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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 MONDAY 4 DECEMBER 2023

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

10 Ms T McDonald SC with Ms T Epstein - Counsel Assisting the Inquiry
 Mr D Buchanan SC with Mr S De Brennan for Maksimilian Bebic, Vjekoslav
 Brajkovic and Mile Nekic
 Ms J Needham SC with Mr M Short and Mr R Coffey for the NSW
 Commissioner of Police
 15 Dr G Woods KC with Mr B Haverfield and Mr P Madden for Jan (John)
 Krawczyk, John Marheine, Christopher Ingram, Brian Harding, Richard Grady,
 Ian Kennedy, Brian Howard, Michael Simmons, Robert Musgrave, Colin
 Helson, Victor Jefferies, Rodney Harvey, Alexander Booth, Clive Silvester, Ian
 Jameson, and John Wilson
 20 Mr A Brown for the Office of the Director of Public Prosecutions (NSW)
 Mr J Silove for the Australian Security Intelligence Organisation

25 HIS HONOUR: Yes.

MCDONALD: May it please the Inquiry. My name is McDonald. I appear with my learned friend Ms Epstein as Counsel Assisting.

30 HIS HONOUR: Yes.

BUCHANAN: May it please the Inquiry. My name is Buchanan. I appear with my friend Mr De Brennan for the applicants: Maksim Bebic, Mile Nekic and Vjekoslav Brajkovic. Mr Brajkovic is present in the rear of the hearing room.

35 HIS HONOUR: Thank you, Mr Buchanan.

40 WOODS: Your Honour. Woods. I appear with Brent Haverfield and Paul Madden of Counsel for the gentleman whose names were read out on the list last time when your Honour granted leave. And may I add to that list of people we seek to represent four other former officers?

HIS HONOUR: Yes.

45 WOODS: James Counsel, Alastair Milroy, Robert Godden and Peter Wick.

HIS HONOUR: Thank you.

WOODS: If your Honour pleases.

50 NEEDHAM: Thank you. May it please the Court. I appear for the

Commissioner of Police of the New South Wales Police Force. My name is Needham, along with Mr Coffey, Mr Short, and instructed by Ms Atherton of the Office of General Counsel.

5 HIS HONOUR: Thank you, Ms Needham. Yes.

BROWN: May it please, your Honour, Brown. I appear for the New South Wales Director of Public Prosecutions.

10 HIS HONOUR: Thank you Mr Brown.

HIS HONOUR: Any others? Do we have applications for the further parties to be represented?

15 MCDONALD: Your Honour, I understand there will be a further application tomorrow morning, and I did understand that there was to be another application today by a representative of ASIO.

20 HIS HONOUR: Yes, I think there is somebody at the back.

SILOVE: Yes, your Honour. I seek leave to appear for the Commonwealth as instructed by the Australian Security Intelligence Organisation.

25 HIS HONOUR: I'm unclear as to the basis of the application.

SILOVE: I'd be happy to put our application to you in more detail. That application is made primarily by reference to the Scope of the Inquiry document circulated to us on 2 November 2023, if your Honour has a copy of that document?

30 HIS HONOUR: Yes, I do.

SILOVE: In particular, that Scope of the Inquiry includes as a subissue to Issue 1:

35 " Knowledge of Commonwealth departments and New South Wales Police about Mr Virkez's connections, including what information was relayed to New South Wales Police and when."

40 Mr Virkez was, of course, the rollover witness in the trial of the Croatian Six. Your Honour, that subissue, as we apprehend it, will be ventilated largely by reference to a number of Commonwealth documents that have been published by the National Archives of Australia, which includes declassified ASIO documents. Some of those documents are contained in the bundle of
45 evidence, or the tender bundle, rather, before your Honour, but not all of them are.

We would seek leave to appear in order to put submissions in relation to Issue 1, as appropriate, but also to assist your Honour in navigating what may be
50 voluminous Commonwealth documents that ultimately will find their way into

the tender bundle. We suspect that that will largely be done by way of submissions at the conclusion of the second hearing block.

5 HIS HONOUR: Yes. What is the statutory provision relating to parties being granted leave to appear, can you remind me?

SILOVE: Your Honour, I can assist in that.

10 HIS HONOUR: The *Royal Commissions Act*, s 7?

SILOVE: Yes. Under the *Royal Commissions Act* s 7(2) it is necessary that a person with a substantial and direct interest in any subject matter of the Inquiry, and in this case, your Honour, we submit that the subject matter relevantly for our purposes is Issue One in the Scope of the Inquiry, which directly has bearing on the Commonwealth knowledge of certain information.

15 HIS HONOUR: It's not a matter, as I presently understand it, where conduct in relation to the matter might be challenged as to the organisation's detriment, so it's just the substantial and direct interest you say?

20 SILOVE: Yes, your Honour.

HIS HONOUR: Ms McDonald, can you assist?

25 MCDONALD: Your Honour, presently contained within the proposed tender bundle are some documents, but they're not voluminous, which have been obtained through the National Archives of Australia being some declassified documents from ASIO. I do note, your Honour, that there are still some outstanding notices such as some Commonwealth agencies. They're not returnable until next year. That may produce other relevant documents which may be tendered in the Inquiry, but at the moment, your Honour, I don't agree with the description of "voluminous" documents. They are quite a discrete number of documents. Maybe the way to proceed, your Honour, is to postpone the application for leave to appear until we know the full extent of the Commonwealth documents that will be before your Honour and whether that does then satisfy subs (2) of s 7.

30 SILOVE: Your Honour, if I may just reflect on those comments by Counsel Assisting. It is the case that the documents contained in the tender bundle at present may not be described as voluminous. However, on our review of the National Archives' documents, there are voluminous documents, some of which we are likely to seek to take your Honour to in the second hearing block. As we have not yet sought leave to appear, we haven't had an opportunity to present those further documents for inclusion in the tender bundle, and we certainly don't propose to do so for the purposes of this hearing block.

45 We do note, however, that some of the witnesses, and in particular, the journalist witness proposed to be called, and also the statements put on by the journalist witnesses not proposed to be called in this hearing block, do contain

matters relating to, we would say, Issue 1, and the Commonwealth's interest in it. That said, if the preferred approach is to defer this application to the second hearing block, we would be willing to proceed on that basis.

5 HIS HONOUR: Yes, I think I'll adopt that approach, Mr Silove. I'll defer ruling upon your application for leave to appear. It's not clear to me that the Inquiry would be assisted by the Organisation being represented at this point. But you will be kept informed as to the progress of the matter, and if you wish to raise the matter against at a stage where you perceive I might be persuaded, feel free to do so.

10 SILOVE: I'm grateful to your Honour.

HIS HONOUR: Yes.

15 MCDONALD: Your Honour, on 8 February 1979, Vico Virkez, also known as Vito Misimovic, attended Lithgow Police Station and told two detectives, Detective Ingram and Detective Sergeant Marheine, about a Croatian nationalist plot to bomb a number of targets in Sydney. He named as his co-conspirator Maksimilian Bebic, his roommate in Lithgow at the time. He named Anton or Tony Zvirotic, and Vjekoslav Brajkovic. When he later gave evidence at the trial of the Croatian Six, he also implicated the other accused, Mile Nekic and brothers, Ilija and Joseph Kokotovic, in the plot.

20 Virkez's report to the Lithgow Police culminated in NSW Police conducting a series of raids both on Virkez's home in Lithgow where he lived with Bebic, as well as the homes of the five Sydney men who were prosecuted and ultimately convicted of the plot. In addition, police raided the home of Joseph Stipich, from whom the Inquiry will hear evidence.

25 On 8 February 1979, the Croatian Six were arrested and charged with a number of offences, including conspiracy to bomb, as well as explosives and firearms offences. All the men, excluding Mr Bebic, were also charged with conspiracy to murder. Mr Stipich was separately charged, as I will come to later.

30 The credibility and reliability of Mr Virkez was strongly challenged during the trial. At that time, the Yugoslav government included a Department of State Security known as the UDBa, and the accused sought to establish that Mr Virkez was a Yugoslav or a UDBa agent, and that he had a motive to lie. In his address book, Mr Virkez had details of the Yugoslav Consulate-General in Sydney, but he explained in evidence that this was probably because he rang the Consulate to abuse them. Although he admitted he was not Croatian, he denied spying on the Croatians. He also denied giving evidence at the behest of anyone connected with Special Branch or the Yugoslav government.

35 On 9 February 1981, the jury returned verdicts of guilty for each of the six men in relation to the bombing conspiracy and the explosives charges but verdicts of not guilty for the five men charged with conspiracy to murder. The jury was unable to reach a verdict in relation to a charge against Mr Zvirotic of

possessing an unlicensed pistol.

5 On 17 February 1981, the men were each sentenced to 15 years imprisonment from 8 February 1979, and no non-parole period was set. They were released after serving seven or eight years of their sentence.

10 On 12 February 2021, an application was filed in the Supreme Court of New South Wales on behalf of Mr Bebic, Mr Nekic, and Mr Brajkovic, pursuant to s 78(1) of the *Crimes (Appeal and Review) Act 2001*, seeking an inquiry into their convictions. Mr Zvirotic and Mr Ilija Kokotovic and Mr Joseph Kokotovic did not join that application.

15 Having regard to new material that was presented in the application, including but not limited to declassified ASIO documentation, and various academic and media publications regarding the matter, on 30 August 2022, the Honourable Wright J exercised his discretion under s 79(1) of the *Crimes (Appeal and Review) Act* to direct an inquiry be conducted into the convictions of the applicants, as well as Mr Zvirotic, Mr Ilija Kokotovic, and Mr Joseph Kokotovic.

20 Your Honour has been appointed by the Chief Justice of the Supreme Court of New South Wales to conduct this Inquiry. Pursuant to s 82(1)(b) of the Act, upon completion of the Inquiry, your Honour must cause a report of the Inquiry to be sent to the Chief Justice. After considering your Honour's report, the Supreme Court must then cause its own report on the matter, together with
25 your Honour's report, to be sent to the Governor, who may dispose of the matter in such matter as her Excellency thinks just. Your Honour may also refer the matter to the Court of Criminal Appeal for consideration of the question of whether the convictions should be quashed, if your Honour is of
30 the opinion that there is a reasonable doubt as to the guilt of the convicted men.

35 The nature of this Inquiry is different from that of a judge and a jury in a criminal trial. Your Honour's task is essentially an exercise in fact finding. This Inquiry must commence with the fact that convictions have been recorded, and have been subject to an appeal, and an unsuccessful application for special leave to the High Court, but that questions or doubts have been raised sufficient to justify the Supreme Court directing an inquiry be conducted.

40 This Inquiry may consider any information that may throw light on the convicted men's guilt. Your Honour is not bound by the rules of evidence and may have regard to all of the information and evidence received, whether that information is favourable or unfavourable to the convicted men. It is not fettered by tactical or forensic decisions at trial, or by the way the Crown or
45 defence cases were conducted.

50 Your Honour, the applicants to this Inquiry, who I will refer to as the petitioners, are Mr Brajkovic, Mr Bebic, and the late Mr Nekic, who is represented by his estate. The Inquiry has made attempts to contact the remaining three members of the Croatian Six, Joseph and Ilija Kokotovic, and Anton Zvirotic, but has not received any indication that they wish to take an active role in the

Inquiry.

5 In this opening address, I intend to give your Honour a summary of the case run at trial, both on behalf of the Crown and the six accused, provide your Honour with a summary of the material that has emerged since the convictions of the Croatian Six, and I will also outline the evidence that the Inquiry will consider.

10 Your Honour has provided the parties with a document setting out the scope of the Inquiry. That scope has been defined, following submissions received by the petitioners and the Commissioner of Police.

15 The overarching areas that the Inquiry will address are: the evidence of Vico Virkez, including the truthfulness and reliability of that evidence; the disclosure of information at trial about his connection with the Yugoslav government, the Yugoslav Intelligence Service, the YIS, and the UDBa; the evidence of admissions and confessional statements, including the truthfulness and reliability of evidence of the NSW Police witnesses in respect of confessional statements and admissions allegedly made by the Croatian Six; the methods
20 by which those confessional statements were obtained and recorded, and the alleged use of violence towards Virkez (as said) and Brajkovic; the raids and seizure of evidence at locations associated with the Croatian Six, including the evidence of New South Wales Police witnesses; and the finding of exhibits, including explosives, firearms, and bomb paraphernalia. The Inquiry will also
25 consider evidence in relation to the police investigation into, arrest and committal hearing in respect of Joseph Stipich.

30 Today is the commencement of a first hearing block or tranche in the Inquiry. A number of requests for information are still outstanding, with the result that the witness list for this hearing tranche has been narrowed. A second tranche of hearing will commence on 25 March next year and is listed for three weeks. In this first tranche, the Inquiry will hear evidence from Mr Brajkovic and Mr Stipich. At the second tranche, I anticipate the Inquiry will
35 hear evidence from the police officers involved in the raids of the homes of the Croatian Six and their arrest, as well as Mr Ian Cunliffe, a former legal officer with the Department of Prime Minister and Cabinet. Also, your Honour, though enquiries still continue, your Honour may hear evidence from journalists who had been involved in their own investigations of the Croatian Six.

40 I will now turn to an overview of the case at trial. The trial ran for 172 sitting days before Maxwell J. 111 witnesses gave evidence. 142 exhibits were admitted. The transcript of the trial is before your Honour at Exhibit 2 and the trial exhibits are at Tender Bundle Tab 4.1. Both the transcript and the exhibits
45 are voluminous and I intend to give your Honour an overview of the key evidence commencing with Virkez's report to the police and the events leading up to the police raids.

50 After having initially attended Lithgow Police Station on 29 January 1979 but having had no luck in talking to any detective, Virkez returned to Lithgow Police Station on 8 February 1979 at, approximately, 12.45pm. He spoke to

Detective Ingram whom he told that his real name was Vito Misimovic, a Serbian name, and he was, in fact, Serbian. He said he was using the name Vico Virkez and had been in the Croatian Army for eight years. Critically, he told Ingram that Bebic, Brajkovic and Zvirotic were to blow up several places in Sydney the following morning along with others in Sydney who were to help but whose names he did not know. He also informed Ingram that Bebic was to attend his home at 6 Macauley Street, Lithgow, between 2.30 and 3pm with 50 kilograms of explosives and he, Virkez, was to buy three clocks and to then make time bombs. Virkez also informed Ingram of the location where the bombs were to be planted: a travel agency in Cabramatta called Balkan, another travel agency in Fairfield called Brana, a community gathering place for Yugoslavs in Cabramatta and a further travel agency in Newtown. Virkez later told the police about two further locations for the bomb plot, the Adriatic Travel Agency in King Street, Newtown, and a sixth location, being water pipes. It was these statements that led to a series of raids, the evidence of which I will address in turn.

At around 2.30pm on 8 February 1979 Virkez left Lithgow Police Station to get back to the house in Macauley Street by 3pm where he had arranged to meet his roommate and one of the alleged co-conspirators, Maks Bebic. Before returning to his home, Virkez attended various locations in Lithgow, including Coles, where he purchased two clocks. He returned home with the clocks. His evidence at trial was that with the assistance of Bebic he put wires in the clocks. His evidence was that Bebic had shown him where to put the wire at the back of the clock. According to Virkez, Bebic and Virkez then travelled in Virkez's car, a black Valiant 1963 model, to a location which was past the old power station in Lithgow. They took a small spade that Bebic had told Virkez to bring. When they got there, Bebic told Virkez about 50 kilograms of explosives that were at the location. Bebic had previously mentioned the explosives to Virkez on around 7 January 1979 when he told Virkez that the explosives had been stolen from the Wallerawang Power Station. When they got to the location of the explosives, Bebic dug them up from the location where they had been buried. He told Virkez to take one box of explosives and then carried it to the boot of the car. Bebic also took another box and placed it in the boot of the car.

They then drove back to the Lithgow house. Virkez took one box into the house; Bebic took the other. Both were placed in the kitchen where they were unpacked. Once the boxes were unpacked, Virkez took the boxes outside to be burned. Bebic cut the explosives in halves and then took wires from the detonators and tied them to the explosives that had been cut in halves. After the bundles of explosives had been prepared, they were placed in Virkez's black Valiant by Virkez and Bebic along with the clocks and theetonators. Bebic then went to get a gun to clean which he then also placed in the car. A little bit later Bebic called out to Virkez to say, "We have to go to Sydney". It was around this time that the police arrived.

Upon raiding the premises, the evidence of attending police officers, as well as Army Captain Barkley, who was waiting outside the premises on the street at the time the raids took place and then attended the scene, was that explosives

and detonators were found in the Valiant in both the back seat and also, as you can see on the screen, in the boot, as well as four mechanical clocks, circuit boards and other electrical devices, a .22 Magnum calibre Winchester rifle and cartridges, a letter bomb and masking tape. Detective Sergeant O'Brien also gave evidence of having located a little red book with an entry on how to make a letter bomb and a piece of white paper with a list of firearms.

Police also attended a tin shed that Bebic used at 3 Hepburn Street, Lithgow. Detective Sergeant O'Brien gave evidence of having located 23 pages of literature in Croatian language, a diagram of an explosive device, a 1979 diary, how to make a letter bomb, and 'Osvetnici Bleiburga' (The Avengers of Bleiburg), a book that I will return to later.

Virkez's evidence was a critical component of the Crown case against the six men. The other key components of the Crown case were evidence given by police officers of confessions made by the accused, evidence given by police officers about explosives and other material located at the homes of the accused men during the raids on 8 February, and evidence about the involvement of the accused in the Croatian nationalist movement.

I will now outline the Crown case against each accused and then return to the defence cases. After the raids of 8 February, at around 9.05pm, Virkez was interviewed by Detective Sergeant Marheine at Lithgow Police Station. His record of interview was typed, signed and written in clear English. It was an exhibit at the committal hearing and is to be found at Tender Bundle Tab 4.28 and 'it is currently up on the screen. In his interview, Virkez made admissions to having been involved in a plot to blow up various locations in Sydney. He said that the explosives that were found in his car were placed there by him and Bebic just prior to the police arriving. The explosives had been made up into bombs to be exploded by time clocks. He had made these four bombs, which each contained 12.5 kilograms of explosives, with Bebic. The gelignite had come from the power station site, Bebic, along with a Steve Topich, had stolen the gelignite from the Wallerawang Power Station in two robberies in November. Since that time the gelignite had been buried in the bush until that afternoon when they had picked it up. Virkez implicated Tony Zvirotic in the conspiracy as well as Bebic and Brajkovic. He said it was Zvirotic and Brajkovic's idea to place the bombs. Their motivation was "to keep fighting for our country".

The next day on 9 February police officers left Lithgow Police Station with Bebic and Virkez and travelled to a number of locations to find further explosives. They travelled to Hassans Walls Road, Lyle's Crossing, where explosive fuses, detonators and gelignite were retrieved from a burnt-out tree stump. They then continued on to Newnes, Forest Road and then to a location on the Cox's River (Rydal Road, Bowenfels), where Bebic allegedly showed detectives a disused quarry where he had experimented with bombs.

Back at the police station, Virkez participated in a further record of interview. Virkez agreed that he had been present when Bebic had shown police where explosives were hidden at the base of a dead tree trunk and

5 stated that Bebic had told him that he had hidden the explosives there. He
said he had been to the bushland on Hassans Walls mountain range on one
previous occasion about two weeks ago. On that occasion he went with Bebic
to get around 50 detonators to give to Zvirotic. Zvirotic had come up on the
train from Sydney and stayed at Steve Topich's place. He collected the
detonators and Bebic drove him back to Sydney. He wanted the detonators
for testing on the bombs. Virkez agreed that he had also accompanied police
to bushland off the Newnes Road area where Bebic had indicated an area
10 where two boxes of gelignite had previously been buried. This was the
gelignite that Bebic and Virkez had picked up the afternoon before to make the
bombs. Bebic had previously stated that he had stolen this gelignite. Virkez
stated that he had also accompanied police to an area off the Rydal Road near
the Cox's River where Bebic had indicated an area where he had exploded
15 some gelignite. They had also travelled with the police to another area near
there where Virkez and Bebic had tested a time bomb just after the New
Year. They had hooked it up to a detonator in the explosives and a clock.

20 Virkez participated in a further record of interview on 10 February 1979, in
which he stated that there had also been a plan for two men, Tomo Mlinaric
and Fabian Lovokovic, to be killed the same night as the bombings. These
men were to be killed because they were not really working for the Croatian
people, and if these men were killed, the Croatians would think that the
Yugoslav people killed them, and that would mean that other Croatians, which
are not fighting now, would fight against the Yugoslavs. He was not sure who
25 made the plan to kill these men, but he had been informed about it by
Brajkovic, Zvirotic, and Ilija Kokotovic. Zvirotic had told him "Mlinaric was his,
and that, me and the others would have to kill Lovokovic." Zvirotic gave him a
list of weapons that Bebic and Virkez were to buy. The record of interviews
attributed to Virkez were typed in clear English and signed by Virkez.

30 Virkez's evidence at trial. Virkez gave evidence with the assistance, at times,
of an interpreter. While in his records of interview, he had only named
Brajkovic, Zvirotic, and Bebic in relation to the bombings, and Ilija Kokotovic in
relation to the plan to murder the two Croatian community members, in his
35 evidence, he implicated all of the accused who stated that he knew them
personally, although Joseph Kokotovic and Nekic, he only knew by sight and
had not spoken to previously.

40 Virkez gave evidence about a meeting he had attended in connection with the
bombings at around 9pm on 26 January 1979 at Brajkovic's house. Zvirotic,
Bebic, and Ilija Kokotovic were also present at the meeting, and Brajkovic's
wife and her brother were present at the house more generally.

45 The day before, on 25 January 1979, Zvirotic had spoken to Virkez and told
him to come to Brajkovic's place the following evening, informing him that the
meeting was "in connection with a plan, some bombs". Virkez had told
Brajkovic that he could not attend the meeting, but Brajkovic told him that he,
Virkez, had to be there.

50 Virkez only stayed at the meeting for a few minutes, following which he made

an excuse to leave as he had plans to meet a girl. Virkez was later informed the following day that at the meeting, plans had been made to put bombs under buildings. Virkez had been informed of the plans on 27 January at a meeting at Virkez's house between 10am to 2pm. Virkez had referred to
5 specific buildings that formed part of the plot, namely the Avio travel agency in Newtown, the Elizabethan Theatre in Newtown, water pipers in St Marys, Balkan Travel Agency in Cabramatta, the Hajduk Club in Cabramatta, and the Brana Travel Agency.

10 Zvirotic also said that if they were unable to obtain the keys for the Elizabethan Theatre, the plan was to put the bombs under the General Tourist or Adriatic in King Street, Newtown. The plan was to be carried out on 8 February 1979 at about midnight or 1am. The bomb to be placed in the Elizabethan Theatre
15 would be connected to a clock so as to explode on the evening of 10 February, whereas the rest of them would explode on the morning of 9 February at about 3am.

Virkez also said that Zvirotic gave him instructions as to what he, Virkez, was to do. Virkez was told to drive from Lithgow with Bebic with four clocks and
20 four "made" explosive bundles. They were to leave Lithgow at about 7 o'clock on Thursday morning, 8 February, and go to Zvirotic's place.

As part of the plot, Brajkovic's group would take care of the locations in Fairfield and Cabramatta. Virkez, Bebic, and Zvirotic would take care of the
25 Elizabethan Theatre and the travel agency, and that Virkez and Bebic were also to take care of the water main or pipes at St Marys.

Virkez (as said) also allegedly referred to the plan to kill Mlinaric and Lovokovic. Virkez's evidence was that Zvirotic said during the course of
30 conversation with - Brajkovic was also present - that "he will kill Mlinaric and "one of us to kill Lovokovic." Brajkovic referred to the reason for killing these two individuals as being, "they are stealing the clubs," being a reference to Croatian clubs in Sydney.

35 They then left Zvirotic's house. Zvirotic went with Brajkovic and Virkez to show them the buildings that were the subject of the plot. Having been shown the buildings, Virkez said that Brajkovic told him to drive back to Brajkovic's house, and on the way, they stopped at Nedic's place, although Nedic was not home
40 at the time.

Virkez gave evidence that he went to the site in St Marys with Bebic a week after his meeting with Zvirotic. When they arrived at the location, Bebic asked
45 Virkez for his opinion about where he would put bombs in relation to the pipe. Virkez responded, "near the river," to which Bebic replied, "it would be better above the road."

On 8 February, after having attended the Lithgow Police Station and spoken with Detective Ingram and Detective Sergeant Marheine, Virkez went to Coles
50 to buy the clocks, which he took back to the home where Bebic was waiting. According to Virkez, when Virkez arrived, Bebic already had four

batteries and two clocks out and had been putting the wire on the clocks. Bebic showed Virkez where to put the wire at the back of the clock.

5 They then went to Virkez's car, the black Valiant, with a small spade that Bebic had told Virkez to bring, and set off to get the explosives. As I have already explained, following which, they returned home just before the police raid.

10 Virkez also gave evidence about the events of 9 February, where he went with police and Bebic to various locations around Lithgow to locate the explosives. Virkez said that he had previously been to the Cox's River location with Bebic on 7 February 1979, at which time Bebic had a plastic bag, a clock, explosives, detonators and batteries, and told Virkez that he would show him how a bomb is placed on a clock. Bebic showed Virkez how to wind a clock to explode, and how to set the explosives to go off in an hour's time. Bebic also
15 put a detonator into the explosive, connected it with the battery and the clock. They set the clock to go off and waited 300 metres away until the explosives exploded.

20 He also reiterated what he had said in his record of interview about travelling to Hassans Walls, namely that he had attended this location with Bebic on 26 January, and on that occasion, Bebic did some digging, took some detonators out, and subsequently returned explosives and some of the detonators where he had dug up the ground. They drove back to Virkez's house, and when they arrived, Zvirotic was there.

25 Virkez was cross-examined about a number of topics. The key lines of attack advanced by defence counsel against Virkez's evidence included that he was a paranoid schizophrenic, and possibly a sleeper agent, designed to discredit Croatian separators. He had renounced his Australian citizenship at the time
30 he had reported the conspiracy.

35 Counsel for Ilija Kokotovic referred to the fact that Virkez had the phone number of the Yugoslav consulate. Virkez had been cross-examined about his contact with the Yugoslav Intelligence Services and denied having any such contact. He denied having had the number of the Yugoslav consulate with a view to informing the consulate about spying on Croatians.

40 Counsel for Joseph Kokotovic alleged that Virkez had named people to police that he'd vaguely come in contact with and maybe had some enmity towards, and that police had fabricated the seizure of explosives and the verbals to fit that narrative. He'd never mentioned the alleged plan to murder Mlinaric and Lovokovic to the police in Lithgow, thus casting doubt on his credibility. He also changed his version of events, never previously having mentioned Ilija
45 Kokotovic to police in Lithgow or in his interviews on 8 and 9 February 1979 and had only implicated him after speaking with Jefferies from Special Branch.

Counsel for Brajkovic and Zvirotic suggested that he had a motive to lie to ensure that he wasn't charged with any further offences.

50 Allegations that Virkez has contact with police prior to giving evidence arose in

5 evidence. Under cross-examination, Virkez stated that a week before he was to give evidence at trial, he was visited by Turner and Milroy in gaol. He denied that the purpose of the visit was in relation to the evidence he was to give, but that he'd spoken about going to court and his safety to and from court. Virkez also denied any recollection of telling Brajkovic about turning having visited him in gaol where Turner had put his hands around his neck and told Virkez to say that Brajkovic and Zvirotic had been involved.

10 Records produced to this Inquiry by the Commissioner of Police show that on 16 March 1979, Detective Sergeant Marheine visited Virkez at Parramatta Gaol in relation to some documents, and that during the course of that visit, Virkez has intimated his desire to see Detective Turner, who, in turn, saw him on 19 March 1979.

15 Virkez gave other evidence at trial that the Commissioner of Police had taken personal documents from his cell. Counsel for Brajkovic and Zvirotic was prevented by the trial judge from further exploration of this line of evidence. During the trial the same Counsel alerted his Honour of having witnessed Detectives Milroy and Marheine speak to Virkez in the cells at court
20 during an adjournment. His Honour accepted the evidence of those officers that they had attended Virkez at the direction of the sergeant in charge of the cells who said Virkez had wanted to see them about a medical complaint and warned them in future that they approach the Crown Prosecutor in advance.

25 Now, turning to the case against Bebic. The Crown case against Bebic included evidence from the police officers about the raid on Virkez's premises in Lithgow and Bebic's tin shed and evidence of alleged confessions made by Bebic. Police officers gave evidence about having surveilled Virkez's premises from about 3pm on 8 February 1979 and having observed Bebic. At around
30 5.45pm Bebic was seen walking down the driveway at Virkez's premises and taking something out of the car which appeared to be masking tape. At 6.15pm he was observed leaving the house carrying a roll of masking tape and retrieving a rifle from the car. Under the direction of Detective McDonald police carried out a raid on 6 Macauley Street, Lithgow. At about 20 minutes past
35 7pm Virkez's Valiant was searched and the police located a large quantity of explosives, gelignite, behind the front seat, on the floor and also in the boot. This was corroborated by Captain Barkley of the Australian Army who had been earlier called to Lithgow Police Station. Captain Barkley was a qualified ammunitions technician.

40 During the course of the raids, police officers alleged that Bebic had made a series of statements that implicated him in the bombing. This included telling Simmons that there were bombs in the car, "two in the back seat of the vehicle, two more in the boot". Turner also gave evidence that in response to
45 Turner referring to the bombs being in Bebic's possession, Bebic said, "Who tell, who traitor?", and made various other statements indicating he would tell Turner information if Turner helped him. Bebic also allegedly implicated the other accused men in the bomb plot. Bebic allegedly said to Milroy, "bombs in car are safe, no go off, no connected", and later described and sketched how
50 he connected the explosives, detonator and clock. These sketches were Trial

Exhibit Q and contained in Tender Bundle Tab 4.1-Q, and the sketches, I think there's two pages appearing on the screen. He also referred to having been in the army and having a book about how to make explosive devices.

5 Turner gave evidence that Bebic participated in a record of interview in the presence of Milroy who recorded the interview on a typewriter. The transcript of the record of interview as typed by Milroy was Trial Exhibit D found at Tender Bundle Tab 4.1-D. Bebic allegedly made a series of confessions about
10 intending to use the explosives found in Virkez's car to blow up some places in Sydney and had given police officers the names of those involved in the plot. He wrote down the names on a piece of paper that he provided to Turner, and that piece of paper is appearing on the screen. The bombing plan was made around two weeks before on the long weekend when Bebic was at Zvirotic's place with Virkez. He admitted having stolen explosives and
15 detonators the previous October or November along with Virkez and Steve Topich.

The interview resumed at 7.30am the next day, 9 February. Bebic made further admissions about having stolen the explosives. Bebic was shown the
20 book Osvetnici Bleiburga and opened it at page 108 which showed how to make a bomb using a clock. He said that he had the book from his time in the Croatian Army where he was an engineer that did demolition of bridges. He admitted to having gone to the bush with Virkez to try out making a bomb with a clock. He said Virkez had no knowledge at the time of how to make a bomb
25 and he, Bebic, had taught him what to do. He told police he would show them where he did this as well as where the other explosives and detonators remained. The transcript of that interview was conducted over two days and was signed by Bebic. That's the final page of the transcript of the interview.

30 After the interview, the police evidence was that Bebic indicated a willingness to show the police around the Lithgow area to where the explosives were hidden. They went to Hassans Walls Road where buried inside a large burnt-out tree trunk was a large garbage bag and a yellow plastic bag containing six large cartridges of gelignite, some electric detonators and a roll
35 of Cordex explosive fuse, and on the screen is one of the photographs taken at the time by police which are found at Trial Exhibit H, Tender Bundle Tab 4.1-H. They then went on to a location in Newnes Forest Road to an area of bushland where Bebic had said he had dug up the explosives that were found in the car. Again, photographs were taken by the police and they are found at
40 Trial Exhibit J, Tender Bundle Tab 4.1-J.

Next Bebic was asked to show the police where he experimented with bombs and he took them to a disused quarry in Rydal Road, Bowenfels, and, again, photographs were taken which are appearing on the screen. He allegedly said
45 to Turner, "Blow up tyre here. No use clock, use battery, there pieces of tyre". They then went further inland to a dried-up creek where Bebic indicated a hole in the rock and told the police that he used a time clock. He stated, "want to make sure bomb works. Don't want to blow up self in Sydney", and there's further photographs to be found at Trial Exhibit K, Tender Bundle Tab
50 4.1K.

5 After his arrest, a further record of interview was conducted with Bebic by Turner, again recorded by Milroy on the typewriter, and the transcript of the record of interview is on the screen, Trial Exhibit N, now to be found at Tender Bundle Tab 4N. He was asked questions about the clock that was to be used at the Elizabethan Theatre bomb, and stated that Zvirotic was to obtain it. He stated that Zvirotic was the boss of the group and either Brajkovic or Ilija Kokotovic was the boss of the other group. The transcript of the interview was, again, signed by Bebic.

10 The Crown case against Bebic also included evidence from Richard Whitehead, a civil engineer, who was employed by Bridge Construction Pty Ltd at the power station. He gave evidence of two occasions in November 1978 where storage magazines at the power station were broken into. On the first
15 occasion a 15-kilogram case of 2-inch Johnson TNC explosive comprising 15 full cartridges went missing. On the second occasion six full cartridges of 3-inch Johnson TNC explosive, a number of L-series detonators and a number of instantaneous detonators were missing.

20 On 2 April 1979 Mr Whitehead went with Turner and Milroy to the army supply depot at Marrangaroo where he was shown by Army Captain Barkley a number of detonators, a real of Cortex and 2-inch gelignite cut into half cartridges which the police believed were stolen from the power station. Mr Whitehead identified the explosives to be the exact type of explosive used at the power station. He gave evidence that Johnson TNC
25 explosive is an unusual type of explosive on the Australian market, not readily available without a licence, and that he had purchased the Johnson TNC explosive three weeks prior to November 1978.

30 The case at trial for Bebic. Bebic gave evidence at trial and the following summary also includes evidence that he gave during a voir dire at trial. His account differed significantly to the events described by Virkez and the police. Bebic said that on 8 February 1979 he went to Katoomba to work. He returned home to Virkez's place at about 3pm and Virkez was not home. Virkez arrived back at about 4pm and went outside the house. When
35 he came back in, he asked Bebic for his shovel. Bebic indicated that he had taken it to his shed at 3 Hepburn Street, which led to a request by Virkez that the two men go to retrieve it. They went together in Virkez's car in the front of which was the book Osvetnici Bleiburga (The Avengers of Bleiburg). Virkez gave Bebic the book to read, but Bebic refused it. Virkez insisted and so when
40 they arrived at Hepburn Street, Bebic took it with him. Bebic went to get the shovel, gave it to Virkez, and Virkez then left with the shovel without Bebic, leaving Bebic on the understanding that Virkez would pick him up about an hour later. He'd left the book behind when Virkez subsequently picked him up. After Virkez returned to the shed and picked up Bebic, they returned to the
45 Macauley Street.

In closing address, Counsel for Bebic emphasised that the timing of Virkez's alleged trip with Bebic to dig up the explosives was implausible, given the
50 timeframe was too late.

Upon return, Bebic went to have a bath. He denied having any involvement in preparing the bombs, nor having seen explosives, nor the wires that were stuck to the clock. Virkez later came to Bebic's room and asked Bebic to lend him his clock. Virkez took a blue clock and then left.

5

When Virkez came to Bebic's room, he invited Bebic to accompany him to the bush, stating that he was going to go there to exercise. Bebic declined. A few minutes later, Virkez returned asking to borrow Bebic's rifle, which Bebic ultimately lent him.

10

Later, Bebic smelled something burning and looked out the window to see Virkez at a brick wall burning off some cardboard boxes and throwing some papers and magazines into the fire. Bebic heard a noise, like someone running round the house. He went to the lounge room, where he saw Virkez holding his rifle. He asked Virkez what was going on, and Virkez had responded, "You will see it now. You and your mate Tony Zvirotic will see the pictures in the magazine that I have prepared for you and I also think that those republicans would be seeing the pictures in the magazine." Virkez threw the rifle on the lounge room chair.

20

Bebic went over to the back door where he heard a voice saying, "Police, hands up, get out." He saw a man dressed in green overalls holding a rifle. Bebic was not carrying anything when he came out. He saw people with shotguns and pistols aimed at him, and he heard someone say, "Shoot the bastard," and someone else say, "no shoot, no shoot." Bebic said that the police rushed towards him and kicked at his leg. He was assaulted by police. Marheine grabbed him by the back of his hair. Turner placed his pistol in Bebic's mouth and asked, "where are the bombs?" Other detectives said, "shoot the bloody bastard," and he was beaten by the butts of the rifles.

30

At some time, he was taken into the house. He denied having made any admissions about explosives or being involved in the bomb plot. He was further beaten, and as he lost consciousness, Milroy poured cold water over him.

35

Bebic told detectives that the explosives did not belong to him, nor was the black Valiant his. Bebic explained that he'd lent his rifle to Virkez as he was going to shoot rabbits. In closing address, counsel for Bebic emphasised the absence of any material that would be necessary to prepare bombs, such as pliers, wire, drill, or cutting implements.

40

As for the events at the police station, Bebic denied having made the confessions attributed to him. He complained about stomach pain and asked for the handcuffs to be removed, which they were. Milroy said that he had something friendly to talk to Bebic about, saying they had information that he and Virkez had intention to disrupt water in Sydney. Bebic said, "That's not true, that's a lie." Turner was standing, hitting his own hand with an electric cable while questioning Bebic.

45

50 Turner left the room and returned with a list of names on paper. He put the list

5 in Bebic's hand and asked if he knew anyone on it. Bebic said that he only knew Zvirotic because he had lived and worked with him. Turner provided Bebic with another piece of paper and asked Bebic to copy the names in the way he would write and pronounce them in Croatian. Bebic objected, saying, "No. Names already there." Turner continued to hit his own hand with the electric cable, and Bebic eventually transcribed the names.

10 Turner placed a map on the desk and indicated with a red pen the proposed bombing areas, stating, "Here, you and your friend want to destroy the water mains of this city in these places, and some buildings, while marking the map". Bebic did not touch or mark the map.

15 Turner and Milroy told Bebic that they had information of plans to destroy water main and the buildings. He told them that he had "no idea about it. I know nothing about it; and I said to them that Virkez invited me for that evening to go to the bush and shoot rabbits, and I gave him a loan of my rifle, because he lost the magazine off his rifle."

20 Bebic said that he spoke very little English and did not understand the questions that had been written down. At the Lithgow Police Station, Turner had asked him questions about being involved with explosives, and Bebic had told him that he'd served in the army for 18 months, involved in the demolition of bridges. Turner had also asked him something about the bombing, but Bebic was surprised by the question and did not know what they were talking about. He denied having been asked the questions recorded in the record of
25 interview and did not give the answers attributed to him. He said, having been ordered to draw a sketch by Milroy, he did so.

30 When the interview resumed the next morning, nothing was typed. He did not recall anyone reading anything to him that day. He was taken by police to the various locations around Lithgow but denied having made any admissions about explosives. Bebic, Virkez, and Detectives Milroy, Turner, Musgrave, and Marheine, visited Hassans Walls. Milroy told him that he had information that Bebic had more explosives. Bebic thought, "I better say where it is or they will
35 start beating me up. I said that explosive not mine, it is Virkez's explosive. He buried it in the bush, and he showed me where it is, and I agreed to take them to the place where that was." Bebic gave evidence that he went to Newnes Forest Road with Virkez the day after stealing the explosives from the power station to bury two boxes of explosives, and that that was the only time he'd
40 been to Newnes Forest Road prior to 8 February 1979. When shown photographs of both Hassans Walls and Newnes Forest Road at trial, Bebic stated, "you see they threatened me" but confirmed both locations.

45 He agreed he'd been to Bowenfels previously with Virkez sometime in 1978 because they intended to go to South Australia to mine opals, and they had wanted to test out how to "manipulate a clock" for the purpose of mining. He said that in Virkez's house, there were always explosives and detonators.

50 He also admitted having gone to Wallerawang one day in around October or November of 1978. While Virkez was waiting in the car, Virkez bought some

explosives and placed them in the boot. The next day, Bebic went to the bush with Virkez. Virkez had told him that he had taken some explosives on a previous occasion and then drove Bebic to the other side of town to a rotten tree trunk where the explosives were.

5

As to the interview of 20 February 1979, Bebic said that he was due to appear in court that day, and Detective Milroy gave him some papers and told him to sign it. Bebic replied that he was not going to sign anything because he did not know what was written on it. Turner was, again, holding an electric cable and said Bebic had to sign it. He then hit him on the right hand and said, "Do you remember the evening when I put the pistol in your mouth? You were lucky that I did not kill you then, but I will if you don't sign it now." Marheine left the room, and a few minutes later, returned with a shotgun. He said, "sign it or I will blast your head off if you don't." Bebic signed the papers under duress but, in his evidence, said that the answers recorded in the interview were fabricated.

10
15

Bebic also gave evidence about his movements on 26 January 1979. He said he'd been working in Katoomba painting houses. He did not see Zvirotic that day and denied having travelled to Sydney with Virkez, nor did he go to the bush with Virkez to pick up explosives. He called evidence from a witness who said that Bebic had been employed as a painter in January in Katoomba.

20

Other evidence was also called in the case for Bebic about the nature of injuries he had suffered, and whether they were consistent with being beaten by the police. A photograph is appearing on the screen, which was one of the exhibits in the trial.

25

HIS HONOUR: Ms McDonald, I think you're going onto a new topic.

30

MCDONALD: I was going to turn to the case against Mr Brajkovic.

HIS HONOUR: I wonder if that's a convenient point to take a break.

35

MCDONALD: Yes, your Honour.

SHORT ADJOURNMENT

40

Your Honour, we're now moving to the Crown case against Brajkovic.

45

At around 2.40pm on 8 February 1979, a conference was held at the Criminal Investigation Branch, in Sydney, coordinating raids on the Sydney properties, led by Detective Inspector Moray. A further conference was held, at about 4.30pm, at Special Branch, attended by Perrin, Crothers, Helson, Jefferies, McNamara and Krawczyk. At around 6.30pm, Krawczyk and Helson attended Brajkovic's home, at 16 Restwell Road, Bossley Park. They had a brief conversation with Brajkovic, primarily about a demonstration to be held on 10 February 1979.

50

The evidence of the detectives was that Brajkovic had also asked them if they

5 knew Tom Mlinaric, to which Krawczyk replied, "Yes, he is the boss of the Marrickville club". Brajkovic then said, "He may be organising demonstration. He is weak, no patriotism". Brajkovic was also asked about Lovokovic and said, "Yes, you know him, he bullshit. He make many demos" and "he have no heart for Croatian people". Krawczyk and Helson then took up surveillance at Brajkovic's premises.

10 A further conference was held at the Armed Hold Up Squad at around 8.30pm. Following this, ten police officers attended the Bossley Park residence. Three officers went to the rear door and called out, "Police here, is anybody home?" Having not received a reply, they entered the room. The other police officers surrounded the house and searched the perimeter, when Brajkovic was not located within the house.

15 The Crown case was that Brajkovic was located lying in a gutter, outside of the house, surrounded by thick grass and a white plastic bag in the vicinity. There was a violent struggle, in which Brajkovic was detained and handcuffed. The police officers involved in the struggle were Pettiford, Helson, Harding and Morris.

20 The plastic bag found near where Brajkovic was detained contained two sticks of gelignite which had been taped together, as well as a number of flares and detonators. The flares were wrapped in a piece of newspaper, which bore a date of publication two years before Brajkovic started living in the house. Neither the flares nor the plastic bag were fingerprinted by police, which was said to be an oversight. The gelignite was also not sent for fingerprinting, because Detective Sergeant Wilson did not consider it had a surface that would carry any prints. The previous screen depicted the white bag, with the gelignite that had been taped together. The screen that has just disappeared was the newspaper which bore the date of publication two years prior to when Mr Brajkovic started living in the house.

30 The house was searched and police located a large amount of electrical and radio devices in a workshop-type room, including an alarm clock with a hole drilled in the face, with a missing large hand, as well as batteries taped together. The evidence of Detective Sergeant Wilson was that Brajkovic admitted to owning the electrical device, informing police that he was taking a course in electronics. The Crown case was also that Brajkovic made admissions to owning the white plastic bag, with its contents, stating, "Yes, I make bomb".

40 The police witnesses denied having seen any marks around Brajkovic's neck or throat. The Crown also put to the jury that any bruising or marks may have been inflicted in the course of the struggle in which police detained Brajkovic outside of the house.

45 At around 2.30am on the morning of 9 February, the police involved in the raid sat down together and typed a summary of the events. There was a general discussion as to what had happened. This typed version was subsequently used by police witnesses to produce their statements.

5 The case for Brajkovic. Brajkovic also gave evidence at trial. He said that he had occasionally attended pro-Croatian independence demonstrations and had been a member of the Croatian National Council. He was doing an electronics course at the time of his arrest. He was asked questions about whether a device could be set off for a specific time, and said that he believed that people who studied computer technology could do this, but would need to be experienced in the field.

10 At the time of the arrest, he was living with his wife, daughter and brother-in-law, Hudlin. On the weekend of 26 January 1979, he said he had been working and then spent time with his family. At around 7pm, he went to the King Tomislav Club with his brother-in-law to assist Hudlin in carrying instruments for a music group. He had an argument with a man there, who he suspected worked with Special Branch, and did not get home til late. He denied having a meeting with anyone at his home that night, and said that 15 Virkez had never been to his house. He only recognised Virkez because of having seen him at a demonstration near the German consulate in Woollahra, and perhaps on another occasion. He did not recall having any discussions with Virkez and did not receive a phone call from him on the weekend of 20 26 January.

On Saturday, 27 January, he went with Hudlin to Parramatta, to buy clothes, and then had lunch with a man called Bosnjak at Brajkovic's house. During the evening, he went to the club again, to hear the concert that was being 25 performed. He denied having visited a number of the premises on the Sunday, as Virkez had alleged.

30 Brajkovic denied having been involved in a conspiracy to blow up any buildings, or commit murder. He said that he did not have any explosives in his possession on the night of 8 February. He admitted to owning the batteries, but not for the purpose of making a bomb.

35 On the afternoon of 8 February 1979, he returned home from work at around 5pm and spoke to the two detectives who were outside the premises. He said that they wanted to ask particularly about a demonstration which was supposed to be on the following Saturday. He denied there having been any mention of Mlinaric or Lovokovic. Brajkovic said he had no reason to kill those men.

40 Later in the evening, after having been out and returned home, Brajkovic went outside to see what the detectives were doing, who were outside the house. He changed into his working clothes and crawled into the gutter between his house and the neighbouring property to observe the police, with binoculars. He saw a car approach the house and the occupants started 45 opening doors and running over the yard making noise. With people running all over the property he became scared and paralysed and the thought passed through his head that there had been cases where Croatian people were killed overseas in similar ways. He heard voices about shooting and heard someone say the word "shoot" or "don't shoot". One of the cars came and parked near 50 his foot where he was lying down in the bush. He recognised Krawczyk's

5 voice and at that point stood up and said, "What are you doing, what are you doing, what is this all about?". Krawczyk responded, "Don't worry, everything is all right". He was told to about lie down and people started screaming. He denied there having been a struggle. He asked why he was being arrested and why they must go to the house. He denied there having been any white bag or gelignite and said the only thing he had with him when he had been apprehended was his binoculars.

10 Brajkovic was taken into the house. He asked to use the telephone. Detective McKenzie told him to shut up and sit down and said, "Chain his hands". He was handcuffed. At one stage a detective came into the room and said, "Have you found anything?". Another replied, "Nothing". Mrs Brajkovic and Hudlin then said, "What did you expect to find, what are you looking for, why don't you tell us?".

15 Brajkovic was then taken to the CIB. He was left in a room with DS Harding and Detective Morris. He was assaulted by Harding who hit him in the face. Morris also assaulted him. Harding took a white towel, twisted it and applied it around his neck. Brajkovic at this point in time was still
20 handcuffed. He was violently assaulted further by the detectives.

25 The defence case for Brajkovic included evidence of Sister Jefferies, a nurse at Long Bay Remand, who gave evidence of bruising around his eyes and forehead on 9 February 1979 as well as on the back of his neck. Dr Gunawardena, a doctor on duty at Long Bay also saw Brajkovic and gave evidence that Brajkovic had told him he had been assaulted by police. He also saw bruises around Brajkovic's eyes.

30 Mrs Brajkovic also gave evidence. She corroborated some of what Brajkovic said about the events of the weekend of 26 January; namely, there had been a music festival at the King Tomislav Club on 27 January. At that time her brother, Hudlin, was living in the house and he had been practising his guitar. Brajkovic had gone to the club after Hudlin left. She did not know Virkez and had not seen him before the committal proceeding. She had seen
35 Zvirotic, Nekic and the Kokotovics at court but never at her house. She corroborated that on Saturday, 27 January Bosnjak had come to her house following which in the evening Brajkovic had gone to the club to hear Hudlin play. Brajkovic had returned home at around 8pm. On the Sunday he was studying electronics the whole day and they were both home Sunday evening
40 for the whole evening.

45 On the evening of the police raids she heard the cars arrive and got up to have a look. There were three men who asked where her husband was. She told them that he was outside. When Brajkovic was brought into the house, he kept saying, "Why am I arrested, what is happening?". She heard a police officer say, "Did you find anything?", and another replying, "No, nothing". She was shown the white bag and the three sticks of something at the CIB, but had never seen them before. At no time was she asked anything by detectives about explosives or shown any. She saw Brajkovic in gaol about a week after
50 his arrest and saw blue marks on his neck.

5 Hudlin also gave evidence. He said he had seen Brajkovic at the King Tomislav Club on the evening of 26 January where Hudlin was for a rehearsal of a concert that was taking place the next day. He corroborated the evidence given by Brajkovic about the movements on 27 January. On the night of 8 February 1979 he had gone to sleep at about 9.30pm. The next thing he remembered was a loud knock on the door. Three men came in. Hudlin asked what was going on and who they were, but was told to sit down and shut up. They started to search the house and he then saw Brajkovic be brought in, in handcuffs. Brajkovic was refused permission to speak to a solicitor. He kept on asking why he had been arrested and why he was there. When they got to the stage at which Hudlin and Ms Brajkovic had to go to the CIB, Hudlin spoke to his sister in Croatian. Someone asked what he had said and he was told to say it again in English. When he did, he was struck with a torch across his face and then taken out in a car and taken to the CIB. At the CIB he was asked a number of personal questions. A detective brought in a white plastic bag containing gelignite. Hudlin said he had never seen such big gelignite in his life. He had not been shown these items nor any detonators, wires or flares when at the house. He saw Brajkovic leave the CIB and at this time, there were bruises all over his face, eyes and forehead.

20 Bosnjak also gave evidence in the case for Brajkovic. He confirmed having spent the afternoon on 27 January at Brajkovic's house. Mr Mato Smolcic, the manager of the King Tomislav Croatian Club also gave evidence that he saw Brajkovic at the club on the evening of Friday, 26 January, who told him he was carrying things for his brother-in-law.

25 Brajkovic also called a witness, Kovacic, who was a government interpreter who interpreted during the committal proceedings. Her evidence was that during that she sat between Virkez and Brajkovic and at one stage during the committal Sergeant Marheine had given evidence that Virkez had marked locations in a street directory that were to the subject of the bombing conspiracy. Virkez said to Mrs Kovacic, "He is lying, what did I know where the theatre is? He gave me a pencil and opened the book and said, 'mark here, that is the theatre, and mark here, that is the water supply and mark the travel agencies'". On another occasion during the evidence in relation to the clocks bought from Coles in Lithgow, Virkez called out, "he is lying, he told me to buy the clocks".

30 Mrs Kovacic also went to see Virkez in Parramatta Gaol. A group of Croatians with which she was associated, the Civil Rights Defence Committee, had asked her to tell Virkez that they would be prepared to arrange for legal representation "if you are willing to tell the truth". Virkez told her that he would do what was best for himself and he had to look after his own interests. He also added, "I also have to settle my deal with the Chetniks".

35 40 45 Joseph Stipich, who was also arrested on the night of the raids but subsequently discharged at committal, also gave evidence for Brajkovic. He recalled having seen Brajkovic with bruises on his forehead and face and marks on his neck in the cells after being arrested.

50

5 In closing address, counsel for Brajkovic and Zvirotic submitted to the jury that they had been targeted because of their prior attendance at demonstrations. It was submitted that it was inconceivable that police had located the gelignite but had not immediately asked Hudlin or Mrs Brajkovic about it. Mr Brajkovic has provided a statement to the Inquiry and will be called to give evidence in the first hearing block.

10 The Crown case against Zvirotic. Zvirotic resided at a boarding house at 30 Chandos Avenue, Ashfield. Eight detectives attended the premises on the evening of 8 February 1979. Detectives entered the premises through the front and rear doors. They saw Zvirotic on the stairs leading up to the first floor and approached him to talk. Police witnesses gave evidence that Zvirotic had pushed Detective Gilligan and a violent struggle ensued. Zvirotic was subdued and asked for the number of his room to which he responded "Number 9". The room Number Nine was searched but another man was occupying that room, not Zvirotic. Detectives escorted Zvirotic downstairs and told him that a number of people had been arrested in Lithgow earlier that night in possession of explosives. Zvirotic responded, "fucking traitors, they sent you here, which one?". He then admitted his room was Number Seven, not Number Nine like
20 he had earlier stated. The room was searched and the police found a pistol, gelignite and a detonator. Police also located a document referring to Mlinaric. The pistol was later examined for fingerprints, but none were found on the item. The gelignite was sent for fingerprinting but it was not possible to obtain prints from it.

25 Zvirotic was taken back to the CIB. He was interviewed by police but declined to allow them to type his responses. Instead Detective Carroll recorded the conversation in his notebook. He made admissions to his involvement in the plot stating, "we fight to free Croatia. We want to show the whole world bad treatment to Croatia". In his admissions Zvirotic implicated Zvirotic and Bebic as well as Brajkovic, the Kokotovic brothers and Nekic. Zvirotic allegedly admitted to telling Zvirotic and Bebic how to put the bomb under the water pipe at St Marys and discussed other locations for the bombs. In respect of the Elizabethan Theatre, he said, "Saturday night Croatian traitors dance
30 there, we blow them up." He stated that the bombs made by Bebic were in Lithgow, and the plan was for Bebic to bring them to Sydney. The plan to carry out the bombings was first discussed at Zvirotic's place two to three weeks earlier with everyone present.

40 Zvirotic was shown the gelignite allegedly found at this place and said he had obtained it from Bebic some three to four weeks ago when he had gone to visit Bebic in Lithgow. Bebic had gone to get the explosives from the bush while Zvirotic had waited at his place.

45 Zvirotic also admitted to having intended to kill Mlinaric and Lovokovic who he described as a traitor. A record of Zvirotic's interview was an exhibit in the committal proceedings. It was not signed by Zvirotic.

50 No photograph of Zvirotic after his arrest was in evidence. The evidence of the relevant police officer was that when coming to process the photographs, none

could be found of Zvirotic, and there was no explanation as to why.

5 The case for Zvirotic. Zvirotic gave evidence in his own case. He stated that he had rented a room from Steve Topich with Bebic in Lithgow for four months while he worked in construction. While there, he met Virkez in around July/August 1978. When he moved out of Topich's residence, he rented a room in Virkez's house. Zvirotic's evidence was that Virkez had told him about occasions on which he had set fire to other premises, and Virkez (as said) became a bit scared of Virkez and decided to get out of the house. After he left, Virkez had come to see him and rung him on several occasions. Zvirotic had turned down invitations from Virkez to go to clubs and ultimately asked him not to come to Chandos Street anymore. Virkez was very upset about this, but after that, did not return.

15 In January 1979, Zvirotic had taken a trip to Melbourne. He returned on January 29. He therefore denied having met with Virkez and the others at Brajkovic's house, as Virkez claimed, on the long weekend. He said that he'd not seen Bebic since he'd left Lithgow, and he'd not seen Virkez for about two to three months before the arrest. He denied having given a list of items to Virkez for purchase for carrying out the plot. Evidence was called from Audrey Old who recalled having seen Zvirotic in the suburb in which she lived in Melbourne over the Christmas/New Year period in 1978/1979, and from another witness who'd been in Melbourne at the time, though neither could say for certain the date on which Zvirotic had left Melbourne.

25 On the day of his arrest, he'd been at home watching TV, and then reading a book. He said that the gun that the police had produced had never been in his room, nor had the gelignite or other items that were said to form part of the bomb. He said that he was looking upstairs on the night of his arrest when he saw a group of people talking on the landing. They turned to him and asked his name. When they ascertained who he was, they pulled out their guns and said, "Don't move." They came towards him, grabbed him by the hair, and handcuffed him. He asked which number his room was, and he said, "what is this all about, what do you want from me, why am I in handcuffs?" He gave the police directions to his room. He tried to find out what was happening but was not provided with any information.

35 Detective Jameson prodded him in the back and said, "Shut up, you bastard, or I'll put some bullets in you." While he was being escorted to the car, Jameson hit him with the butt of a pistol. He was further assaulted by Jameson before he entered the car.

45 In closing address, counsel for Zvirotic referred to the fact that no one other than the police had seen the gun, the gelignite, or other items seized from his room, nor was Zvirotic asked any questions in his room about where the bombs would be detonated. Although Zvirotic had allegedly told police that the co-conspirators had met at his home, no other tenants were asked questions about this.

50 When Zvirotic arrived at the CIB, he remained handcuffed. He was assaulted,

including by being hit in the ribs by Jameson and on the top of his head. Zvirotic said, "I have nothing to tell you about, what do you want from me," following which he was further assaulted by the police. He said that they kept hitting him all over and saying, "tell us, tell us."

5

Webster entered the room and interrupted the assault. He asked Zvirotic about Topich and Virkez. Zvirotic told Webster that he'd known Virkez as Vito and denied knowing anything about explosives. He was also asked questions about his membership of the Republic Party, and he informed police that he was not a member.

10

After some further discussions, Webster bought in two blank pieces of paper and asked him to print his name and sign. He wrote his name as ordered. About ten minutes later, more detectives entered the room and started hitting him again, including with a towel. He said he was screaming in pain. He denied having made confessions at the CIB and said that no one took notes while he was there.

15

Zvirotic's evidence was that during this assault, his hands were forced open and closed onto a pistol. Detective Carroll said to him, "Say that pistol is yours, you bastard, Say that it is yours." The Crown reminded the jury that no prints had been found on the pistol located at Zvirotic's premises, therefore casting doubt on why the police would've closed Zvirotic's hand around the pistol.

20

25

When Zvirotic was taken to Long Bay, he remembered complaining to somebody, possibly the nurse. He recalled having seen Brajkovic in the dock at Central Police Station, at which time his face was badly swollen and had marks around his neck.

30

Zvirotic also stated in evidence that he knew Mlinaric. He'd been involved in an incident with him in 1978, which left Zvirotic with 13 stiches in his head. He'd given instructions to a solicitor to commence proceedings against Mlinaric in respect of the assault. He denied having any intent or agreement to murder him, nor to murder Lovokovic. Mlinaric had previously given evidence about the incident and had said that Zvirotic had hit him on the forehead, and Mlinaric proceeded to defend himself with a billiard cue.

35

Evidence was called from Dr Gunawardena who said that he had seen Zvirotic on 28 February 1978 and obtained a history that there had been a physical altercation in May 1978 with Mlinaric in which Zvirotic's skull was injured.

40

Zvirotic also had alleged that he was assaulted by the police on 8 February. The examination revealed some tenderness in the lower spine and the abdomen. He was asked about whether the injuries were consistent with assaults alleged by Zvirotic.

45

The cases against Joseph and Ilija Kokotovic and Mile Nekic. The Kokotovic brothers lived at 9 Livingstone Road, Burwood. Nekic lived nearby at 20 Eureka Street, Burwood, but was arrested at the Livingstone Road

50

premises. His wife, from whom he was separated and child lived at 9 Livingstone Road.

5 At about 9.30pm, following a conference at the CIB, detectives commenced observing the Livingstone Road premises. The raid took place at about 10.15pm and was attended by nine police officers. At the time of the raid, as well as the three accused, Joseph's wife, Lydia, and daughter, Biserka, Nekic's wife, Christina, and son, Joseph, and Ilija and Christina's mother, Maria, were present at the house.

10 The detectives entered the house by the front and back doors. They did not have their guns drawn. When the police entered the house, they located the three accused at the doorway to a small attic. The men were in the course of leaving the room. Joseph Kokotovic was holding a pair of scissors. In the room, the detectives found two large half sticks of gelignite, four electric detonators, and five relay delay connectors. No photographs were taken of the explosives in situ on the table, nor were fingerprints taken as they were deemed not adaptable to fingerprinting, nor were the recovered explosives entered in the exhibit book. Photographs were later taken on 3 April 1979 at the Dangerous Goods Branch. Also found at the premises were a large number of placards bearing the words, "Death to Yugoslavia."

25 Joseph Kokotovic attempted to run from the room and was placed under arrest following a violent struggle with police. The explosives located at the premises were placed in the boot of a car and taken to the Special Breaking Squad office at the CIB. Joseph was conveyed to CIB in the same car. At the office, the explosives were locked in a security locker by Detective Grady until 11am the following morning where he took them out and conveyed them to the Dangerous Goods Branch at the Department of Labour and Industry.

30 Detective Howard stated that he spoke to Ilija Kokotovic in the attic room with Detective Parsons. Ilija referred to the explosives the police had found and stated, "Don't worry, it won't go off." He was asked what he intended to do with the explosives and replied, "We just have them." He was later again asked what he intended to do with the explosives and replied, "I have to do what my mind tells me to do to help my people in Croatia."

40 Ilija was taken to the CIB, where he was interviewed. The record of interview was typed. He stated he was a member of the Croatian Republican Party, and said that he was friends with Bebic and Virkez. He admitted to having been involved in the bomb plot, "to help my people", and implicated his brother Joseph, and Mile Nekic in the plot. He named the locations of the proposed bombings - some Serbian clubs, travel agencies, and the Elizabethan Theatre at Newtown, and explained his motivation: "The Yugoslavs are coming here, making a lot of money and taking it to Belgrade, where it is being used to kill my people". He also admitted to possession of the explosives found at the premises. He admitted to intending to kill Mlinaric and Lovokovic, but refused to say anything else on the topic.

50 Nekic was also spoken to at the premises. Detective Godden said that he said

to Nekic, "What can you tell me about those explosives there", to which Nekic responded, "What can I say? It is there". His house was searched and the police found books containing material on army training.

5 Nekic was interviewed at the CIB, following the search of his premises. After confirming that Bebic and Virkez had been arrested, Nekic asked detectives, "Did the police find the bombs?" He volunteered to tell the police "what we were going to do with the bombs", but declined to have the conversation typed. He explained that there was to be a meeting that night, at 11pm, at
10 Zvirotic's place, to plan the bombings, and that the bombs were going to be brought down from Lithgow. He named the sites of the proposed bombings. Zvirotic, the Kokotovic brothers, Bebic, Virkez and Brajkovic were to be present at the meeting.

15 Nekic identified the gelignite, detonators and connectors found at the Livingstone Road premises, and stated that Zvirotic had given them to Joseph Kokotovic about two weeks earlier. He stated that the men had been having meetings for the last month and were all members of the Croatia Republic Society party, of which he, Nekic, was the president. He said he'd been
20 reading books on army training, to train to fight against the Yugoslav government, identifying the books that had been found at his home.

Nekic also admitted to the conspiracy to murder Mlinaric and Lovokovic. He stated that they had planned to kill them "so that people would not think that we put the bombs in the picture theatre and the clubs". Zvirotic did not like
25 Mlinaric, because they had a fight.

Joseph Kokotovic was also interviewed at the CIB. He also declined to have the interview typed and, instead, Detective Grady recorded the conversation in
30 his notebook. Joseph allegedly confessed to his involvement in the bombing plot, stating, "We must do something for the years that our people have been like servants in our own country. You've caught us, but a hundred will take our place". He told police that his brother, Ilija, and Tony Zvirotic were the ones making the decisions and would tell the others involved the plan that evening,
35 at a meeting. He named the locations of the bombing plot - the Elizabethan Theatre, the water pipeline, some travel agents, and a Serbian club at Cabramatta. He was shown a list of the names given by Bebic of the men involved, and agreed that he had discussed the plan with the individuals named on the list, at a meeting at Zvirotic's place. Bebic or Brajkovic were to
40 make the bombs.

Joseph also admitted to possessing the explosives found at the premises. He said that Ilija and Zvirotic had brought them home a few weeks earlier and that he believed that they had come from Bathurst, from Bebic or Virkez.
45

Joseph also admitted to his involvement in the plan to kill Mlinaric and Lovokovic. He said that Zvirotic had hated Mlinaric because they had a fight, and he had planned to kill him, to move blame away from the group over the bombing of the Elizabethan Theatre. The killings were to take place a couple
50 of weeks after the theatre bomb.

5 The case for Ilija Kokotovic. Ilija Kokotovic gave evidence. Ilija accepted that he had a connection with the Croatian Republican Party, but it was mainly related to distributing literature. He had previously distributed literature and had also attended meetings in the park. He said that on the night of his arrest he went to the attic, after dinner, to retype a publication of the Croatian Republican Party, for the purpose of distributing it to Croatians who were interested. Nekic came up to the attic to join him. At a certain point in time, he heard noise and cries from downstairs. He and Nekic ran to the front of the attic and were stopped by men holding guns. One of the men, who he learned later to be Detective Sergeant Rogerson, pointed a gun at Nekic's stomach and pushed him.

10 Ilija went downstairs and there was commotion and noise everywhere. He saw Nekic's wife, Christina, holding her son and tried to calm her down. He kept asking, "What's going on?" He saw Joseph being led away, handcuffed. He was told to go back upstairs. When he went there, Nekic was sitting near a table. He eventually was told that men in the house were police. He did not see anyone carrying anything within the house and did not see anything that looked like explosives. He denied possessing the explosives found at his house, and he said he'd never seen them before.

15 He'd accompanied police to the CIB and was not, at this stage, told that he was under arrest. At this stage, no-one had mentioned any bombs, nor Virkez, nor Bebic. He was placed in a room at the CIB. There was no typewriter in the room. He was asked questions about Nekic. He denied having made the admissions attributed to him, and said that the first time he'd ever heard the version of the interview given by the police was in Court. He denied having admitted to being part of a conspiracy to murder Lovokovic and Mlinaric.

20 In closing address, his counsel submitted that it was improbable that the accused had talked freely about their involvement in the plot but then abruptly terminated their interview, before revealing any details of the location of the bombs, and refused to sign their confessions.

25 Detectives were given a screed, being a document containing names and information available to police at a briefing before the raid, and a further, more-detailed screed when they returned to the CIB after the raid. All the information contained in Ilija's alleged confession was contained in the screed.

30 Ilija denied knowing Zvirotic, although it was possible he'd met Zvirotic while distributing literature. He did not know Bebic or Virkez. He had not met Mrs Brajkovic before, although he did know Brajkovic, nor did he know Hudlin. The first time he'd ever seen Virkez was at the committal hearing.

35 The first he learned about why he'd been arrested was when he was taken to Court. Even then, he heard what was read out, but did not quite understand what was going on. He denied any involvement in a plot to blow up buildings, or kill people, or to do anything with explosives. He did not know the travel agencies the subject of the plots.

40

In closing address, his counsel referred to the fact that the explosives allegedly found at the Burwood premises were carried by Grady, in his bare hands, without separating or wrapping them. Different police had also given different evidence about the location of the items found at the premises. Police did not follow police instructions about bomb incidents, which included directions on notifying other agencies, evacuating the premises and the fulsome search of the house. Some officers admitted to having worked on explosive cases before, when the army was brought in when gelignite was found. Police did not follow normal fingerprinting procedure on explosives, nor were swab tests taken to determine whether the men had recently handled the gelignite. None of the police who attended the other raids had seen the Burwood gelignite when they were back at the CIB. There were also inconsistent descriptions of the gelignite, by various witnesses. Police generally had made few further enquiries for corroborating evidence following the confessions.

Counsel for Ilija Kokotovic suggested that one plausible version of events was that the Burwood trio's names were located by Special Branch detectives on the afternoon of 8 February 1979, and Bebic was asked to write them out, to make it look like he was the source.

The case for Joseph Kokotovic. Joseph Kokotovic gave evidence on oath. He said he had attended quite a few demonstrations and, as a result of one, had been charged with malicious injury to a vehicle, and placed on a good behaviour bond. He'd also been arrested on another occasion, in front of Town Hall, and charged with hindering police. On the night of his arrest, he was in the sitting room of his house, when he heard noises coming from inside the front of the house. He poked his head out of the door and, although he didn't remember the scene, recollected having been somehow bundled towards the hallway. He heard his mother screaming. He was aware of strange men all round the house. He started calling out "UDBa", and "Help, neighbours", as he did not know who the men were. There was a lot of hysteria and he was held by two men and then handcuffed.

After being handcuffed, he was sat in the lounge room. He did not recall having seen anything on a table like explosives, detonators or relay switches. He had not gone upstairs that night and it was not correct that he had been in the attic and attempted to leave while the police were there. He was not informed that he was under arrest nor of the reason why he was taken from the house. There was no reference made to bombs or gelignite or Zvirotic or Bebic.

Joseph Kokotovic was taken to the CIB by Detectives Counsel and Grady. When he was placed in the car, he did not see anyone go near the boot. At the CIB he was taken into a room with Counsel and Grady. He was asked some general questions about where he lived and his date of birth. The answers to the questions were typed up. After those questions were asked and typed, the two detectives looked at each other and said, "What about the rest?", to which the response was, "We'll fill out the rest later". He could not recall the other questions he had been asked other than whether he had been to Lithgow and if he knew anybody in Lithgow to which he answered,

"Nobody". He told the police about his involvement in demonstrations and in selling Croatian newspapers. At one stage he was asked what he knew about bombs or whether he made bombs, and he replied that he knew nothing about making bombs. During the course of the interview he was assaulted by police. He was struck across the head and while on the floor kicked a few times in the front. While he was being assaulted, police made comments like, "Tell us the truth. Tell us the truth". He was asked whether he had been using his electrical trades for other purposes and it was suggested he was using it to make bombs. He was threatened with a long gaol term, "You're going to get 15 years, my boy, and your daughter's going to be a big girl by the time her daddy comes out".

Joseph denied having made the admissions attributed to him by police. He denied any involvement in the bomb plot or the plan to murder Mlinaric or Lovokovic. He denied any plan to meet with his brother and Zvirotic that night. His counsel submitted to the jury that his alleged confessions only contained information available from the screeds that had been made available earlier to the police. He also denied having met with Virkez, Brajkovic, Zvirotic and others on the Australia Day long weekend. He could not recall his precise movements, but recalled having worked on Saturday, 27 January, and picked his wife up from the airport. He did not go to Brajkovic's home.

Character evidence was also called on behalf of Joseph Kokotovic. In closing address counsel for Joseph Kokotovic emphasised that the evidence of the gelignite said to be seized from Burwood was photographs taken well after the raid and not in situ. It made no sense that the Burwood trio would have such a large quantity of explosives at their home if it was expected that the explosives would be delivered from Lithgow that night.

The case for Mile Nekic. Nekic also gave evidence at trial. He stated that he attended demonstrations relating to Croatian independence between 1971 and 1979 and that he also used to sell literature to the Croatian community. He was responsible for importing some of the literature to Sydney. He was a member of the Croatian National Council. At the demonstrations he attended he became aware of the presence of Special Branch detectives. He denied having burnt a flag at a demonstration at a soccer match in 1976 as alleged by Detective Jefferies, but thought Ilija Kokotovic had done that. He did have a flag on that occasion, but did not run onto the field with it burning.

On the evening of 8 February 1979 he was at the Livingstone Road property and had gone upstairs where Ilija Kokotovic was busy with a typewriter. When the police arrived, he was upstairs reading pamphlets. He heard noise and screaming from downstairs and Joseph calling out, " UDBa. UDBa." He heard his wife's voice and started to run downstairs. Halfway down the steps he was stopped by a man who had a pistol in his stomach. He was told to go downstairs and ordered to sit down. He saw people searching the attic and taking items out, but only found out later they were detectives. He was told by police that they would be searching his house at Eurella Street. He admitted possessing the books that were found there. He said they were Australian Army books given to him by a friend and were in English and which Nekic

found hard to read and was unable to understand.

5 Nekic was taken back to CIB and interviewed. He told detectives that he did not know Bebic or Virkez, although he may have seen Bebic around in the Croatian community. He told detectives that he knew nothing about explosives at Lithgow. He was then left alone for about 15 to 30 minutes following which
10 detectives came into the room and informed him that he was under arrest. He was told that explosives and detonators were found at his flat. He told police this was not true. I interpose that there was ultimately no evidence that police had found explosives at those premises. He was then handcuffed and escorted to Central Police Station. At Central Police Station no charge was read out to him.

15 Nekic denied that the police had found explosives in the attic at Livingstone Road and denied having made the statements attributed to him. He denied any involvement in the bombing or the murder conspiracies. In closing address, his counsel pointed to the fact that all the information contained, Nekic's alleged confession was contained in the screed. Nekic's counsel also
20 pointed to the fact that police believed there were many outstanding explosives but made no further enquiries of the six men as to the location of those explosives. Further, despite the police belief that further explosives were outstanding, the Burwood property was not guarded nor searched extensively the next day. Neither the bomb squad nor search dogs were called in, for
25 example.

Other evidence called by occupants at 9 Livingstone Road. Mrs Maria Kokotovic, the mother of Joseph and Ilija also gave evidence. She denied that there were explosives at the premises, did not see the police handle anything
30 other than a small box and some papers, and did not recall hearing police use the word "explosives". Lydia Kokotovic, Joseph's wife, gave evidence and stated that the purpose of the attic was for keeping books and papers and that the children loved going up there. During the raids she saw Joseph handcuffed in the sitting room. There was nothing on the table next to him. At no stage did she hear the words "explosives" or "bombs" mentioned.

35 Christina Nekic, Nekic's wife, similarly stated that she heard no mention of detectives finding explosives, did not see them carrying out explosives or any explosives in the table in the lounge room. They had nothing in their hands as they led Joseph away.

40 LUNCHEON ADJOURNMENT

Your Honour, the next topic to be discussed during the opening is a brief
45 discussion of Yugoslav-Croatian history and involvement in politics.

At trial, the Crown called evidence from Dr Bosworth, a senior lecturer at the University of Sydney, with a doctorate in modern European history. He had expertise in Central European Slavic history, including what was, at the time, modern Yugoslavia. He explained the history of the regions of Yugoslavia,
50 dating back from World War I. Tito rose to power in Yugoslavia by the end of

World War II, leading a communist nationalist movement, with the aim of unifying the country. Dr Bosworth explained that Yugoslavia remained a country of extraordinary regional diversity. Following the war, there was considerable emigration from Croatia, by Croats, and dissatisfaction about the establishment of the federal government of Tito.

Detective Jefferies, at the trial, gave evidence about the nature of Croatian nationalistic activities within Australia. He said that he had spoken to Nekic, on around 26 May 1977, in relation to Croatian politics, and Nekic had told him he was a member of the Croatian Intercommittee Council and represented the Croatian Republican Party on that Council. Nekic also told Jefferies about proposed upcoming demonstrations by the Committee, and Nekic enquired about arranging a demonstration through the police.

Jefferies also said that on 26 November 1977 he went to Unisearch House, at Anzac Parade, Kensington, being the Yugoslav National Day ball, where he saw a group of Croatians distributing pamphlets to people entering the building. Among that group was Brajkovic, Joseph Kokotovic, Mile Nekic and Zvirotic. At around 8pm, he saw Brajkovic and Joseph Kokotovic ignite two flares and throw them into the building. Under cross-examination, Jefferies accepted that the flares were not thrown into the building, but, rather, put down the aperture in the wall, in the car park below.

Jefferies gave evidence of other demonstrations by the Croatian community that he had attended, including demonstrations at which Nekic, Joseph Kokotovic, Ilija Kokotovic, and Brajkovic were present.

In cross-examination, Jefferies was asked whether there was a group of people known as the Chetniks. He said that there was and his understanding was that they were Serbians who favoured the restoration of the Serbian monarchy to Yugoslavia, and opposed the Croatians. He agreed that there were Serbian organisations within Australia who opposed and sought to denigrate the Croatians. He had no direct evidence of any UDBa operations in Australia. It was put to Jefferies that he had arranged for or connived the arrest of political demonstrators who, for one reason or another, he wanted off the streets. He denied that he used the opportunity of the arrest of the men at Lithgow to get rid of Croatian Republican Party activists or other people considered to be active in the party or that this was a motivation for the fabrication of evidence. Jefferies agreed that he had never seen Virkez at a demonstration. Mlinaric and Lovokovic also gave evidence that in their history of involvement in the Croatian community, including demonstrations, they had never heard of Virkez.

Jefferies gave evidence of a meeting he had with Virkez on 10 February 1979, following the 8 February raid at Lithgow. According to Jefferies, the purpose of that two to three-hour meeting was not to discuss the 8 February incident but to discuss Croatian political affairs. No notes were taken or recorded of that meeting, including by Detective Hogue of Special Branch who was also present. Jefferies stated that he had committed it to memory and that that Virkez had revealed nothing new. Under cross-examination at the committal

Jefferies stated that he had not asked Virkez about his possible involvement in UDBa at the meeting. He had also denied being aware at that time of any report relating to Virkez in connection with a bombing incident in Canberra.

5 In addition to the Croatian Six, a seventh man, Joseph Stipich, was arrested and charged in relation to the bombing plot. Mr Stipich has given a statement to the Inquiry and will be called to give evidence in this first hearing block. Mr Stipich knew the Kokotovic brothers, Nedic and Brajkovic since around 1975. He had also been introduced to Zvirotic in around 1976. He
10 participated in Croatian clubs in Sydney and demonstrations promoting an independent Croatia.

On 8 February 1979, Stipich was arrested at his family home in Willmot. Five or six plainclothes detectives entered his room and conducted a search. He
15 was arrested and taken to CIB headquarters where he was interviewed. He denied knowing Bebic nor training or undertaking any training to make bombs. Stipich was charged with the possession of an explosive substance, being nine electric detonators. Police statements from the committal proceeding state that police located a coil of blue-coloured wire and a bundle
20 of electric detonators in a draw in a desk in Mr Stipich's bedroom.

The Inquiry has also received a statement from James McCrudden, a solicitor who acted for Stipich at committal. Mr McCrudden explains that during the
25 committal he asked the witnesses as to their personal involvement in the search and confirmed that they had seen a desk with drawers which contained explosives. Also as part of the material before your Honour is an interview conducted with Mr McCrudden concerning the evidence and his cross-examination of police officers at the committal.

30 DVD PLAYED TO COURT

Your Honour, that is an extract from an interview conducted by a journalist, Joey Watson, which included the interview with Mr McCrudden, an extract of
35 what your Honour has just heard. As revealed in that extract, at the close of the prosecution case Mr McCrudden called Stipich's father who testified that the desk was, in fact, an old table and had no drawers, and he also produced a photograph of the table, and there are two photographs there that were exhibits in the committal of the table. The matter was dismissed at committal and Mr Stipich was discharged. The transcript of the committal hearing of
40 Mr Stipich is not available to the Inquiry. The police officers who investigated Mr Stipich were not involved in the investigation of the Croatian Six and were consequently not called to give evidence at the trial of the Croatian Six.

Counsel for Ilija Kokotovic sought to cross-examine Mr Stipich at trial about the
45 evidence purportedly located by police at his premises. The trial judge noted counsel's intention to question Stipich in relation to the alleged finding of explosive material at his house and sought admission of that evidence as it tended to support the case that his client was framed by the police. Although the matter had caused him "some perturbation", his Honour rejected the line of
50 cross-examination in his judgment of 22 October 1980. In rejecting this line of

questioning, his Honour referred to the fact that none of the police officers who formed the raiding party which went to Stipich's house had been called to give evidence in the trial.

5 HIS HONOUR: Ms McDonald, can I just interrupt you and ask you this? The raiding party, as you've referred to it, that went to Mr Stipich's home, was it subject to the same briefings beforehand et cetera as the others?

10 MCDONALD: Your Honour, at the moment, the material that the Inquiry has gathered doesn't allow us to answer that question.

15 HIS HONOUR: Right. I'm just wondering if Mr Stipich had not been discharged at committal, there might've been, in effect, a Croatian Seven that was in trial before Maxwell J.

20 MCDONALD: Your Honour, there was a decision made to allow his committal hearing to be severed. Whether, if he was committed, he would've become the Croatian Seventh at the trial, a joint trial of all seven, I'm uncertain about.

25 Your Honour, at trial on 20 May 1980, before Virkez gave evidence, counsel for Ilija Kokotovic called on subpoenas issued to the New South Wales Commissioner of Police, the Department of Immigration, the Director-General of the Australian Security and Intelligence Organisation, and the Australian Federal Police, seeking production of documents concerning the accused and Vico Virkez.

30 On 26 May 1980, on the application of counsel for the Commonwealth, and on the basis of an affidavit from the Commonwealth Attorney-General as to the need to preserve secrecy about intelligence matters, Maxwell J upheld a claim for privilege made by the Commonwealth and set aside the subpoena directed to ASIO. His Honour did not inspect documents which had been produced on the basis of the Attorney-General's affidavit. His Honour's decision in this respect was considered by the Court of Criminal Appeal to be correct.

35 In the Court of Criminal Appeal, one ground related to fresh evidence obtained since the trial was raised. The fresh evidence was obtained as a result of a subpoena to the Prime Minister's Department. Although claims for privilege in the nature of public interest immunity were made in respect of the documents covered by the subpoena, certain documents were eventually made available
40 to counsel for the appellants, some on a limited basis. The new or fresh evidence included an affidavit sworn by a Mr R F Cavanagh, the Principal Intelligence Officer of the Australian Crime Intelligence Centre, deposing to a conversation with Virkez on 21 February 1980 at Parramatta Gaol, and two letters to the Prime Minister from Virkez, one of about 13 November 1979, and
45 one dated 13 August 1980. These letters indicated that Virkez sought to be returned to Yugoslavia, and that he had no apprehension of being treated as a political dissident if he was returned.

50 Roger Cavanagh had been issued with a subpoena requiring, among other things, production of documents, including conversations between him and

Virkez. He swore an affidavit and deposed that he did not have any documents in answer to the subpoena, and as far as he was aware, no such documents existed, and that's paragraph 3 of the affidavit.

5 He stated, at paragraph 4, that on 21 February 1980, in the company of
Detective Senior Constable JS Blades of the AFP, he went to Parramatta Gaol
to interview Virkez. No formal record of interview was taken, given that the
Commonwealth government was not a party to the prosecution. Some brief
10 notes of the interview were made that were subsequently destroyed, following
the preparation of a letter dated 11 March 1980 to the Department of Prime
Minister and Cabinet. In the course of interviewing Virkez, he informed Virkez
that he had been told by the Yugoslav Consulate-General that Virkez had
called them on the morning of 8 February 1979 and gave them information
15 which led to the arrest of Virkez and a number of members of the Croatian
Republican Party. Virkez agreed that he had done so. Cavanagh suggested
to him that he'd been an informant of the consulate-general for some time, and
he'd visited their premises on a number of occasions. Virkez, at first, denied
this claim, but, later said, "You were right, but I have only been giving them
20 information about things in the community. I wanted no part of this plan to
blow up people. That's why I got scared and told everybody about it". Virkez
elaborated that he'd informed the consulate-general about who was on
committees in the community, who collected pamphlets and newspapers, to
hand them out. Virkez denied being more than a casual informant or being an
officer of the UDBa, stating, "I only got involved because they told me it was
25 my duty, as a patriot Yugoslav. I had never been paid for it."

Cavanagh had a second meeting with Virkez, at the gaol, on 7 March 1980,
again accompanied by Blades, as well as two NSW Police officers, Johnson
and Radalj, then of the Special Breaking Squad. At this meeting, Virkez did
30 not say anything about his relationship with the Yugoslav
government. Cavanagh states, "This interview almost entirely consisted of
conversation between myself and Virkez regarding the allegations of
maltreatment by the NSW Police made by Virkez in his letter to the Prime
Minister, the fact that it was the NSW Police who had the running of the case,
35 that he was in no danger from the NSW Police, and that he should arrange to
obtain his own legal counsel".

On 11 March 1980, following Cavanagh's meeting with Virkez, at Parramatta
Gaol, a letter was sent by the AFP to the Department of Prime Minister and
40 Cabinet, "Attention: Security Branch", which is now on the screen. Amongst
other things, the letter suggested that NSW Police were aware of Cavanagh
having interviewed Virkez, and that, in the opinion of the interviewing
officers - that is, Cavanagh - Virkez had been operating in Australia, as an
agent of the Yugoslav government, and it was in this connection that he
45 became involved with the Croatian Republic Party. The letter also indicated
that consultation had occurred with NSW Police about the possibility of Virkez
being deported upon conviction.

Cavanagh was cross-examined during the Court of Criminal Appeal
50 hearing. He stated that when he spoke to Virkez he sought to determine how

many times he'd visited the consulate-general and when, but Virkez was vague or possibly evasive. He did not speak to Virkez about the nature of the bombing conspiracy, and limited his conversation to the letter Virkez had sent to the Prime Minister.

5

Cavanagh stated that he had formed the impression that Virkez was carrying out a minor function which is often requested by a number of governments. He was not an agent in the true sense; he was simply providing information. Cavanagh did not agree that Virkez was necessarily under the day-to-day instruction of the consulate-general, but he'd been asked, in general terms, to provide community information.

10

Cavanagh recalled that "The major thing that was passed on to the NSW Police was that, in my opinion, he was not a professional agent". This was passed on to a number of officers he was dealing with at the time, including Detective Sergeant Turner, who was the officer-in-charge of the case. He could not recall precisely what he told Turner, but, if anything, he would have said, "He's just like a lot of others in the community. He has been handing material on, from time to time, but he is no professional agent".

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The Court of Criminal Appeal, in effect, accepted that the material qualified as fresh evidence, but ultimately rejected it as sufficient to uphold the grounds of appeal and quash the convictions. Although the Court of Criminal Appeal said that they were entirely persuaded that Mr Cavanagh's evidence was true, and accepted the fact that Mr Virkez was an agent, in the limited sense, which the new evidence now discloses, of the Yugoslav government, in Australia, that that did cast some doubt on the way that his role was presented by the Crown at trial. However, they concluded:

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"But, all in all, if one accords to the new evidence the greatest weight of which it is capable, it merely discloses a reason why Virkez might deliberately lie in order to implicate those who were his political adversaries or were at least in opposition to those whom he, albeit in a minor way, was serving. But it does not persuade us that he did; nor does it impeach the evidence of the appellants' admissions. We are not satisfied, therefore, of the appellant's innocence; nor do we entertain a reasonable doubt of their guilt in the light of the evidence at the trial which the jury must have accepted.

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Reading the evidence at trial and endeavouring to construe the jury's verdict most favourably to the appellants, we nonetheless think that it is likely that the jury accepted the substance of Virkez's testimony.

45

It may be, and we are prepared to accept this, that the fact of Virkez's association with the Yugoslav Consulate-General might well increase the reserve with which his evidence would be approached by a jury. But the critical matter is that the admissions made by the appellants, with the possible exception of Brajkovic,

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provided, if they were believed, powerful corroboration of what Virkez had said, and in the case of two of the appellants, inculpatory evidence which cannot be found in Virkez's own testimony.

5 We do not overlook that Cavanagh's evidence is in some respects
in conflict with the denials made by Virkez in the witness box at trial
and would be likely thus to establish Virkez in those respects as a
liar, but this consequence would not have affected the evidence of
10 the police about the admissions allegedly made and these are, we
think, decisive. We are not satisfied, therefore, that had the
evidence of Cavanagh been led at trial, a different result would have
been likely."

15 In the application of the petitioners before his Honour Wright J, his Honour
noted:

"The Court of Criminal Appeal's reasoning appears to have been
that the police evidence of the confessional statements supported
Mr Virkez's evidence concerning the bombing conspiracy so that the
20 jury could have accepted the truth of Virkez's evidence about the
conspiracy even if Mr Cavanagh's evidence had been called at trial
and established that Virkez was a liar in other respects. It was also
concluded by the Court of Criminal Appeal that neither of the letters
to the Prime Minister tended to affect the evidence Mr Virkez gave
25 at trial or to impeach his credit."

Your Honour, on 14 October 1982 the Court of Criminal Appeal dismissed
each appeal against conviction and denied each applicant leave to appeal
30 against sentence.

Your Honour, on 14 March 1986 the High Court refused special leave to
appeal against the convictions. During the course of argument, counsel for the
Crown was asked about the relevance of the fact that information known by
Cavanagh at the time of the trial arising from his conversation with Virkez, was
35 in the possession of the Crown in the right of the Commonwealth or an officer
in its employ. Mr Blanch of Queen's Counsel, who appeared for the Crown,
candidly accepted that if the material were in the possession of the State and
more specifically the Crown Prosecutor, and was hidden from the defence, the
result would be almost automatic that there would be a miscarriage of justice in
40 those circumstances because of the duties of the Crown to disclose relevant
material to the defence. The Crown's argument proceeded on the basis that
there was no suggestion that the information known to Cavanagh was known
to the State prosecuting authorities. As I will come to shortly, new material that
has been made available since the trial and the appeals suggests that contrary
45 to this line of argument, members of the New South Wales Police Force were
aware of Virkez's association with the Yugoslav Consulate General.

In 1991 two journalists independently interviewed Virkez in what was then
Yugoslavia. Paul McGeough from the *Sydney Morning Herald* published a
50 newspaper article on 26 August 1991 and on the same date a Four Corners

episode entitled "Cloak and Dagger" was broadcast featuring an interview between Virkez and the journalist Chris Masters.

5 Your Honour, on 29 November this year a hearing schedule for the first hearing block was circulated amongst the parties and it included a reference to Mr Chris Masters if required. Since that time, your Honour, the Inquiry has obtained from Mr Masters his rather lengthy notebook which requires some discussion with Mr Masters and some deciphering of the material. To allow that to occur and also to allow the parties to participate in a conference with Mr Masters, it has been determined that Mr Masters, if he is to be called, will not be called in this block of hearing but will be postponed until next year.

15 Now, your Honour, in the Four Corners episode, as we have indicated, there was an interview with Mr Virkez. Mr Virkez gave evidence that he received training as a member of the Serbian Black Hand, and that he had been in Australia spying for the Yugoslav authorities since the early 1970s. Also in the interview, he also commented upon the trial and his evidence at the trial, and we'll now play two excerpts from that interview.

20 DVD PLAYED TO COURT

Your Honour, I referred to a *Sydney Morning Herald* article published on the same day by Paul McGeough, an article entitled, "Fall guy breaks silence over ASIO's terrorist trap." As I said, it was published on that day, and it contained similar material, and the article is now on the screen. It quotes Virkez as having said he was a member of an Australian cell of the Black Hand, a Serbian terrorist group. He was motivated by anti-communist sentiment to believe in the return of the long deposed Yugoslav monarchy and total freedom for the Serbian Orthodox Church. He infiltrated several Croatian terrorist and political groups in Australia in the 1970s with ease. He had joined Serb and Croat clubs under different names and had three names at one stage. He admitted to having informed ASIO and the UDBa on Croatian activities but denied that he was employed by them. He denied having been a UDBa agent and stated, "It was ASIO and the police that were working for UDBa, not me."

He spoke to ASIO by telephone and would go to Sydney and call them in Canberra. The woman on the switchboard knew his name and would put him through to a man called Cavanagh. Significantly, in court, he told lies, stating, "I only about half of my evidence. Some of these men were wrongly convicted, but there was nothing I could do." He did not know who was involved in the plot, stating, "I don't know which of them was guilty. I told them that we had yet to decide who would do what, and we were to have a meeting in Sydney. Bebic and Zvirotic definitely would not have been involved, but in court, I said that all six were going to do it." He said, "I was not going to lay bombs. Why would have I tipped off the police? Bebic did not have the training. Zvirotic was a political operator and was too frightened to be involved. Bebic and Zvirotic might have been involved in the planning, but I still can't say who was going to do what."

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After he advised ASIO that a Croat plot was afoot, he was told to carry the bombs in his car. He was told he would not be charged and would only spend two to three days in gaol. After he was charged, he was assaulted.

5 While in prison and after his release, he was visited by Yugoslav agents, or
taken, under NSW Police or ASIO escort, to meet them in the Yugoslav
consulate in Woollahra. For much of the six months between his release and
his deportation, he'd been kept under police guard. When he was deported,
10 two men from ASIO sat with him on the plane, until the plane arrived in India,
at which time they were replaced by two UDBa men, who took him to
Belgrade.

Mr McGeough, the journalist who wrote the article, is now retired and living in
15 America. However, he has provided a statement for the Inquiry.

Police culture in New South Wales around the time. On 23 September 1991,
Mr Roger Rogerson gave a television interview, in which he spoke of the way
in which police frequently verbed people, fabricated evidence and loaded
people up, resulting in their convictions. This was reported two days later, in
20 the *Sydney Morning Herald*, and included a reference to "safe-blowers, fearing
getting a couple of sticks of geli found in their cars or in their possessions".

Subsequently, in late 1991, articles dealing with similar matters, including
police deliberately lying under oath, and planting guns or explosives on people,
25 appeared in the *Sydney Morning Herald* and the *Sun Herald*.

Six years later, the Royal Commission into the NSW Police Service, known as
the Wood Royal Commission, released its final report. Extracts of the report
will be before your Honour, at Tender Bundle Tab 13.13. The report referred
30 to a pervasive culture among NSW Police of verballing and planting evidence,
and the use of threats or improper persuasion to procure confessions.

One of the witnesses your Honour will hear from in the second block of
evidence, next year, we anticipate, will be Ian Cunliffe. On 22 February 2007,
35 Ian Cunliffe gave evidence at a New South Wales coronial inquest into the
death of the Balibo Five in East Timor. On the screen is an extract of the
evidence. Mr Cunliffe gave evidence about an instance, when he was Deputy
Secretary of the Department of Prime Minister and Cabinet, where there had
been withholding of information "which would have been significant in a major
40 criminal trial". He said there had been an interdepartmental committee,
consisting of ASIO, Department of Immigration, Foreign Affairs,
Attorney-General's and the Commonwealth police, chaired by the Prime
Minister and Cabinet, where a "decision closed matters that I thought were
tantamount to perverting the course of justice in a criminal trial involving about
45 six defendants, here in Sydney". He said that a decision was made that
material that was available would not be made available, and he was informed
that, if the material was subpoenaed, it would not exist.

Later, on 20 August 2012, Mr Cunliffe wrote to the *Sydney Morning Herald*, in
50 response to an article about the Croatian Six that referred to allegations by him

that Canberra intelligence and police officials had suppressed information in the case of Croatian Six. He affirmed the allegations he had made, stating, "I'm confident that the Commonwealth has records which demonstrate clearly the truth of my allegations, and that the suppressed information would have resulted in a not-guilty verdict in the Croatian Six case."

In 2016, the third volume of *The Official History of ASIO*, dealing with the years 1975 to 1989, was published, entitled, "The Secret Cold War: The Official History of ASIO 1975-1989", by John Blaxland and Rhys Crawley. The process by which this official history was prepared was described in the preface to that volume, at page 14, as follows:

"Once we had completed the manuscript for each volume, it needed to be cleared by ASIO to ensure that it did not disclose techniques that might still be in use, information that had been received from foreign intelligence agencies (and could not be released by ASIO), and the names of ASIO officers and agents. The clearance process involved the authors sitting with ASIO officers and examining each matter ASIO wished to redact. Often, ASIO would be satisfied with changing or redacting just one word or phrase. At no stage did ASIO seek to change any of our conclusions. If ASIO thought our conclusions were misguided, we demanded that ASIO show us documents that would prove us wrong. If ASIO could not do so, the manuscript was not changed. Naturally some aspects of the story we have not been able to publish for reasons of national security or international relations. Not all the names of operations could be released and in some cases an operational name has been replaced with another name so that the original name is protected."

In the sixth chapter of that volume of *The Official History* the authors deal with matters relating to activities of the Croatians in Australia during the relevant period. It includes the following concerning the Croatian Six, and this appears at pages 138 to 139:

"Virkez had acted as an informant on Croatian nationalist activities to someone ASIO suspected of being an intelligence official attached to the Yugoslav Consulate-General in Sydney. A few hours before walking into the Lithgow Police Station on 8 February 1979, ASIO had intercepted a telephone call from Virkez to the consulate claiming that three others - Brajkovic, Bebic and Zvirotic intended to carry out the attacks. The article referred to Masters' interview with Virkez and the Court of Criminal Appeal's comments in its judgment that Virkez probably was a Yugoslav Intelligence Service source, a matter that may have no effect on his credibility. The book states 'the Croatian Six were realised after it became clear that Virkez had fabricated his story' and that later revelations indicated that their convictions resulted from a deliberate YIS operation to portray Croatian Australian community as extremist, terrorists and increase public support for Yugoslavia. ASIO had failed to discern the Yugoslav Intelligence

Service actions and intentions within the Croatian community and the wrongful conviction of the Croatian Six was only one of a number of similar calls that in hindsight demonstrated a lack of insight."

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In the application before him, Wright J noted at paragraph 37:

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"It is difficult to determine whether the authors' statement was intended to assert a causal link between [the release of the Croatian Six] and it having become clear that Mr Virkez had fabricated his story. The authors did in the rely upon any other corroborating information. Furthermore, the description of the conviction of the Croatian Six as wrongful is only an opinion of the authors. Nonetheless, the status of the work as the official history of ASIO, the records to which the authors are access and the process by which this official history was prepared suggests that this opinion deserves some weight when considering an application for an inquiry such as the present."

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In 2018 certain ASIO records relating to Virkez were declassified. The ASIO material indicates that Virkez was in contact with the Yugoslav Consulate as far back as 14 August 1978. The material containing a list recording the contact between Virkez and the Yugoslav Consulate as follows with Virkez identifying himself as "Vido".

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On 8 February 1979 ASIO recorded a conversation between Virkez, described as "Vitimir Misimovic, aka, "Vito-Vido", and S Kreckovic at the Yugoslav Consulate in which Virkez informed the consulate about "some bombs" to be placed in Sydney, one to be placed "where the dam is, another one the Hajduk Club, another at Balkan." He also referred to somewhere "where the singers are going to be." Virkez named Brajkovic, Zvirotic and Bebic as participants in the bombing plot. Virkez was to drive them to Newtown to place the bombs. The consulate advised Virkez to ring the police.

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The ASIO material also indicates that Virkez continued to attempt to contact with the Yugoslav Consulate after his arrest. On 5 March 1979 a Mr Bennett contacted a Mr L Coshott at the Yugoslav Consulate describing himself as Virkez's friend. He stated that Virkez had asked him toring Mr Kreckovic at the consulate and "tell him to come and see him in gaol because he's in big trouble and needs the help of Kreckovic". The ASIO intelligence notes comment, "It is apparent that Virkez, YIS informer and Lithgow bomber, now realises the trouble he is in". Other material in the ASIO files refers to Virkez as an informant.

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On 28 February 1979 ASIO published a report, which is up on the screen, to the Special Inter-Departmental Committee on Protection Against Violence on Croatian activities in Australia, the SIDC-PAV report. The report refers to the arrests relating to the alleged bombing and, at paragraph 34, refers to Virkez as follows:

5 "One of those arrested was to act as a driver for those involved in
the proposed bombing operation. For a period of at least six
months prior to the arrests, that person also acted as an informer on
Croatian nationalistic activities to a person suspected by ASIO of
being an intelligence office official attached to the Yugoslav
Consulate-General in New South Wales. Some hours before his
arrest, that person contacted officials at the Consulate-General and
passed them detailed information about the proposed
10 bombings. The incident reveals the depth of the penetration of
Croatian extremist groups by the Yugoslav Intelligence Service in
Australia."

15 On 14 March 1979, Assistant Commissioner Roy Whitelaw of the New South
Wales Police contacted ASIO to discuss its report about Virkez, and
specifically, paragraph 34 of the SIDC-PAV memorandum. This memo, which
is up on screen, notes that Whitelaw was "very concerned" about this
information as if the opposition became aware of this information, it could
"blow a hole right through the police case." He considered the paragraph to be
20 sub judice.

25 An internal ASIO memo also records a record of conversation with Assistant
Commissioner Whitelaw on 16 March 1979, and again, it's up on the
screen. The memo refers to the SIDC-PAV report dated 28 February 1979
and concerns expressed by Mr Whitelaw "as to possible repercussions which
could flow" from that document "when the Croatians were presented to the
Court on charges arising from events mentioned therein". The memo further
notes:

30 "Mr Whitelaw explained that for some years, there had been
allegations and rumours to the effect that official Yugoslav
government representatives in Australia had been attempting to
discredit Croatian nationalist organisations by the use of agents
provocateurs among their own people, or that "incidents" had been
35 staged at the instigation of those representatives, and then had
been blamed on them. Mr Whitelaw's view was that this incident
would give rise to similar allegations. For this reason, the ASIO
information should be available to the Police Prosecution Branch
"so that the police prosecution would be aware of all the
40 circumstances, and thus avoid blundering into a possible untoward
situation during the committal hearing.

45 The discussions ranged at some length over the ways in which the
police could be embarrassed during the Court hearing should
allegations that an agent provocateur be raised. Mr Whitelaw
referred several times to the need to properly brief police as to the
ASIO information in that context."

50 Virkez was the topic of further discussion amongst the Commonwealth
agencies in the early 1980s. On 9 April 1980, an Inter-Departmental meeting
attended by Prime Minister and Cabinet, including Mr Cunliffe, Roger

5 Cavanagh, Attorney-General's and DFAT referred to Virkez, reiterating that NSW Police had been informed early about information in the possession of ASIO about Virkez and stated that "legal and police opinion was that Virkez's involvement with the Yugoslav Intelligence Service, which was rumoured in the Croatian community, would not support allegation that he was an agent provocateur, and PMC will issue summary of meeting."

10 An ASIO record dated 9 April 1980 further refers to Virkez having joined the Croatian Republican Party on behalf of the YIS and, again, refers to Deputy Commissioner Whitelaw's knowledge of the information contained in the SIDC-PAV report of 28 February 1979. The ASIO material contained a note dated 6 July 1982 titled, "Yugoslav Intelligence Services (YIS) further contacts and informants." The document then lists a series of names, including, as depicted on the screen, "Virkez. Vico, HQV-14-58, COC-YIS informant and suspected agent provocateur."

15 The ASIO material, therefore, contains suggestions that Virkez was an informant for the YIS, and possibly even joined the Croatian Republican Party, on its behalf, and possibly acted as an agent provocateur. Further, the material suggests that both Commonwealth and NSW Police were aware of this connection, a fact that was not brought to the attention of the accused at trial. The relevance of this and the implications for the convictions of the Croatian Six will be explored during the Inquiry.

20 If your Honour pleases, that is the opening for the Inquiry. Before calling the first witness, there are some administrative matters to deal with, including the tender of further evidence. Ms Epstein will address your Honour in that respect.

25 HIS HONOUR: Thank you, Ms McDonald.

30 EPSTEIN: Your Honour, can I start by addressing the issue of a non-publication order. Can I hand up to your Honour a document in which I seek two further non-publication orders. The first is to continue a non-publication order your Honour has previously made, until today's date, in respect of paragraph 11 of the statement of Mr Brajkovic dated 26 October 2023. The second is in respect of personal information about one of the police officers involved at trial.

35 HIS HONOUR: Yes. Is there anything more to be said about the matter? I take it, it's on the same grounds that applied earlier.

40 EPSTEIN: It is, your Honour.

45 HIS HONOUR: Nothing has changed in the intervening period?

EPSTEIN: No, nothing has changed, your Honour.

50 HIS HONOUR: I make those orders in the same terms as proposed.

5 EPSTEIN: Could I then turn to the tender of further documents, your Honour. At the first directions hearing, on 10 August 2023, documents forming Exhibits 1 to 4 in the Inquiry were tendered, which included formal documents establishing the Inquiry, Exhibit 1; the transcript from the trial of the Croatian Six Exhibit 2; various judgments in respect of the Croatian Six, Exhibit 3; and exhibits tendered at the trial of the Croatian Six, being Exhibit 4.

10 Before I set out what documents I propose to further tender as part of the new tender bundle, in relation to Exhibit 2, two pages in the documents your Honour has before you were misnumbered; those being pages 4749 and 4750. At an appropriate time, I seek your Honour's leave to uplift those two pages and replace them with the correctly numbered page numbers. If your Honour pleases, we can do that after the break, by enquiry with your associate.

15 HIS HONOUR: Yes.

20 EPSTEIN: Could I then hand up to your Honour an index of the proposed additional tender bundle. This sets out what was initially circulated to the parties on 2 November 2023, and updated further on 23 November 2023. It is a voluminous tender bundle and the hard copy has been placed on the shelves in front of your Honour. To assist with the tender of these documents, could I ask that your Honour mark the index MFI 2?

25 MFI #2 INDEX TO TENDER BUNDLE AS AT 04/12/23

30 If I could briefly explain to your Honour how this index is now set out. The index includes the exhibits which have already been tendered, in black, and the new documents, marked in red. The tender bundle adopts a numbering format which permits further documents to be added at convenient locations in due course. I'd ask your Honour to consider marking the exhibits in the manner set out in the tender bundle index.

35 HIS HONOUR: Yes.

40 EPSTEIN: I'll briefly outline the documents which are listed in the red text in the index. These documents include further transcripts relevant to the Inquiry, at Tabs 2.2 to 2.5, including transcripts for bail hearings, the committal hearing, the proceedings before the Court of Criminal Appeal, and the application for special leave before the High Court.

45 Exhibit 3, which presently comprises the Croatian Six judgments, has been updated to include beyond Exhibit 3.39, which was previously included, Tabs 3.40 and 3.41, which are judgments of the Court of Criminal Appeal, dated 27 May 1982 and 14 October 1982.

50 In respect of Exhibit 4, which includes the exhibits tendered at the trial of the Croatian Six, a number of exhibits that were previously marked "Missing" in the index, which was then marked MFI 1, have been located and are included in this updated index.

5 Counsel Assisting also propose to supplement the existing Exhibit 4 with further sets of exhibits and documents marked for identification relevant to the Inquiry. I propose to tender Tabs 4.2 to 4.4, which contain the exhibits tendered at the committal hearing of the Croatian Six, the documents marked for identification at the Court of Criminal Appeal proceedings, and various indexes to exhibits and documents marked for identification at those various proceedings.

10 Your Honour, the updated index also contains, at Tab 5, further Supreme Court records pertaining to the Croatian Six, including charges, antecedents, summaries of evidence and various other court records, at Tab 6, photographs and diagrams relevant to the Croatian Six and various locations relevant to their charges, at Tab 7 documents pertaining to the Vico Virkez, including transcripts, judgments, citizenship records and other records, at Tab 8, documents pertaining to Joseph Stipich, including antecedents, exhibits from his committal proceeding, police statements and the more recent statement received from Mr Stipich and his former solicitor, Mr McCrudden. Tab 9 contains the declassified ASIO records which were before Wright J and which have been ordered chronologically. Tab 10 contains National Archives of Australia records specifically comprising relevant declassified Commonwealth Government records released by the National Archives of Australia on 20 8 August 2022. Tab 11 contains relevant documents produced by the New South Wales Commissioner of Police. Tab 12 contains relevant documents produced by the New South Wales Department of Communities and Justice 25 pertaining to the Croatian Six. At Tab 13 your Honour will find publications and related records relevant to the Inquiry, including the Four Corners episode Ms McDonald has played this afternoon and documents related to that program, and further other newspaper reporting and publications in the media. Tab 14 contains policies, procedures and training documents relevant 30 to the Inquiry. Finally, Tab 15 contains additional evidence relevant to the Inquiry, including documents directed to witness availability and a recent statement provided by Mr Brajkovic. Paul McGeough has also provided a signed statement to the Inquiry yesterday and an unsigned version of this statement was previously circulated to the parties on 29 November 2023.

35 Your Honour, I formally tender those documents.

40 HIS HONOUR: All right. Well, I'm not going to go through and repeat any of that. The documents will be received and marked as you have proposed. I wonder whether it might be advisable for a copy of the document that sets out all of that, that you've just gone through, should be marked for identification 3.

EPSTEIN: Certainly I can make that available, your Honour.

45 MFI #3 LIST OF DOCUMENTS

<VJEKOSLAV BRAJKOVIC, SWORN(3.14PM)

5 WITNESS: Before we start, with respect, I am a little bit overwhelmed mentally with your exposition, with apologies to say such a thing, but it's overwhelming. I feel some noise inside because of this and otherwise everything is all right.

<EXAMINATION BY MS MCDONALD

10 Q. What I intend to do is ask you some questions. If you're a bit overwhelmed at the moment, because we've had a very long day with me speaking a lot of information, just say that and we could take a break. Would you like to take a break now or are you all right to start?

15 A. It may be better to take some break. I need to refresh myself.

MCDONALD: Your Honour, would that be convenient?

20 HIS HONOUR: Yes. Well, we will take a break and see how we go. Whether he's in a position to start today or it would be better if he started first thing tomorrow might be assessed.

MCDONALD: I might have some discussions with my learned friends, your Honour.

25 <THE WITNESS WITHDREW

SHORT ADJOURNMENT

30 HIS HONOUR: What's the situation now?

MCDONALD: Your Honour, I've had discussions with my learned friend Mr Buchanan. The application is for Mr Brajkovic to commence his evidence first thing tomorrow morning.

35 HIS HONOUR: That is fine. The schedule for the first hearing block this week anticipated we might conclude oral evidence tomorrow. How does that look now?

40 MCDONALD: Your Honour, again, not holding anybody to this indication, but discussions with various representations, it doesn't appear that there's going to be great questioning of any of the two proposed witnesses. So, hopefully, we would be able to finish the evidence tomorrow.

45 HIS HONOUR: We'll take the time we need to, of course, but it's the reality that a person such as Mr Brajkovic, who has given evidence at the trial and been cross-examined upon it, at some length, at a time when his memory was probably fresher than it is now, hasn't got a lot left to be asked about, or to answer to, so, I understand that.

50 ADJOURNED PART HEARD TO TUESDAY 5 DECEMBER 2023