don't know whether it was him or another person, I only saw him through the small gap in the door. It appeared to be him.

5 Q. Didn't Mr Simmons say something to him about "hurting my hand"?

A. Yes, he did.

Q. Didn't Mr Bebic apologise?

A. I believe so, yes.

10

Q. Wouldn't that indicate that it was Mr Bebic who slammed Detective Simmons' hand in the door?

A. Yes, possibly.

15 Q. The other evidence you've given about Mr Bebic was he was there with a rifle?

A. Yes.

Q. Which he did drop, after you called out, "Drop your rifle."

20

A. Yes.

Q. And he's now admitted to explosives being in the car?

A. Yes.

25 Q. If you go back to page number 3 of your statement, about 20 lines up from the end of that statement, can you see the line starts, "...said, do I understand from what you have just told me"?

A. I can't see it on the screen, I'm sorry.

30 HIS HONOUR: I'm not sure he's on the right page. This is page 3?

MCDONALD: Yes. Page 3.

35 Q. Do you see, looking at the screen at the moment, five lines down it finishes with, "Detective Simmons"?

A. Yes.

Q. Then it follows on, "Detective Simmons said, 'Do I understand from what you have just told me that there are four explosive devices already made up and in the vehicle?'"

40

A. Yes.

Q. He said, which is Mr Bebic, "You say again?" Detective Simmons said, "Do I take it that there are four bombs, two in the back, two in the boot, already made up which only have to have the wires connected before they're ready to go?" And Bebic says, "Yeah. I tell you that."

45

A. Yes.

Q. Then "Detective Simmons then had a conversation with me", and I'll just pause there. What did you and Detective Simmons discuss?

50

A. As far as what we would have discussed then was how we would go about the vehicle and evacuating people--

Q. So by that--

5 A. --in that area.

Q. Sorry.

A. Yeah. Evacuating people from the area that weren't necessarily should be there.

10

Q. So by that point, nobody has been evacuated?

A. I'm not sure. Possibly.

Q. At this point, you're the only representative from the Ballistics Unit at 6 Macauley Street?

15

A. Yes.

Q. In a sense, you are the expert at the premises in explosives?

A. Well, I don't like the word "expert", but, yes.

20

Q. You were the one with the most knowledge at the house about explosives?

A. Possibly, yes.

Q. Of the officers at 6 Macauley Street, who was the officer-in-charge of the raid?

25

A. Perhaps Detective Sergeant McDonald.

Q. You said, "perhaps". Do you have a recollection?

A. Not a true recollection, but I - I would assume he would be the senior officer-in-charge.

30

Q. If there was a concern about the bombs and evacuating people, he would have been the officer that you approach to speak to?

A. Not necessarily. It depends where he was. I - I don't know where he was at the time.

35

Q. Who else would you have told?

A. I probably would have told as many police as possible if - whoever was there.

40

Q. If you go back to this paragraph on page number 3, can you see it then goes on, "Detective Simmons then had a conversation with me and at the completion of which he said to the defendant, 'I don't trust you, and I propose to have the area evacuated and you remove to a safe position while we attend to the vehicle and the bombs.'"?

45

A. Yes.

Q. Then Mr Bebic said, "Bebic tell the truth, Bebic wait here with you."

A. Yes.

50

Q. Then Detective Simmons says, "All right. That will do me fine. In other words we have nothing to worry about, or have we." And the defendant made no reply, and then Detective Simmons then went on to speak about him being charged about injuring his hand, and in relation to the explosives.

5 A. Yes. That was a ridiculous statement to make, I must admit.

Q. Well, that was what I was going to ask you.

A. Yes.

10 Q. Based on that statement, from somebody who had already assaulted Detective Simmons, and had previously been with a rifle, the idea that you would trust his assertion of "Bebic tell truth, Bebic wait here with you", wouldn't in those circumstances you start at least evacuating other police officers?

15 A. Well, we would have. I just don't know the sequence of how - how it happened. We would, yes.

Q. As I said to you, there's just no record in your statements and from my recollection, the evidence you gave at trial and at committal about evacuating people.

20 A. Well, I don't know. I haven't seen that, but the area was evacuated.

Q. Sorry?

A. The area was evacuated before - yes.

25 Q. Sorry, I interrupted you, Mr Musgrave. At this point you are there near the car with Detective Simmons and Mr Bebic.

A. Yes.

30 Q. Is that still up on the screen? Towards the end of that paragraph you record that "Detective Simmons then handcuffed the defendant ... shortly afterwards Detective Sergeant Turner and Detective Milroy walked over to where we were standing ... had a conversation with us and they then took the defendant back inside the house."

35 A. Yes.

Q. Is it the case that now you and Detective Simmons start your examination of this car?

A. Yes. Probably, yes.

40 Q. Why was Detective Simmons assisting you?

A. I believe he may have been trained in explosive IEDs; I'm not sure, but I did need assistance.

45 Q. Is your recollection he has had some either knowledge or past experience, or some involvement with explosives?

A. He may have. I'm not sure.

Q. Did you have to get any equipment to examine the car?

50 A. Yes.

Q. What did you get?

A. I had a bomb kit, I described earlier, with some equipment in it, and I retrieved that from my vehicle which was parked nearby, and brought it to - near the black Valiant.

5

Q. When you say your vehicle, in your statement did you describe that as the Ballistics vehicle?

A. Yes.

10

Q. The examination of the car. What did you observe first?

A. We observed that the - all the doors were shut. I think some of the windows may have been down; I'm not sure. The boot was closed, and the glove box was closed, and there were large packages in the rear floor. I believe the rear floor, or the rear seat.

15

Q. At this time when you're examining the car, is there anybody present to take photos?

A. Not until the vehicle was rendered safe.

20

Q. Did you render the vehicle safe?

A. Yes, after we established that the devices weren't connected with the detonators and the clocks and batteries, and separated all of that; yes.

25

Q. In that answer, did making the car safe involve examining and working out what explosives or associated devices were in the car?

A. Yes.

30

Q. Working out whether they are connected in any way?

A. That's correct.

Q. Working out whether they're either positioned or in close association with another particular component or device which may be dangerous?

A. In relation to?

35

Q. For example, the detonators.

A. Yes. The detonators, yes, they were separate.

40

Q. Why have you got to be careful about detonators?

A. I'm sorry?

Q. Sorry, I withdraw that. With detonators, do you have to be careful in how they are stored?

A. Yes.

45

Q. Why is that?

A. They're generally safe when handled correctly, but being electric detonators they shouldn't be anywhere near a battery or any power source, and that would probably include any large static electricity.

50

Q. The sequence is to examine the car broadly in the way that you've just

described; make it safe--

A. Yes.

Q. --and then once you've made it safe, then can things like photos be taken?

5 A. Yes.

Q. If there are, I suppose, further examination in detail of the particular components?

A. Yes.

10

Q. Do you recall on that night a photographer arriving?

A. I believe a photographer did come, have photos.

Q. It wasn't a police photographer, because do you recall this, that the police photographer from Orange wasn't available, so they got a local photographer?

15

A. Yes, I do recollect that, yes.

Q. Can I just concentrate on this section when you were trying to make the car safe? If we turn to the body of the car inside the car where the various seats are, what do you recall seeing at this initial stage?

20

A. As I said, there were two fairly large boxes in the rear of the vehicle, the rear seat, and there were two further large boxes in the boot.

Q. Can I pause there? The two boxes in the back of the car, and you've said on the seat, looking in through the window could you see what were in those boxes?

25

A. ..(not transcribable)..for the torch. I don't know what - the light was reasonably good, I believe. I believe you could see them, yes.

Q. The box was open, was it?

30

A. I'm sorry? The boxes?

Q. Were the boxes open?

A. No. I believe the flaps of the boxes were all shut.

35

Q. Well, to see inside the boxes, did you have to open the flaps?

A. Yes.

Q. Did you do that?

40

A. Yes.

Q. When you opened those boxes, what was in the boxes?

A. I noticed large circular, cylindrical sticks of what's commonly known as gelignite. The cut ends were facing up I believe.

45

Q. I'm sorry, I missed that. Cut into?

A. The cut ends, the - the explosives were longer, these were cut in half to make two pieces, the cut ends were facing up.

50

Q. All right. If we just concentrate on that rear area of the car to begin with,

was there anything else you can recall in that back section of the car?

A. I believe there was another rifle and that was up on the parcel tray.

Q. You spoke about the boot?

5 A. The boot, yes.

Q. You opened the boot?

A. Yes.

10 Q. What was in the boot?

A. There were two, again, large boxes of a similar size. They also contained similar explosives.

Q. Can you recall whether in the boot there were any other components?

15 A. Yes, there were. Can't say without referring to the statement exactly what they were.

Q. All right. We'll get back to your statement in a minute, but with the two boxes, and putting to one side the rifle at the back of the car, did you determine that they were in a safe position?

20 A. The rifle, yes.

Q. And the boxes with the half gelignite?

25 A. Yes, they were in a safe condition, there was no detonator inserted, and nothing that could make them explode.

Q. All right. The material in the boot, did you ascertain whether that was safe?

A. Yes.

30 Q. You also referred to the glove box. Do you recall if there was anything in particular of concern about the glove box?

A. We - well, we did have information, of course, that there were detonators and batteries in the glove box, which, of course, is not a good idea. And the - yeah.

35

Q. I think - sorry, Mr Musgrave, please continue?

A. Yeah. They were eventually retrieved.

Q. I think you gave evidence beforehand that having a detonator near a live power source, like a battery, can be dangerous?

40

A. If the wires are bare, or not joined together, yes, but it's not the practice, of course.

Q. To gain access to the glove box, did you undertake a particular procedure?

45 A. I believe we opened the glove box remotely, using cord..(not transcribable)..--

HIS HONOUR

50 Q. Sorry, using what?

A. A cord, like a heavy string twine.

MCDONALD

5 Q. And the cord came from your bomb kit?

A. Yes. I believe so.

Q. Was there some need to have something like masking tape?

A. Yes.

10

Q. Opening it remotely, when you say opened remotely, I take it that's opening the door to the glove box?

A. Yes, the catch. Yes.

15

Q. The catch, thank you. How do you then safely access the detonator and the batteries in the glove box?

A. I don't recall exactly how they were packaged, whether they were loose or in separate packets or whatever, but I assume they were in separate packets, and they were removed.

20

Q. After accessing the glove box and removing the detonators and batteries--

A. Yep.

Q. --at that point, were you satisfied that the car was relatively safe?

25

A. Relatively safe, yes. There was nothing else that could be seen.

Q. Being relatively safe, did that mean that other police officers could come over and have a look?

A. Yes.

30

Q. Also, was the photographer allowed to come over to the car and take photos?

A. I believe so. I don't recall him, but I believe so. Yes.

35

Q. You didn't take any photos that night, did you?

A. I may have. I'm - I'm not certain.

Q. Do you actually have a recollection of taking photos that night?

A. I- I'm not certain of that. I think I did. I'm not sure.

40

EXHIBIT 4.1-B SHOWN TO WITNESS

Q. Mr Musgrave, looking at the photograph, can you recognise that as a photo of the car?

45

A. Yes.

Q. It appeared to be parked very close to the back door of the house?

A. Yes.

50

EXHIBIT 4.1-C, RED PAGE 3, SHOWN TO WITNESS

Q. Mr Musgrave, have a look at that photograph.

A. Yes.

Q. Do you recognise what that photograph captures, or depicts?

5 A. It seems to be - it's a blanket of some description.

Q. Do you recall that blanket being over the back seat of the car?

A. Well, I do now. Yes.

10 Q. When did you see the blanket over the back seat of the car?

A. Well, it would have been when I first observed inside the - the vehicle.

Q. Again, not being critical, Mr Musgrave, I was asking you questions about your recollection of what was going on when you started the examination of the car to ensure that it's safe.

15

A. Yes.

Q. Looking at that photograph, is it your evidence that that blanket, or bedspread, I'm sorry, was over the back seat?

20

A. Yes. It appears to be that way, yes.

Q. Do you actually recall that presently?

A. Not factually, I don't. I don't recall it. I haven't seen those since today.

25 Q. Just pausing on that photograph. That photograph was taken by this local photographer who was asked to attend the scene.

A. Yes. I don't know.

Q. Did you take that photo?

30

A. I'm not sure which photos I took, no.

Q. Could you go in Exhibit 4.1-C to page 4. Would you have a look at that photograph?

35

A. Yes.

Q. Does that jog your memory, or remind you, of the position of any items in the car on the night of 7 February?

A. Yeah.

40 WOODS: The eighth.

MCDONALD: I'm sorry. Thank you, Mr Woods.

45 Q. The eighth of February, sorry, Mr Musgrave. What do you recall, looking at this photograph?

A. Well, one can see the boxes on the floor, obviously in a - a garbage bag. Yep.

50 Q. Does that remind you or jog your memory as to how items were first seen in the back of the car?

A. Yes.

Q. What's your recollection now looking at that photograph?

A. That - my recollection of it? Who took it?

5

Q. No. You gave evidence before, when I was asking you when you were first examining the car to make it safe, you gave evidence that there were two boxes on the back seat. Right?

A. Yes.

10

Q. This is a photograph that was taken on the night of 8 February, and you can see there are no boxes on the back seat, but there are two garbage bags.

A. Yes.

15

Q. If you look at the first garbage bag, there seems to be something peeping through the opening.

A. Yes.

20

Q. Does that jog your memory at all, or remind you of what you observed or saw that night?

A. Yes, it does.

25

Q. What does it jog or remind you of?

A. Well, on - when I said I saw two boxes on the back seat, that would be certainly incorrect. One would see what's depicted in that photograph.

Q. They're on the floor of the rear of the car, aren't they?

A. I'm sorry?

30

Q. The two garbage bags are on the floor of the car?

A. Yes. They're on the floor.

35

Q. They're not on the back seat, are they?

A. No, but I didn't - I didn't recollect that initially, before.

40

Q. Again looking at that photo, can you recall who took the photograph?

A. It may - may have been myself took the photo. I'm not sure.

HIS HONOUR: There's something about this at 2.1-8, red page number 244, third last paragraph on the page.

MCDONALD: I'm sorry, your Honour, what was the page number?

45

HIS HONOUR: This is about the photographs. Page red 244.

MCDONALD:

50

Q. Could the witness be shown Exhibit 2.1-8?

EXHIBIT 2.1-8 SHOWN TO WITNESS

Q. Mr Musgrave, can I check. Giving evidence today, you've obviously got a copy of your statement.

A. Yes.

5 Q. Did you have the evidence that you gave at the trial?

A. Yes.

Q. Have you had a chance to read that through?

A. I have read it. I have not memorised it.

10

Q. Were you given the evidence that you gave at the committal?

A. Yes.

Q. Have you had a chance to read that through?

15

A. Yes.

Q. If we go back to this transcript, this is a transcript of the evidence that you gave on 23 April 1980. Can you see it says, "Eighth day", and then "Robert Barry Musgrave on former oath"? Do you see that?

20

A. I can't really see it, but I take it that's what's there. Yes.

Q. If you go down the page, right down the bottom you've got a question, "Detective, could you look at these five photographs, Exhibit C? ... Do those show what you found behind the front seat and in the boot of the vehicle?" You answered, "Yes, they are photographs that I later caused to be taken showing the location of the exhibits mentioned."

25

A. Yes.

Q. That answer suggests that you didn't take the photographs; you caused somebody else to take the photographs.

30

A. Yes, it - it does tend to read that way. Yes.

Q. Can you see the next question, "When you first saw those cartons, were they broken as they appear in the photographs, were they opened?" You answered:

35

"The two packages in the rear seat area of the vehicle were partly cut away in the fashion of a flap as it would be. However, it was necessary, for me to gain a view inside the package, to cut away a further portion of the cardboard container."

40

Do you see that?

A. Yes.

45 Q. If we could then go back to Exhibit 4.1-C, and page red 5, can you see that's a photograph of the back of the car with one of the boxes on the floor?

A. Yes.

Q. Can you see there how the end of the carton seems to be open and cut away?

50

A. Yes.

5 Q. Does that accord with the evidence that I just took you to where you said "it was necessary for me to get a view inside the package to cut away a further portion of the cardboard container"?

A. Yes.

10 Q. So was it the case, Mr Musgrave, that step number one, you're making the car safe, and you examine it?

A. Yes.

Q. For example, on the back seat or the back area there was the bedspread?

A. Yes.

15 Q. You would've had to have removed the bedspread and you've got the two plastic bags on the floor of the car?

A. That would be correct, yes.

Q. Then you look in the plastic bags and you find these cartons?

20 A. Yes.

Q. You cut away at one end of the cartons to see what's in there, and looking at that photograph, you can see that there's a half cylinders of gelignite?

A. Yes.

25

Q. Once you go through, making sure the car is safe, when the photographer comes to take the photos, do you put things back in their place?

A. Of that I'm not certain.

30 Q. All right. Well, isn't your evidence the photographer was not there when you first looked inside the car to make sure it was safe?

A. Yes.

35 Q. So the photographer couldn't have taken a photo of the bedspread on the back seat, covering that back area?

A. Yes, that's correct.

40 Q. Doesn't that suggest that you make the car safe and then you put things back - after looking at what's in there, making sure it's safe you put things back in the position they were so that the photographs can be taken?

A. I'm - I'm not certain of that, but there may have - may have happened that way; I'm not certain.

45 Q. Can I take you back to Exhibit 4.1-C please? Now, page 3 is the bedspread, over the back area, then--

A. Yes.

50 Q. --if you go to page 4, that's the back area with what appears to be two big plastic bags with something inside?

A. Yes.

Q. Then page 5 is a photograph of one of the cartons, and can you see the black plastic bag is down towards the ground or the floor of the car, as if it's been pulled away?

A. Yes.

5

Q. Then if you go to page 6, do you agree that is a photograph of the nearside or the other side of the car, the back seat area, with the other carton or box with the plastic bag taken away?

A. Yes.

10

Q. And again, revealing the half cylinders of the gelignite?

A. Yes.

Q. Then if you go to page 7, that was a photograph of the boot of the car?

A. Yes.

15

Q. When you spoke about "in the boot of the car", I think you said there was a box with some gelignite and other components?

A. Yes.

20

Q. Do you remember giving that evidence? Depicted in that photograph, is that the cardboard box with--

A. It appears to be, yes.

Q. --"F W Vear"?

A. Yes.

25

Q. Then if I can take you to Exhibit 4.1-S, red page 54, have a look at that photograph.

A. Yes.

30

EXHIBIT 4.1-S, RED PAGE 54, SHOWN TO WITNESS

Q. Have a look at that photograph.

A. Yes.

35

Q. Do you recognise that as a photograph of the glove box?

A. Yes.

Q. Attached to the latch of the glove box, is that the cord that you had referred to previously?

A. Yes. It would be.

40

Q. Then inside the glove box, you gave evidence that there were detonators and batteries, but they were packaged separately.

A. Yes.

45

Q. For these photographs, did you place back into the glove box the detonators and the batteries?

A. Did I place them back in?

50

Q. Yes.

A. I - I'm not certain. I - I don't think that would have happened.

Q. Why not?

5 A. Well, I - I don't know. Once they were removed, why would they be put back.

Q. You put the bedspread back, and you put the plastic bag around the cartons so photographs could be taken.

10 A. Yes.

Q. Why did you do that?

A. I don't know. I - I can't recall exactly what happened.

15 Q. Do you think you did it so that you could get photographs which depicted how you found the car, how it was when you first looked at it?

A. Yes.

EXHIBIT 4.1-S, PAGE 55, SHOWN TO WITNESS

20

Q. Looking at that photograph, can you see there's the big plastic bags?

A. Yes.

Q. There appears to be two cartons full of cylinders?

25

A. Yes.

Q. Do you recall what that's a photograph of?

A. A photograph after they were removed from the vehicle.

30 Q. Were they the two cartons that were on the floor of the rear of the car?

A. Yes.

Q. You've given evidence of finding at the rear of the car, the boot of the car, and in the glove box, a number of either explosives or items associated with explosives.

35

A. Yes.

Q. After making the car safe, and enabling photographs to be taken of what was found in the car, was the next part of your role as part of the Ballistics Unit at the house, to then determine the quantity of the explosives and other associated devices?

40

A. Yep.

Q. After determining the quantity, was it then part of your role to ensure that they're safely taken away from the premises?

45

A. Part of it, yes.

Q. Then ultimately stored safely for that night?

A. Yes. So they were taken by the army captain, I believe.

50

Q. We'll come back to the army captain in a minute, but after ensuring that they're going to be kept safely that night, is it also part of your task to make sure that ultimately they're going to be secured somewhere safe?

A. Yes.

5

Q. And also to be available if they're required to be tendered in evidence, or referred to in some way in evidence?

A. Yes.

10

Q. The first task that I referred you to just then, after you've made the car safe, and then you've ensured that photographs are taken, did you then determine the number of either explosives or other items that had been in the car?

A. Yes.

15

Q. Could the witness be shown Exhibit 2.1, please?

HIS HONOUR: Which part of 2.1?

MCDONALD: Sorry, p 247, red 247.

20

EXHIBIT 2.1 RED PAGE 247 SHOWN TO WITNESS

Q. If we can expand it a little bit, please. Mr Musgrave, this is a transcript of the evidence you gave at the trial. What I wanted--

25

A. Yes.

Q. --to take you to is about half way down the page, you were asked this question: "Now, how many explosives in each of those boxes behind the front seat." Do you see that?

30

A. I can't really read it from here, sorry.

Q. Hopefully it's up there now. Can you see about mid-way on the screen there is a question, "Now, how many explosives in each of those boxes behind the front seat"?

35

A. That's correct.

Q. You answer, "In each box there was contained 20 half cartridges or the equivalent of ten full cartridges of this type of explosive."

A. Yes.

40

Q. To give that evidence of each box there was the 20 half cartridges, did you make notes on the night?

A. Yes.

45

Q. Where were those notes kept?

A. They would be kept within the brief.

Q. When you say a note, was it in a notebook or was it some kind of entry on a running sheet, or an occurrence sheet?

50

A. I used a - a - like a spiral-bound notebook to make notes, because they

were usually pretty lengthy.

Q. When you say a spiral notebook, are you talking about a pocket-sized one, or a larger, for example, A4 size or something like that?

5 A. No, it wouldn't - wasn't an A4 size. Like a shorthand notebook.

Q. When you were on site you would make a record in that?

A. Yes.

10 Q. For example, the evidence you've given here on red page 247 of the 20 half cartridges, is your recollection you made a note of that in this shorthand-size spiral notebook?

A. Yes. Well, the - yes.

15 Q. Was it your practice that on the night when the different components and explosives are being brought out of the car, that you're making a note of the type of device?

A. Yes. A note for each exhibit, yes.

20 Q. And also the quantity?

A. Yes.

Q. The notebook that you had with those details in it. You would use it when you wrote up your statement, or you would refer to it when you wrote your

25 statement?

A. Yes.

Q. Was it an ongoing notebook? For example, the next day may have notes about another operation that you attended?

30 A. No, it would have been maintained just for this.

Q. It was a notebook only for this operation on 8 February?

A. Yes.

35 Q. When you had written your statement, what happened to the notebook?

A. Well, the notebook, as I said, would be retained within the brief of evidence in the unit.

Q. You've said the brief of evidence within the unit. Which unit are you talking

40 about?

A. The Ballistics Unit.

Q. Would there be some separate - I think you said brief of evidence within the unit - was there a separate brief of evidence for this particular job, or

45 operation, that you attended?

A. Yes, it would be allocated a number, and everything in relation to it would go into that brief.

Q. We'll get to this shortly, but the actual physical exhibit, so things like the

50 actual gelignite, clocks, wires, detonators. Would you ultimately take custody

of those?

A. Yes.

Q. If they were potentially dangerous, where would they be kept until the trial?

5 A. If they were potentially dangerous they were kept at Marrangaroo, the majority - or pretty well all of it. I did return to Sydney with some for identification purposes, which was returned back to Marrangaroo, so the bulk of it would have been kept there.

10 Q. Can I just ask you, when you referred to Marrangaroo, is there--

A. Yes.

Q. --a particular facility that you're talking about there?

15 A. Yes. I think they call it two two three supply company.

Q. Was that run by a private group, or was it part of the army, or what?

A. That's part of the army - army, yes, ordinance.

20 Q. Any exhibits that you, or items that you seized that were potentially dangerous, ultimately they would end up at, sorry, Marrangaroo?

A. Yes.

25 Q. What about if there were other items that you seized, for example, if you seized a clock face that it appeared was going to be used as part of the bomb but obviously hadn't been connected at that time; where would that clock end up?

A. I believe I'd take that back to Sydney, maybe to have fingerprinted.

30 Q. Then after, if it had been fingerprinted or not, was there some kind of exhibit room at Ballistics Unit?

A. Yes, exhibit - yes.

35 Q. A harmless exhibit, for example, a standalone clock, after being fingerprinted or whatever, did it - the procedure was it would be put into the exhibit room at Ballistics?

A. It'd be kept with the exhibits from this particular thing all together.

40 Q. When you say the exhibits of all the things, what are you referring--

A. Well, anything - anything pertaining to this situation would be kept together.

45 Q. When you say this situation, are you only talking about the explosive side of this operation, or other evidence that may be relevant for the ultimate trial of the accused? Do you see the distinction?

A. No, I can't follow.

50 Q. All right, sorry, Mr Musgrave.

A. Yeah.

Q. Mr Musgrave, in any investigation where there's explosives, there may be other exhibits or items that are seized by the police that have nothing to do

with the explosives, you agree with that?

A. Yes.

5 Q. So for example, if there was a threatening note written that was found at a house by another police officer, that would potentially be an exhibit at the trial?

A. Yes.

Q. Nothing to do with the actual explosives?

A. No.

10

Q. The harmless exhibits you were talking about, for example, the clock, would it be kept at Ballistics with other harmless exhibits from this operation, or would it be given to the officer-in-charge of the overall investigation and kept with other exhibits?

15 A. No, they were - they're retained at the Ballistics Unit.

Q. All right. So up until the trial, if it was a potentially dangerous exhibit, it would be at - I've gone blank again - Marrangaroo?

A. Yes.

20

Q. If it was a harmless exhibit, it would be with other harmless exhibits from this operation at the Ballistics Unit?

A. Yes.

25

Q. What was your communication with the police who were conducting the overall investigation? Did you - to start with, with the information about the exhibits you seized and where they were being kept, was the officer-in-charge informed of that?

A. He would have knowledge of it, yes.

30

Q. Was that a matter of - how did you tell the officer-in-charge?

A. Well, he'd have to know where the exhibits were in case they wanted to relate to them; at some--

35

Q. We've seen some evidence of what we'll call running sheets.

A. Yes.

Q. Would you compile a running sheet to set out that information and then it would be able to be provided to the rest of the investigative team?

40

A. I'm - I'm not certain of that.

Q: Excuse me, your Honour. Could the witness be taken back to Exhibit 2.1, and to page red 244? Again, if we could expand it.

45

Q. Now, Mr Musgrave, this was your evidence that you gave on 23 April 1980. If we go right down the bottom of the page, you were asked a question about your initial examination of the car, and if I take you to your answer, "The cartons were examined in situ." Then across the page at the top of 545, you say:

50

"The area inside the vehicle in the rear seat portion was examined. Also, in the rear seat portion, I located three plastic Glad-type bags which were found to contain four mechanical clocks."

5

Do you see that?

A. Yes.

10 Q. Do you recall, in addition to the cartons on the floor which contained the half cylinders, do you recall now that in addition in that rear area of the car, within three plastic Glad-type bags were four mechanical clocks?

A. Yes.

15 Q. Do you remember seizing those?

A. Do I remember?

Q. That they were seized, or you took those as well?

A. No. Yes I - yes, I did.

20 Q. In the glove box, do you recall that there were four batteries and four electronic detonators?

A. I think - I believe so, yes.

25 Q. Mr Musgrave, you spoke about you had a recollection of taking some photographs yourself?

A. Yes. A vague recollection, yes.

EXHIBIT 4.1-Y, PAGE 56, SHOWN TO WITNESS

30 Q. Have a look at that photograph.

A. Yes.

35 Q. Can you see there's a description at the bottom saying, "Showing four electronic detonators found in glove box of Valiant at 6 Macauley Street, Lithgow, on 8 February 1979."

A. Yes. Yes.

40 Q. Looking at that photograph, it just appears to be different from the photographs that we took you to previously of the car in situ at the house.

A. Yes. On this one it's in colour.

Q. For example, it's in colour.

A. Yes.

45 Q. Looking at that photograph, can you recall is that a photograph that you took?

A. I believe so, yes.

50 Q. Looking at the photograph, you can see there's kind of plastic material, but then you've got the four detonators plus wires, and then there seems to be like

an exhibit label. Can you see that?

A. Yeah. Yes.

5 Q. Can you recall whether that photo was taken on 8 February or the next day?

A. I believe that would have been taken back in - back in Sydney at the Ballistics Unit.

10 Q. By this time, the four detonators that had been found in the glove box had been ultimately transported back to the Ballistics Unit?

A. Yes. I - I took them back there, yes.

Q. You have now taken a photograph of them at the Ballistics Unit?

15 A. Yes.

Q. The evidence you gave about "safe and unsafe exhibits", where did the detonators end up being kept until the trial was over?

20 A. They were retained at the unit until I got them to these - the Dangerous Goods Branch, I think they call themselves. They were retained until I could get them to the Dangerous Goods Branch.

Q. When you refer to the Dangerous Goods Branch, is that somewhere different to Marrangaroo?

25 A. Yes.

Q. A potentially dangerous exhibit may be kept at another location in the lead up to the trial?

30 A. Yes. It wasn't kept there 'til the trial, I don't believe. I collected all of the exhibits from the dangerous goods branch and returned them to Marrangaroo.

Q. Why did you send it to the Dangerous Goods Department or Section? Was that for some separate testing or something?

35 A. Basically to be examined. If they could offer any indication of anything that might assist, but - and the explosives for safe storage.

Q. If the witness can be taken to Exhibit 4.1-Z?

EXHIBIT 4.1-Z SHOWN TO WITNESS

40 Q. Mr Musgrave, would you have a look at that photograph and the typed description underneath?

A. Yes.

45 Q. Can you see again it's in a plastic bag, and there seems to be like an exhibit label?

A. Yes.

50 Q. Then the description is "Showing a 6 inch piece of Johnsons T.N.C. explosive removed from device located rear nearside of Valiant", et cetera, "Lithgow on 8 February, 1979."

A. Yes.

Q. That explosive depicted in the photograph, that's different from the half-cut cartridges that were in the cartons?

5 A. Yes, it's a different type of explosive. Yes.

Q. Do you recall where it was found in the car?

A. When it was found?

10 Q. Where it was found?

A. No, I don't. It was perhaps the - located in the boot of the vehicle.

Q. The description talks about a device located rear near side of the Valiant. That would suggest internal of the car, wouldn't it?

15 A. Perhaps, but rear near side could also be a description of the boot.

Q. Again, is this a photograph that you took?

A. Yes, it would have been. Yes.

20 Q. Looking at it, the fact that it's in colour, and where the photograph is and the state of the piece of explosive. Again, you had taken that back to the Ballistics Unit?

A. Yes, I did.

25 Q. Was this also sent to the Department of Dangerous Goods?

A. Yes.

Q. The Dangerous Goods Branch?

A. Yes.

30

Q. Then ultimately after they examined it is it your evidence that that went back to Marrangaroo?

A. Yes. It was taken back by me.

35 Q. Your Honour, could the witness be shown Exhibit 11.44?

EXHIBIT 11.44 SHOWN TO WITNESS

40 Q. Page 175 to begin with. Mr Musgrave, I'll orientate you to these pages first. These appear to be a proof sheet of photographs that were taken at Lithgow, Macauley Street, on the night of 8 February.

A. Yes.

45 Q. For example, just looking at that first page. If you look at - I think it's got six next to it. It would appear to be a photograph of the bedspread on the rear seat?

A. Item 6?

Q. Yes.

50 A. Yes.

Q. Can I take you through to page 177? The photograph which has got 20 next to it, and if that can be expanded in some way? Looking at that photograph, there's three people in it.

A. Yes.

5

Q. Are you in the photograph?

A. Yes.

Q. Which one are you?

10 A. In the centre, I believe. Yes.

Q. The person immediately to your left in the photograph?

A. That - perhaps Detective Marheine.

15 HIS HONOUR: Sorry, when you say immediately to his left; as we look at the photograph? As his left?

MCDONALD: I'm sorry, your Honour.

20 HIS HONOUR: Closest to the car, or furthest away from the car?

MCDONALD: Furthest away from the car. Thanks, your Honour.

HIS HONOUR: Yes.

25

WITNESS: Furthest away from the car?

MCDONALD

30 Q. Yes, sorry. Also, appears to be in similar overalls that you are?

A. Yes. That is, perhaps, it's very difficult from that, could be Detective Etienne, perhaps.

Q. The other person who seems to be closest to the car was your recollection that was Sergeant Marheine?

35

A. Yes.

Q. Could we just go up to the photograph which has got 19 next to it, still on page 177, yes, and can we try and expand that a little bit?

40

Q. This time there seems to be four gentlemen in the photograph?

A. Yes.

Q. There's the person in civilian gear, it looks like a white shirt?

45

A. Yes.

Q. Is that--

A. That looks like Detective Marheine.

50 Q. Looking at the photograph immediately to his right?

A. That there's myself.

Q. Right, and that's your back is being photographed?

A. Yes.

5

Q. If you go back to Sergeant Marheine, the person to his left who seems to be hanging on the boot, the top of the boot?

A. Yes.

10

Q. Do you know how that is?

A. I can't tell, I can't see his face.

HIS HONOUR

15

Q. Is that a police insignia on his sleeve, or Army?

A. Looks like a police insignia. Yes.

MCDONALD

20

Q. Then, really concealed is the person to your right on the photograph, which does appear to be similar to the other person you identified in photograph 20?

A. It could be, but again, I can't see his face. No, can't say precisely.

25

MCDONALD: Your Honour, would that be an appropriate time?

HIS HONOUR: Yes. Yes, it would. Mr Musgrave, we'll resume your evidence on Tuesday morning. So you're free to go for now.

30

<THE WITNESS WITHDREW

AUDIO VISUAL LINK CONCLUDED AT 4.02PM

ADJOURNED PART HEARD TO TUESDAY 2 APRIL 2024