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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 FORTY-FIRST DAY: TUESDAY 5 NOVEMBER 2024

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

10

EPSTEIN: Your Honour, before we turn to the first witness of the day, I propose to tender documents which have been circulated to the parties since the last hearing block in September and October. To assist with that tender can I hand your Honour an updated index for your Honour to mark MFI 15.

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HIS HONOUR: The updated tender bundle index MFI 15.

MFI #15 UPDATED TENDER BUNDLE INDEX

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EPSTEIN: As your Honour will see, the index includes the exhibits that have already been tendered in black and the documents are marked in red. Briefly, the new documents that I tender today include Tab 6.9-2, being an aerial photograph of 16 Restwell Road, Bossley Park, as at 1980, which was received from Fairfield Shire Council. Tab 11.263, a P40 crime information report of charge against Joseph Kokotovic for possession of explosives dated 25 19 February 1979. Tab 11.264, which contains selective New South Wales Police individual profiles, including rank, position and transfer histories. Tab 11.265 comprising New South Wales Police Service registries. Tab 11.226, being a letter dated 8 March 1989 from Assistant 30 Commissioner LD Kellock to the Commissioner regarding the question of a promotion of Detective Sergeant Jan Krawczyk. Tab 11.267, being Bench sheets of the Central Court of Petty Sessions dated 9 and 21 February 1979 in respect of Mr Brajkovic. Tab 11.268, being various excerpts of audio recordings of New South Wales Police radio transmissions, 8 February 35 1979. Tab 11.269, which contains a Telex titled, "Croatian Inter-Committee Council" dated 1 November 1977. Tab 11.270, which contains an undated New South Wales Police precis sheet and filed titled, "Croatian Lithgow Conspiracy" compiled by Detective Senior Constable Ireland.

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Tabs 12.7 to Tabs 12.25 consist of records from Corrective Services New South Wales relating to Arthur Stanley Neddy Smith, Mr Brajkovic and John Alison Steep. Tab 13.52 is an article published in the Canberra Times titled, "Murphy's Law" dated 14 May 1994. Tabs 13.53 and 13.60 consist of various publications relating to criminal procedure in New South Wales. Tabs 14.18 45 and 14.19 contain two further police instructions as at 1977. Tab 15.19 is a statement of Janice Leonie Cavanagh dated 29 September 2024. Tab 15.20 is a statement of David John Collier dated 24 October 2024. Tabs 15.21 to 15.30 consist of court records relating to the trial of John Alison Steep. Tab 15.31 contains a statement of Richard St John dated 30 October

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2024, which was formally tendered yesterday. Tab 15.32 contains a statement

of Thomas Anthony Sherman dated 31 October 2024.

5 Your Honour, further to those documents, a number of exhibits have been
supplemented; namely, Exhibit 4.1-VV, which has been supplemented with
one further map extract from the UBD Street Directory at red
page 83-1. Exhibit 11.70 has been supplemented with a further letter from
10 New South Wales Police Force to the Inquiry dated 11 October 2024
concerning searches undertaken for various records at red
page 306-49. Exhibit 12.6 has been supplemented with a further logbook
entry at red page 79-1.

15 Finally, your Honour, Exhibit 5.6-1 currently contains a duplicate of the
document that forms Exhibit 5.6-5. I seek your Honour's leave to uplift
Exhibit 5.6-1 and replace it with the correct document listed in the list of
Exhibits, which is the grounds of appeal made on behalf of Mr Nekic to the
Court of Criminal Appeal.

HIS HONOUR: Yes. You have that leave.

20 EPSTEIN: Thank you, your Honour.

HIS HONOUR: Thank you, Ms Epstein.

25 AUDIO VISUAL LINK ACTIVATED AT 9.52AM

<MICHAEL DONALD BOYLE, SWORN(9.52AM)

<EXAMINATION BY MS MCDONALD

5 Q. Please state your full name?

A. Michael Donald Boyle.

Q. Mr Boyle, you're currently retired?

A. Correct.

10

Q. Mr Boyle, when I'm asking you questions, at times I will take you to documents and the documents will be shown on the screen. If at any time you can't read the document or if half the document is on the screen and you want to read the whole page, would you please indicate that and we can accommodate it.

15

A. Yes, I will.

Q. Mr Boyle, I want to take you, first, back to the years 1979, 1980. During those years, you were employed by the Commonwealth?

20

A. Yes.

Q. You were working for ASIO?

A. Correct.

25

Q. At that time, you were a member of what was known as, "The Headquarters Liaison Group"?

A. Yes.

Q. Located in Canberra.

30

A. Correct.

Q. I want to ask you some questions about the structure of ASIO at that time. ASIO, was it divided into what were known as "divisional branches"?

A. Yes.

35

Q. At that time, what were the divisional branches?

A. I'm sorry, I really can't give you details on that because the organisation changed, and I can't recall the dates that it actually changed, but there would have been branches to deal with intelligence analysis and with operations, covering a range of functions. They'd (not transcribable)..in the ASIO Act.

40

Q. At times were there also a branch known as a "Counter Subversion Branch"?

A. I'm not sure whether it was a branch. I suspect it may have been a section - a large section within a branch.

45

Q. When you referred to, I think, was it an Operations Branch and an Intelligence Analysis Branch?

A. Yes.

50

Q. Within those branches, were there then different sections?

A. Yes.

5 Q. Within one of those branches there may have been, at the relevant time, a counter-subversion section?

10 A. That's difficult for me to answer because originally there was a Counter-Subversion Branch which looked after primarily the Communist Party of Australia and other organisations. At some point that organisation changed under the previous Director-General Barbour, and I can't recall the details of that exactly.

Q. The two branches that you've spoken about, Intelligence Analysis and Operations, would you describe what tasks the Operation Branch would undertake?

15 A. The Operations Branch would run operations - technical operations, agent operations, surveillance operations. Those sorts of activities. The intelligence collection side, if you like.

20 Q. Then the Intelligence Analysis Branch, would they be provided with, for example, the intelligence collected by the Operations Branch?

25 A. Yes. In the various areas that the Subversion Branch was responsible, that would have included the Communist Party of Australia, it's offshoots, and the various Croatian organisations, which you might be interested, including other organisations such as the Ananda Marga at that time.

Q. Focusing on your career with ASIO, when did you join ASIO?

A. May 1960.

30 Q. Leading up to roughly 1979, did you work in many of the different branches of ASIO?

A. I worked in several branches, yes.

Q. What were those several branches?

35 A. One would have been the Subversion Branch. One would have been the branch dealing with counter-espionage. I served positions in the headquarters, and also in the regions and overseas.

Q. In 1979, 1980, the head of ASIO was the Director-General?

40 A. Correct.

Q. Then could you briefly describe the structure underneath the Director-General?

45 A. The Director-General who, at that time, was Mr Justice Edward Woodward. He would have had a deputy, and he would have had an administrative side, and the subversion or analysis side, a counter-espionage side, and there would have been a series of regional offices. One in each State, plus overseas liaison officers.

Q. At this time, the headquarters of ASIO, where was it located?

50 A. It was in Melbourne.

Q. You've given evidence that around this time you were employed in the Headquarters Liaison Group?

A. Yes.

5 Q. Where was that located?

A. Canberra. It was located in the same premises as the ACT regional office but it was separate from them.

10 Q. The Headquarters Liaison Group, was it part of the Office of the Director-General?

A. Yes.

Q. What did the Headquarters Liaison Group do?

15 A. It represented the Director-General in Canberra. Its function is probably highlighted following recommendations from Mr Justice Hope in the Royal Commission to whom intelligence security services - where he recommended strongly that headquarters of ASIO should be transferred from Melbourne to Canberra. So, the Headquarters Liaison Group operated, if you like, something like a high commission or an embassy. We represented the
20 Director-General at various committees, and we were carrying out certain liaison activities on espionage, certain policy work, and we also were to advise him of matters that might be occurring in government, that could occur(as said) ASIO or impact ASIO in some way.

25 Q. You spoke about the Operations Branch. Did the Headquarters Liaison Group undertake any operational work or intelligence-gathering work?

A. No. We did no operational work, and we did no analytical work either, apart from the policy responsibilities of which the Director-General had given us.

30

Q. Can I pose to you a hypothetical position. If in your role as a member of the Headquarters Liaison Group you were invited to attend a meeting, say, at Prime Minister and Cabinet, on a particular topic, to represent the Director-General, would you seek a briefing or information from other branches
35 within ASIO to assist you in representing the Director-General?

A. Yes.

40 Q. After attending that meeting, whatever was discussed or whatever the result was, was it then an expectation that you would report back possibly to the Operations Branch or the section that had briefed you?

A. Yes.

45 Q. And again, depending on what was discussed, maybe report back to the Director-General or his deputy?

A. Yes.

Q. Can I return to your career at ASIO? You spoke about prior to joining the Headquarters Liaison Group, and I should ask you, when did you join that group?

50 A. Probably 1972 or 1973. I'm not quite sure of the date. Probably '73 rather

than '72.

5 Q. Before that, when you were working for other branches or sections of ASIO, did you develop a particular expertise dealing in either certain subversive groups or counter-espionage interests of ASIO?

A. Yes. As a professional intelligence officer tasked with functions within those areas, I would develop knowledge and experience.

10 Q. Any particular areas? For example, did you develop any expertise or specialist knowledge dealing with Croatian National movement?

A. Yes, I did, but that was ten years before the time we're talking about.

15 Q. Could you briefly describe what your involvement or work involved?

A. I was in Canberra at the time. I was responsible for running the section that dealt with subversion, and the Croatian community or other certain activities of Croatian organisations are known to be very militant or active in Canberra and were also connected to similar organisations or branches in the New South Wales, and my function was to investigate them as well as I could with the resources available.

20

Q. In a previous answer, you spoke about ASIO being involved in intelligence on subversive activity, but also counter-espionage. Do you remember that distinction that you made?

A. Yes.

25

Q. The counter-espionage work that ASIO performed, what did it focus on?

A. It focused on hostile intelligence activities in Australia directed against Australia's interests.

30 Q. At that time, would it focus on particular countries?

A. Not so much countries, but on their intelligence organisations as it directed towards their operations in Australia.

35 Q. Was one of the intelligence services that ASIO was interested in the Yugoslav Intelligence Service?

A. We had an interest in the Yugoslav Intelligence Service, but not as great as, for example, our interest in the Soviet Intelligence Service, which was regarded as more threatening to Australia's interests.

40 Q. To your knowledge, why was ASIO not as interested at that time in the Yugoslav Intelligence Service?

A. Well, they weren't actually threatening Australia's national interests. They were threatening Croatian interests. The Yugoslav Government was a neutral but friendly power, and there were very close diplomatic relations with them. We were aware of the Yugoslav Intelligence Service interest in the Croatian militant organisations, and we were aware of the threat that the - those organisations occasionally posed to the Yugoslav Government and its interests.

45

50 Q. Your career either in ASIO or elsewhere after 1980, in 1981, did you leave

the employment of ASIO for a period?

5 A. No, I didn't leave ASIO. I was placed on a public service board executive development scheme which lasted for a year, but I was - if you like, I was still a - I was an ASIO officer on that scheme or that training course, along with officers from other departments. We all returned to our parent departments after the course.

10 Q. Did you return to your substantive position with ASIO roughly in May 1982?

A. I - no, I was promoted and transferred to Melbourne.

15 Q. When you were transferred to Melbourne, was that the headquarters of ASIO in Melbourne?

A. Yes.

20 Q. What role were you promoted to there?

A. I was made a branch head and made responsible, it's the Secretariat Branch, which was to oversight our dealings with government and other activities, including eventually the organisation of ASIO's report for the second Royal Commission.

25 Q. I first want to take you to some documents that have been tendered in the Inquiry, which are ASIO documents. As part of the either surveillance or intelligence gathering tasks undertaken by ASIO, at times that involves use of covert techniques?

A. Yes.

30 Q. For example, at times, telephone intercepts will be used?

A. Yes.

35 Q. When a telephone intercept is in place, was it the procedure that if a telephone call was intercepted of some interest, a summary of that call would be made?

A. Yes.

40 EXHIBIT 9.1-5, RED PAGE 6, SHOWN TO WITNESS

45 Q. Mr Boyle, can you see that document?

A. Yes, and I can read it too.

50 Q. You've only got the top half of the document, but can you see it's entitled "Intercept Report Non Gratis", and then there are a number of other details?

A. Yes.

55 Q. Then there's the main heading "Yugoslav Consulate General Sydney Contact with Identified and Unidentified Persons", with a date.

A. I don't think that's a date. I think that's a file number.

60 Q. Yes, sorry. You're correct. 25/5/119 is a reference to a file number?

A. I think so.

Q. You can see just in the first paragraph, there's a reference to a date and a person, "Vido (Vito) vr contacted," and then there's a "V. GRCE at the Yugoslav Consulate-General, and asked about a possible meeting."

A. Yes. Correct.

5

Q. Is that an example of a call that was intercepted, and then a summary being produced?

A. That is correct. May I add that VR stands for voice recognition?

10

Q. Can you explain, putting VR, voice recognition, what that signifies?

A. At that time, it would've meant that the translator - the identification is based on the translator's recognition of the voice.

15

Q. Could you return to the top of the page to the line which commences "Intercept Report"?

A. Yes.

20

Q. Next to that, it's got the words "Non Gratis".

A. Yes.

25

Q. What does that refer to, or what does that mean?

A. It was a phrase that was used in the reporting of certain types of intelligence from agents and from other technical sources, and "Non Gratis" means that it was protected. It had to be protected. "Gratis" would be used if it was in the public domain.

30

Q. That reflected had to be protected?

A. That means - yes. Even though it might not be classified secret. It was a source protection phrase.

35

Q. What would determine whether information would be labelled "Non Gratis"?

A. Well, the fact that the telephone call was intercepted, the use of intercepts, the use of surveillance, the use of agents, and the reporting was generally considered "Non Gratis" and had to be protected because you didn't want the source of that information compromised because if it was compromised, it was no longer of intelligence value.

40

Q. Continuing along that line, the next entry is "EVAL: B2".

A. Evaluation B2.

45

Q. What does the B2 indicate?

A. I can't recall the exact code anymore, but intelligence or information was evaluated in two ways. One was the credibility of the - the reliability rather of the source, and the other was the credibility of the information provided. You could have a very good source, but the information that source provided may not be considered reliable. On other occasions, you could have a source that was uncertain, but there was information that supported and made the information reported credible, and it was graded from A1 down to - I think it was F6, something like that. The B--

50

Q. Sorry, what was the lower one? I missed that.

A. It was F6.

Q. F for Freddie?

5 A. Yes, F for Freddie. And it run A to F, from memory. And I'm not certain that I'm 100% reliable on this, from memory that would have been the source, and I think the numerical thing would have been the credibility of the information. It's a long, long time since I've had to consider those things.

10 Q. Your recollection is here, B reflects an assessment of the source?

A. Yes. Perhaps the source in this case would have been the interception, telephone--

Q. Sorry?

15 A. The source in this case would have been the fact that it was a telephone intercept.

Q. Then the two would reflect an assessment of the credibility of the information?

20 A. Yes. Probably reliable.

Q. Is one, to your recollection, the most reliable?

A. Yes. Very rarely used.

25 Q. How many numbers were used in the assessment of the credibility of the information?

A. Again, I'm going on my memory and I don't know that my memory is reliable in this regard, I think it was one to six.

30 Q. One to six. Next to it, it's got "New South Wales/W.97-78/12."

A. Yes.

Q. Do you recall what that would refer to?

35 A. I believe it refers to New South Wales interception warrant number 97. I'm not certain about what the 78/12 refers to. All intercept activities, telephone intercept activities were - had to be approved by the Attorney-General, the Federal Attorney-General, by warrant. And the results reported to him normally every six months if the warrant was to be renewed.

40 Q. Can I take you to the next line.

A. Yep.

Q. We've got "Item 1" and then "EW 621"?

45 A. I don't recall what "EW 621" stands for.

Q. Next to it we appear to have - "in 29", does that reflect that it's an incoming call?

A. I believe so.

50 Q. And 29 may be a reference to what, the call number that day?

A. That could be the case, but I can't be certain.

Q. Would it appear the time is the time of the call "10:47"?

A. Correct.

5

Q. Next to it, "I 27/11/78", do you know what that refers to?

A. That would have been the date on which the call was recorded.

10 Q. If we jump to underneath "I", the "R 30/11/78", that's a reference to 30 November 1978?

A. Correct.

15 Q. What does the "R" indicate?

A. That would be the date the report was made. So you have the information being recorded. No, the operation. And then processed in a report which was made on the 30th of the eleventh.

20 Q. Your previous answer where you indicated in the first paragraph that you solve - or the reference to "VR", that that would be voice recognition?

A. Correct.

25 Q. At the time did ASIO have officers who would be assigned to a particular telephone intercept would be listening to it regularly so that they could develop that kind of ad hoc expertise in identifying voices?

A. I would - yes, I believe so. There are qualifications, in that the resources we had in terms of translators for a particular language were always limited, and generally they were overloaded with work. But over a period of time, they could develop the ability to recognise particular voices from which they had become familiar.

30

Q. If we could continue down the page, thank you. Just looking at this very quickly, Mr Boyle, paragraphs two, three and four seem to be a summary of what was discussed during the telephone conversation?

A. Yes.

35

Q. Can I take you to the paragraph after paragraph four, we've got "T.C. This report should be read in conjunction with a previous report," et cetera. The reference to "TC", do you know what that refers to?

A. Translator's comment.

40

Q. Then we've got the line, "Spool361 1026 1054", I assume that's a reference to the actual tape that recorded the conversation?

A. I think 361 will be the spool number or the tape number. 126 to 154 would be where on the tape the report actually resides.

45

Q. Can I ask you about the next entry on the page, "CO-C:" and then there are a number of names with other information in brackets?

A. I'm sorry, I can't see that.

50 Q. Sorry. Could we move down the page, please. Yes.

5 A. I notice that you've got the case officer comments, "COC", and he's made a reference there to the use of the name, which is phonetic "Vido", unidentified, and then he's given a file number. He's done the same thing for the others who are identified there, but they're actually been identified. Full name not known. I'm not sure what "OSI" stands for. And he's given a file number for Veljko Grce. But I'm quite - not quite certain what they've done with the others, they probably marked them for - I can't remember what "NA" stands for, but "FNU" is full name unknown.

10

Q. Your reference to the case officer comment, is the case officer a different person from the person who has listened to the recording, translated and summarised the recording as set out in the first four paragraphs?

A. Yes.

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EXHIBIT 9.1-15, RED PAGE 17, SHOWN TO WITNESS

Q. Mr Boyle, I'll take you to another document, which is 9.1-15, page 17, red page 17. Mr Boyle, can you read that, or do you want it expanded?

20

A. No, it'll have to be expanded, I can't read it, I'm sorry.

MCDONALD: Could we go to the top of the page to begin with.

25

Q. This is another Intercept Report for a telephone intercept in respect of a phone call to the Consulate. But can you see, looking at it, it then seems to be a verbatim or a transcription of the actual conversation?

A. Correct.

30

Q. If we go to the top of the page again, it's an "Intercept Report Non Gratis", and again, the evaluation is "B2."

A. Correct.

35

Q. If I can jump to the end of the next line, the call was at, is it 12.30, and is that "approximate" next to it?

A. I'm not sure, but it seems likely.

40

Q. The "8 February 1979", and then this transcription has been made on 12 February 1979?

A. Correct. Correct.

45

Q. You can see at the beginning of the actual - sorry, the heading is, "Croats Arrested with Explosives at Lithgow and Sydney - STD call from Lithgow." And then we've got on a particular date, "Vitomir Misinovic, aka Vito Vido, contacted S Krekovic at the Yugoslav Consulate, asked for somebody and then the ensuing conversation occurred." If I can just take you through that page, you can see there it appears to be a transcription of the actual conversation, not a summary?

A. Correct. That's right.

50

EXHIBIT 9.1 15, RED PAGE 18, SHOWN TO WITNESS

Q. If we go to the bottom of the page, then we go across to page 18, you can see it's continuing.

A. Correct.

5 EXHIBIT 9.1-15, RED PAGE 19, SHOWN TO WITNESS

Q. Then if we go to the final page, you can see it ends with the word "Goodbye" and we've got the reference to the spool again. Then if we could move down the page, we've got the case officer comments.

10 A. Yes.

Q. Can I ask you, the first person who's identified as Vitomir Misinovic, the reference then to SC78-11-103, what's that a reference to?

15 A. I believe that's to a file.

Q. I'm sorry?

A. I believe that is a reference to a file. But it may be an operational file.

Q. It could be a file which is dealing with that particular person, or a file dealing more with a particular operation, for example, with the consulate, the Yugoslav Consulate?

20 A. I think it's more likely to be a file dealing with an operation or the consulate.

Q. Would you look at items five, six and seven.

25 A. Yes.

Q. There are other names there and they are names which were mentioned during this conversation. When the words "NA" appear at the end of the reference to those names, what does that indicate?

30 A. I'm not certain in this case, because the persons have been identified and they would have had some sort of file. So I'm not sure what the NA stands for.

Q. Then there's further information made in the case officer comments which refer to item number eight, there's a reference to a Sydney telex of 9 February, "...which is a summary of this verbatim report."

35 A. Yes.

Q. Then there's a reference to, "Nine men involved in these bombing attempts have been arrested...", et cetera?

40 A. Yes.

Q. "Involved were connected with the Croatian Republican Party (HRS)..." Then there's--

45 A. Yes.

Q. --"(HQ) 3/2/2155"?

A. I think that may be the headquarters' file that refers to the Croatian Republican Party.

50 Q. Then there's a reference to, "MISINOVIC changed his name to Vico Virkez

in 1978."

A. Correct.

5 Q. As reflected in item number eight, it would appear that this intercept was summarised and was contained in a Telex. Then there was a decision to actually transcribe the actual conversation.

A. Yes.

10 Q. The decision to transcribe the actual conversation, is that something that would occur if a particular conversation then assumed a new importance or a greater importance than was assessed when the conversation was first listened to?

A. Yes.

15 Q. Mr Boyle, did you have knowledge and possibly involvement in a committee that was established in the 1970s called, "The Specialist Interdepartmental Committee for Protection Against Violence"?

A. I attended these meetings quite frequently, yes.

20 Q. Can you recall when roughly it was established?

A. No, I can't. It flowed from Murphy when he was Attorney-General, and I think from a number of other activities I cannot give you details of the circumstances under which it was created, but they would be on file in various departments.

25

Q. As its name suggests, it's an Interdepartmental Committee. Which various other departments or other entities or representatives from various entities would attend?

30 A. The Special Interdepartmental Committee on Protection Against Violence was housed in the old Department of Administrative Services. Departments under the protection - the Protective Services Coordination Centre, which was part of the DAS established, I think, probably in Fraser's time as Prime Minister. Departments attending it were those who had responsibility or interest in the protection against violence, political violence. That would be
35 Prime Minister and Cabinet, Foreign Affairs, Immigration, the Department of Administrative Services, Defence, ASIO and the Commonwealth Police. There would have been others from time to time, but I think they were the core members, or there may have been additional members. It was a long time ago.

40

Q. When you said, "at times there may be others", did the "others" include representatives from, for example, a State Police Force?

A. There's no State representation on a permanent basis, and I do not recall State representatives attending any of the meetings that I did.

45

Q. Did you attend every meeting?

A. No.

50 Q. When you did attend a meeting, and something had occurred that ASIO had information about, that it thought it was appropriate to provide to the

members of this Committee, how would that information be conveyed to the Committee? For example, would you do it orally, or would there have been a paper prepared?

5 A. Normally ASIO would prepare an assessment or a report, and that would be included in the SIDC-PAV monthly summary. Occasionally an officer - the responsible officer from headquarters would attend to explain the report. On other occasions, either I would be there, or I would accompany the officer, or depending on the nature of the event and the incidents being discussed, my superior may attend.

10

EXHIBIT 9.1-21, RED PAGE 30, SHOWN TO WITNESS

Q. Can you see this in handwriting at the top--

A. Yes.

15

Q. --it has written, "Extract from ASIO SIDC-PAV report of 28-2-79"?

A. Yes.

20 Q. Can you see a heading - I think the "A" has disappeared, but it should read, "Arrest of Extremists in New South Wales"?

A. Yes.

25 Q. Then under paragraphs 32 down to 35, there is a summary of the nine Croats being arrested by New South Wales Police in Lithgow and Sydney, and then in 34, a reference to, "One of those arrested was to act as driver for those involved in the proposed bombing operation."

A. Yes.

30 Q. The evidence that you just gave of depending on the particular issue or matter, ASIO may prepare some kind of written report for the Committee?

A. Yes.

35 Q. Reading this, would this appear to be an example of such a report or paper prepared by ASIO for the Committee?

A. I assume so. There's no clearly-identifying on it, so I'm not certain who has done the extract. What department or what agency, but it reads as though it could be.

40 Q. I think we're relying upon the, albeit, handwritten notation at the top, "Extract from ASIO SIDC-PAV report".

A. Yes. I don't know who wrote that.

45 Q. I know this is a big ask, Mr Boyle, but do you recall back in around February 1979 attending the Interdepartmental Committee Meeting at which this was discussed?

A. No. I'm afraid I don't.

50 Q. Just while we're still looking at it, if you look at paragraph 34, which I took you to briefly, there's a reference in that paragraph to, "For a period of at least six months prior to the arrests, that person...", and "that person" refers back to

"one of those arrested was to act as a driver"--

A. Yes.

Q. --"for those involved". Had:

5

"...acted as an informer on Croatian nationalist activities to a person suspected by ASIO of being an intelligence official attached to the Yugoslav Consulate-General...Some hours before his arrest that person contacted officials at the Consulate-General and passed them detailed information about the proposed bombings."

10

Do you see that?

A. Yes.

15

Q. That, I would suggest, that information was information that ASIO had because it was the one with the telephone intercept on the telephone lines into the Consulate.

A. I believe that to be so.

20

Q. Reading that, it would support the handwritten description at the top that this is a report that is emanating from ASIO.

A. Yes.

25

Q. You spoke about occasionally attending meetings of this Interdepartmental Committee. In your role in this liaison Committee, at times did you have dealings with any members of the New South Wales Police Force?

A. No.

30

Q. In particular, that would include, would it, any members of Special Branch of the New South Wales Police Force?

A. Correct.

35

Q. If I say to you names such as Inspector Perrin or a Detective Vic Jefferies, none of those names mean anything to you?

A. No. I'm not even certain I've heard them before.

40

Q. I want to take you now to 1980, and around March 1980, and, in particular, 12 March, when you attend an Interdepartmental Committee Meeting at the Department of Prime Minister and Cabinet. This particular meeting was headed by an Ian Cunliffe?

A. I think I did attend it, but I have no recollection of it.

45

MCDONALD: Mr Boyle, what I'll do is first show you the minutes of the meeting, and then I might take you to some documents that predate the minutes.

EXHIBIT 10.1-12, RED PAGE 21, SHOWN TO WITNESS

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Q. Mr Boyle, you can see at the top, it's the record of a meeting held on Wednesday 12 March 1980, "re Mr Vico Virkez"?

A. Yes.

Q. Present, and there are a number of people mentioned, but if we go to the second last name, your name appears, "Mr M Boyle, ASIO".

5 A. Correct.

Q. Can I just ask you about some of the other people attended? Ian Cunliffe. As at 12 March 1980, did you know Mr Cunliffe?

10 A. No, I didn't.

Q. This was your first dealings with Mr Cunliffe.

A. Correct.

Q. The next person, a Mr Carrington from Prime Minister and Cabinet. Did you know him?

15

A. Yes, I got to know him quite well. I had regular contact with him.

Q. Why did you have regular contact with him?

20

A. He was a senior officer in the Security Branch, which was not the Departmental Security Organisation. It was a branch of PMC which followed up on activities involving the recommendations of the Royal Commission, and also on a number of other matters concerning internal security, and as a member of the HLG, Derek and I had quite a lot of contact, as I did with other members of that Branch.

25

Q. The next name is a Mr Emerson Elliott. Had you come across him before?

A. No. It doesn't ring a bell with me, but obviously he was there.

Q. Then from Crown Solicitor's Office, Dale Boucher.

30

A. Yes, I have a vague recollection of Dale, but I don't recall the circumstances.

Q. Our next person is a Mr Hardy from Immigration and Ethnic Affairs.

35

A. No. To the best of my knowledge, I didn't know him. I may have met him, of course, but the - he's slipped entirely from my memory.

Q. Then Mr Cavanagh from the AFP.

40

A. Yes, I know Roger. I didn't have a lot of do with him, but I'd had dealings with him over time, and because of his involvement in the Commonwealth Police Intelligence side of things.

Q. He's nominated there as representing the AFP. What was your understanding of Mr Cavanagh's role within the AFP?

45

A. I don't know that I had one really. I really can't answer that. I don't - Roger was involved with certain intelligence operations conducted against the Croats or Croat organisations, rather, in the Commonwealth Police, and when the Commonwealth Police and the ACT Police were amalgamated into the Australian Federal Police, I presumed he carried on that sort of role, but I can't confirm that because I had no detailed knowledge of - of his activities.

50

Q. Your understanding was that he worked as an intelligence officer, not actually as a member of the Australian Federal Police. He wasn't a police officer but was rather an intelligence officer?

A. He was a civilian employed by COMPOL, and then by the AFP.

5

Q. Did you first come across Mr Cavanagh when he was working for the Commonwealth Police?

A. Yes.

10

Q. To your understanding, did Mr Cavanagh have dealings with some of the ASIO officers working within operations or intelligence gathering?

A. I can't really answer that. He had contact with people in headquarters, and I can't really go into the details of that because I just don't know them.

15

Q. Can I just take you to the first full paragraph? We've got, "Mr Cunliffe opened the meeting by welcoming those present, and copies of Mr Virkez's letter to the Prime Minister and an AFP memorandum of 11 March 1980 was circulated."

A. Yes.

20

EXHIBIT 4.3-10, RED PAGE 762, SHOWN TO WITNESS

25

Q. Just stopping there, could we bring up Exhibit 4.3-10, please? If we go to the next page, Mr Boyle, in the minutes, there was a reference to a letter addressed to the Prime Minister from Vico Virkez. There was a translation of the letter, and this is the first page of the letter. Do you recall receiving a copy of that letter around the time of the first meeting?

A. I have no recollection, but it's quite likely that I did.

30

Q. Can you recall whether you received a copy of that before you attended the meeting?

A. No. I'm sorry. The letter itself does not ring a bell with me. Quite possibly, I did. I would've taken it at face value and gone to the meeting. I may have informed headquarters. I have no recollection of the circumstances or of the meeting.

35

40

Q. You gave evidence previously of the general procedure that would be followed when you were attending a meeting as part of the liaison group that you would receive some kind of briefing or information from headquarters. You would then represent ASIO at the meeting, and then you would report back?

A. Correct.

45

Q. We haven't been able to find a briefing note for this meeting. Is it possible that you attended without receiving such a briefing?

A. Yes, it could be. I have no recollection of the circumstances, but it may have been called at PM&C's instigation fairly quickly, and I went along to get this information, and we didn't have that information beforehand. In other words, I would've passed it back to headquarters, but again, I have no recollection of that.

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EXHIBIT 9.1-37, RED PAGE 54, SHOWN TO WITNESS

Q. Can I take you to Exhibit 9.1-37? Do you need that expanded, Mr Boyle?

A. Yes, please.

5

Q. Could you assist us with this document? It's headed "Confidential VR to HQS". Then the next line after SYD, it appears to be a thousand. We've got what I assume to be a date, 19 February 1980.

A. Correct.

10

Q. Then HQ, again, with some numbers. Just those first three lines, looking at those, can you identify what type of document this is?

A. Well, it's a Telex message to headquarters from Sydney, and I think the reference to the 473230 is reference to a headquarters file number.

15

Q. Then if I can take you to the content of the Telex. "Yugoslav Intelligence Service - aAgent, Local Fed police contact advises the following non gratis info unless already advised" - I think that might be "to you by Federal Police headquarters". Again, "The following non gratis information", again, information where the source should be confidential, or the information should be kept confidential?

20

A. The - yeah, that's indicating that - an operational intelligence matter, and protection of the source is necessary.

25

Q. Then can you see in the second paragraph, there is a reference to "Vico Virkez", and then, "HQS refs. The Yugoslav informant from Lithgow has apparently written a letter to the Prime Minister complaining about his arrest after informing police of the bombers' intentions." Then, "Three fed police contact, and Roger." It says, "Cavandeh", but I would suggest it's "Cavanagh will be interviewing"--

30

A. Correct.

Q. --"Virkez re his letter on nominated dates". Then, "Fedpolice contact will advise results of interview locally."

35

A. Yep. Correct.

Q. It would appear from the second paragraph that at least ASIO headquarters and also Sydney office had received some information about the letter Mr Virkez had sent to the Prime Minister?

40

A. I can't comment on that. I have absolutely no knowledge. I don't know the background of this Telex, and it doesn't seem to be - seem that they're informing headquarters that Roger will be doing something in the future regarding Virkez. I don't know what the result of that was, and I don't know anything about the letter he sent to the Prime Minister other than having attended the meeting called by the Prime Minister as a response to what was in that letter.

45

Q. Could we go towards the bottom of the page? Can you see the handwriting "Note for file"?

50

A. Yes.

Q. It's got, "Mr Cavanagh is aware of ASIO's interest in Virkez and knows questions to put to Virkez on our behalf."

A. Yes.

5 Q. Looking at that "Note for file", and I understand your evidence that you weren't involved at this level, but just a procedural question to begin with. If a Telex came in with this information, and a case officer or another person wanted to add some further information, they would just drop down the note for file in this way?

10 A. Yes, to complete the action.

Q. In your role as the liaison officer, when you were going to attend, for example, the meeting on 12 March 1980, would you be provided with any of the primary source documents such as Telex's or other material that was being generated by the intelligence gathering officers?

15 A. No. We would've been receiving the assessments and summaries. We'd not be handling the original documents. That could lead you into a lot of paper, and we would be having to do our own analysis, and we would not have been considered competent to do that because we did - we were not in the specialised field.

Q. I'm jumping around with documents, Mr Boyle, but I'll take you to a document that you appear to have had some input into, but in 1982. It's Exhibit 9.1-80. If you have a look at this document, it's got "Confidential", then is it "LL" or "11 to HQS"? I'm looking right up the left-hand top corner.

25 A. That's an "L" or "II".

EXHIBIT 9.1-80, RED PAGE 114, SHOWN TO WITNESS

Q. I'm sorry?

30 A. Is that "LL" or "II"?

Q. I don't know. I was going to ask you if you could identify what it would be referring to.

35 A. I think that's "immediate", which indicates the priority of the message.

Q. Then where it says, "For LA from H/HLG"--

A. Yep.

Q. --who is LA or what is LA?

40 A. He's the legal advisor.

Q. And "H/HLG"?

A. Headquarters Liaison Group.

45 Q. You can see it's headed "Subpoena concerning Vico Virkez".

A. Yes.

Q. Then it states, "Michael Boyle came over to HLG today to examine the relevant files and comment on his recollections of this matter."

50 A. Yes.

Q. Can I pause there, it would appear to be dated 17 May 1982, would you remind us, by that time had you returned from this public service board course?

5 A. Yes. I returned in I think early 82, so I would have been the Head of Secretariat Branch and I may well have been involved in supporting ASIO, being the second Royal Commission. I'm not 100% certain of the dates, but that generally what was happening.

10 Q. The relevant part of this is towards the bottom of the page where there is a reference to, "The earlier meeting chaired by Prime Minister and Cabinet on 12 March, related to a letter written to the Prime Minister by Virkez."

A. Yep.

15 Q. "The AFP letter to Prime Minister and Cabinet, 11 March 1980, reported on Virkez giving the interviewing officer's opinion that he was an agent of the Yugoslav Government and stating that his fellow conspirators knew that he was a police informant."

A. Yep.

20 Q. Then across the page:

25 "My telex of 11 April 1980 to headquarters gave the information that COMPOL advised the New South Wales Police on what they knew of Virkez on 9 February 1979 which predates the ASIO briefing of 16 March 1979 of Acting Commissioner Whitelaw, New South Wales Police, by a month. Virkez's involvement with a suspect YIS officer was referred to in the SID PAV SITREP on 28 February 1979. The SITREP did not refer to Virkez by name."

30 A. Yep.

Q. I've just referred you to that to see if that would jog your memory of what appears to be a report that you gave back to HLG today, after a subpoena had been received concerning Vico Virkez?

35 A. I have no recollection of that. It may be the case, I don't know. As far as I can recall, I do recall being asked to sign a document as to what had transpired. The details you've just read out I don't recall specifically.

EXHIBIT 10.1-12, RED PAGE 21, SHOWN TO WITNESS

40 Q. Can I take you back to Exhibit 10.1-12, please. Mr Boyle, have you recently had an opportunity to read through these minutes?

A. Yes.

45 Q. Reading through the minutes, you can see that initially the issue that was being discussed was Mr Virkez's request to be deported, and there was a question about whether he actually could be deported from Australia.

A. Yes.

50 Q. If we can go to the second page, which is page 22, if you look at the third paragraph on that page--

A. Yes.

Q. --there is a reference to Mr Emerson-Elliott from Prime Minister and Cabinet:

5

"Raising a concern that the Commonwealth was being drawn into a matter which could be characterised as an attempt to pervert the course of justice and that the Commonwealth had knowledge of Virkez's true role in the matter on an official basis as the Consulate-General had alerted the Commonwealth Police of Virkez's tip-off."

10

Then there's some questions about with Mr Cavanagh, and Mr Cavanagh possibly giving evidence at the trial. Can I just pause there, when you look at the minutes or the record of the meeting, you're not recorded as making any comment or participating in any of the discussions. Is that your recollection of the level of your - and I'm not being rude - the level of your participation at the meeting?

15

A. Well, I've got no actual recollection of being at that meeting, but from what you say, I think that's a fair deduction, and it would indicate to me that I was not on a headquarters brief, that I was there to find out what was going on. But again, as I say, I have no recollection, that's a deduction.

20

Q. Could we jump back to the previous page, page 21. Right at the top at the beginning, after Mr Cunliffe has opened the meeting, there's a reference to copies of Mr Virkez's letter being circulated, and also an AFP Memorandum of 11 March 1980. I'll bring up that Memorandum. It's Exhibit 9.1-38. It's two page document, Mr Boyle. Can you see at the top it's "Australian Federal Police"--

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30

A. Yep.

EXHIBIT 9.1-38, RED PAGE 55, SHOWN TO WITNESS

Q. --addressed to Prime Minister and Cabinet, but it's with a heading, "Representations from Vico Virkez", with a date of birth. In the first paragraph it refers to some communications between AFP and Prime Minister and Cabinet.

35

A. Yes.

Q. Including conversations between Assistant Commissioner Farmer and Mr Cavanagh.

40

A. Yes.

Q. The part that I wanted to draw your attention to is right down the bottom of this page B. "Virkez, in the opinion of the interviewing officers, has been operating in Australia as an agent of the Yugoslav Government and it was in this connection that he became involved with the Croatian Republican Party."

45

A. Yes.

Q. The source of this, from this, appears to be either intelligence gathered by

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the Australian Federal Police, can you recall at the time you were shown this at the meeting, whether that raised any concerns or your reaction to that in terms of that was something that you would have to report to headquarters about?

5 A. I don't recall reading the memo. Reading it now, I would have simply recorded that there's nothing there that sprang any alarm bells for me, after all ASIO was not involved in a police investigation, nor were we involved in the prosecution, so far as I was aware.

10 Q. The concern that was raised, as recorded in the second page of the minutes, was along the lines of there's a criminal trial of accused in New South Wales where the Commonwealth might have some information relevant to their defence, and a broad issue of what is the role of the Commonwealth when it has that knowledge of informing either police/prosecutors in New South Wales about it, or even possibly informing defendants about it. Can you recall back in 15 1980, in those broad circumstances, if ASIO possessed such information that may be relevant to a trial being conducted in a State court, did it have any policy about the provision of that information to a State entity?

20 A. That's completely outside my area of responsibility, and I think that would probably fall to discussions of the Director-General, Judge Woodward would have, perhaps, with the head of the AG's department, or senior officers in the organisation. I'm not aware of those discussions. I'm not aware of the actual information that is referred to there, so far as I know.

25 Q. My question was more a question of procedure, but from your answer, it would appear that if such an issue arose, it would be escalated to the level of the Director-General who would then possibly make, or have discussions, with the Commonwealth Attorney-General or other officers at a similar senior level, either at a Commonwealth level or a State level.

30 A. I believe you would be talking within the Commonwealth level, and I think that was probably the case, but I cannot be specific in these particular circumstances that are outlined here because I simply don't know. I wouldn't have been consulted anyway.

35 Q. After that meeting, pursuant to the procedure that you described earlier today, you provided a report about what occurred at the meeting?

A. Sorry, which meeting are you talking about?

Q. I'm sorry. The meeting on 12 March 1980. I just took you to the minutes or the report of the meeting.

40 A. Yes. I don't recall reporting that, but if I had been there, I certainly would have been reporting it, but I don't recall doing a report, and I've not seen any report that I may have done at that time.

45 EXHIBIT 9.1-40, RED PAGE 58, SHOWN TO WITNESS

Q. If we start at the top, it's a, "Minute Paper", "subject: Vico Virkez", dated 18 March 1980.

A. Right. Well, that seems to be my report.

50 Q. If we go to the bottom of the page, I'll take you back to the top, but can you

see, is that your signature?

A. Yep. Yes.

5 Q. Could we go to the top of the report. It's addressed, "To C/PMV", and then there's some handwriting underneath that, and then, "Per", and I would assume some kind of redacted name. The "C/PMV", is that a particular role or superior that you're reporting to?

10 A. No. Not a superior. It is the, "Coordinator, Politically-Motivated Violence", and he would be one of the sections was in the branch. He would be in charge at headquarters of the intelligence analysis and probably intelligence tasking for the politically-motivated violence area.

Q. Can I take you to your report. In the first paragraph you refer to the meeting?

15 A. Yep.

Q. Mr Boyle, if you want an opportunity to read through the document, please say so.

20 A. I am reading the first paragraph now.

Q. The first paragraph seems to be dealing with that issue of deportation of Mr Virkez.

A. Yes.

25 Q. When you're ready, if I could then take you to paragraph two.

A. Yes. Go ahead.

Q. You then say, "The discussion revolved around information produced by the AFP, Mr Cavanagh making the largest contribution." You then comment:

30 "PMC queried me privately, on the extent to which ASIO was aware of the information in paragraph 3b of the AFP memo of 11 March, and of the conclusion drawn in the penultimate sentence of paragraph 4 of the same memo."

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I'll pause there and take you back. That was Exhibit 10.1-12.

HIS HONOUR: Are you talking about the record of the meeting or the AFP memo?

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MCDONALD: I'm sorry, your Honour, I'm getting a bit confused. It was 11 March 1980.

HIS HONOUR: 9.1-38.

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EXHIBIT 9.1-38, RED PAGE 55, SHOWN TO WITNESS

MCDONALD

50 Q. This was the AFP memo that I took you to previously, Mr Boyle.

A. Yes.

5 Q. If we go down to the bottom, and the information in 3(b) was that information that I took you to about, "Virkez, in the opinion of the interviewing officers, having been operating in Australia as an agent of the Yugoslav Government."

10 A. I don't recall having seen that before the meeting, and I didn't see that letter that was addressed to headquarters. It would not have come to me unless headquarters thought it was necessarily that we learnt of it.

15 Q. Mr Boyle, this document you were shown during the meeting on 12 March 1980, and it would appear in this report that I've just taken you to that you prepared on 18 March 1980, that Prime Minister and Cabinet queried you privately on the extent to which ASIO was aware of the information contained in paragraph 3(b).

A. Yes.

20 Q. Do you recall being queried privately by Prime Minister and Cabinet after the meeting about that comment by the Australian Federal Police in their letter?

25 A. No. I have no actual recollection of that, but it doesn't surprise me that I spoke, or Derek spoke to me about it. It had been a matter that had been raised in the Royal Commission, and there was a - as I mentioned before, that the Security Branch at PM&C was interested and concerned by the nature of the relationship and exchange of information between COMPOL and ASIO of which there had been some difficulties in the past, and I think he was just checking on this particular case whether we had the information. I have no idea what I said to him, but I don't think we have - I don't think the HLG had the information, and at that point of time I would not have known whether
30 headquarters had it other than what the Commonwealth Police representative had said.

MCDONALD: If we go back to your reporting note.

35 EXHIBIT 9.1-40, RED PAGE 58, SHOWN TO WITNESS

40 Q. I've taken you back to your report. In that second paragraph where you record, "PMC queried me privately", is your recollection that that was Mr Carrington as the representative of the Security Branch within Prime Minister and Cabinet who spoke with you?

A. As I said, I don't recall the actual conversation, but I can imagine it would have took place in - it would be Derek Carrington from the Security Branch at PM&C who attended the meeting.

45 Q. If you look at the final sentence of that paragraph, which you've underlined, "Mr Carrington said that his branch was interested in the extent to which AFP was consulting ASIO on security intelligence matters."

A. Yes.

50 Q. Do you see that?

A. Yes.

5 Q. The fact that you've recorded that and underlined it, does it reflect the evidence that you gave that it was more a concern about communication between Commonwealth agencies about security matters that was concerning Mr Carrington?

10 A. Yes. I believe so. He was thinking perhaps of a particular instance that was discussed at the meeting, and it would be an example of the general policy about how these exchanges were arranged, and they had an interest in that beyond this meeting, as did we.

Q. Just continuing with your note, you then say:

15 "Mr Cavanagh subsequently explained that he would brief ASIO HQ officers when he called to see them on Thursday, 13 March, and that he hoped to make available a transcript of the AFP interview with Virkez shortly. I did not question him on the points made by Carrington as I was not aware of the extent to which he may have consulted Headquarters."

20 A. Yep.

25 Q. It would appear from your note that the issue of the actual status of Mr Virkez, for example, was he, as the AFP stated, "an agent of the Yugoslav Government". If he was, what kind of agent, et cetera, doesn't seem to have been a matter that was discussed at this meeting?

30 A. Well, I - as I said, I can't remember the details, but in terms of getting into descriptions of whether he's an agent, agent provocateur, informant or contact, that was not something which would have come up at the meeting, and as I suspect I hadn't been briefed, I was simply going to record what took place and pass it on to headquarters. I had no idea or no information or involvement in whatever Roger was doing with headquarters or the exchange of information there.

35 Q. Can I just ask you, following on from that answer, in the answer, you refer to some different terms. In 1980, within ASIO, was different meaning ascribed to, for example, an agent compared with an agent provocateur compared with an informant?

A. They would have different meanings, yes.

40 Q. Can I ask you about the use of the term "agent"? In 1980 within ASIO, if somebody was being described as an agent of the Yugoslav Government, what was your understanding of the use of that term?

45 A. In ASIO's parlance or use of the expression, it would mean an agent was somebody who was under the management of ASIO and directed to perform certain activities and to report back. Informant might be anybody who's passing information. The problem that we have here with the Commonwealth Police or their use of it is that it's not clear whether they'd actually decided that he was an agent on the basis of what they'd been given, and I presume that was a result of their interrogations of the New South Wales Police, or whether he was an informant, or whether he was somebody who was just generally

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5 tasked to keep the Yugoslav Intelligence Service informed of what was going on with various elements of the community. The word "agent provocateur", which turns up, I think, in other references, means that not only is the agent being managed, he's being managed in order to create particular action or disturbance with what could be quite profound implications for the government. It's not term that we would use lightly, and I don't recall that it was used in the organisation very often, although we knew that, for example, in the Communist Party of Australia, that occasionally, there would be members who were acting as provocateurs for particular purposes. In this case, I can't add any enlightenment as to what or how Virkez was regarded. Can I just state that that's what the AFP thought at that time apparently.

15 Q. Can I just stop you there? When you were describing an agent provocateur, you referred to an example of a person associated with an organisation that was acting as an agent provocateur, and I missed the reference to the organisation?

20 A. Communist Party of Australia. Members of the party would occasionally provoke situations and circumstances which - for their own purposes.

Q. Did you refer to the Communist Party then?

A. Yes.

25 SHORT ADJOURNMENT

Q. Mr Boyle, before I resume asking you some questions, could I ask you, when you answer, could you slow down a little bit in your response. On occasion, we're just having some difficulties in picking up your answer, and it might assist us if you could just slow down with your response.

30 A. Happy to.

Q. Thanks, Mr Boyle.

A. It's not deliberate.

35 Q. Mr Boyle, I'm still in 1980, and I want to turn to a meeting that you attended on 9 April 1980. Another interdepartmental meeting, but this time it's been described as a "high-level interdepartmental meeting". Do you recall that?

A. Yes, I do.

40 Q. Can you recall how this meeting came about?

A. No. My recollection of the meeting is not terribly clear at this distance of time. There's certain things I remember, but I presume it followed on from developments stemming from the first meeting, but I'm not clear what they were now. Not now, anyway.

45

Q. Mr Boyle, I'll take you to a document, which is Exhibit 9.1-46.

EXHIBIT 9.1-46, RED PAGE 64, SHOWN TO WITNESS

50 Q. It's a two-page document, Mr Boyle, and if you wish to read it in full before I

ask you some questions, please indicate that. Looking at the top of the document, is this a Telex that you received on 9 April 1980?

A. I believe so.

5 Q. If we look at the left-hand corner, we've got, "Secret", and then it's got, "PP TO: CAN".

A. Yes.

Q. Can you give an indication of what that is referring to?

10 A. "PP" stands for "priority", which is less than "immediate", but above "routine", and it's to Canberra, and it is for the Headquarters Liaison Group, which in this case would have been me.

Q. Where it's got, "For H.L.G.", who is that a reference to?

15 A. That's for, "Headquarters Liaison Group, and that would have been, in effect, me.

Q. The reference is, "Telecon Boyle" and then a redacted name, "OF 8.4.80 Concerning Vico Virkez."?

20 A. Correct.

Q. Then, for example, it starts off with, "NSW Police received the SIDC-PAV SITREP of 28.2.79."

A. Yep.

25

Q. That was a reference to that document that I took you to before the morning tea break. Do you recall that?

A. Yes.

30 Q. Then there was a reference to an:

"Assistant Commissioner NSW Police (R. Whitelaw) was concerned with Yugoslav Consulate Complications. He was informed of identity of Yugoslav Informant by ASIO on 16.3.79."

35

Then it follows with, "Relevant information pertaining to Virkez is as follows:". We then have paragraphs 4(a) and (b)?

A. Yes.

40 Q. Then if we just jump to the next page, page 65, there's a further reference to Mr Whitelaw being provided with advice on 16 March 1979, et cetera.

A. Yes.

Q. The last entry on that page where it's got, "NNNN 1452 AEST", is that an indication of when the Telex was sent?

45

A. Yes. 1452 is Australian Eastern Standard Time.

Q. Going back to red page 64, having a look at this document, is this a briefing note from headquarters providing you with either information or background to assist you in attending the interdepartmental meeting on

50

9 April?

A. Yes.

5 Q. Is it your understanding that at least some of the information reflects what is held in the intelligence records of ASIO about Mr Virkez?

A. Yes.

10 Q. And other material referring to dealings or meetings ASIO had with an Assistant Commissioner of the New South Wales Police, Mr Whitelaw, again reflected information contained in records of headquarters of ASIO?

A. Yes.

15 Q. You weren't personally involved in any meetings or dealings with Assistant Commissioner Whitelaw?

A. That is correct.

Q. The--

20 A. Nor - I'll just add, nor was I briefed on any communications with the New South Wales Police in terms of the detail of basically content.

Q. Other than the information contained in this Telex?

A. Correct.

25 Q. The purpose of providing you with this briefing note, it was obviously to inform you so you could go armed with some information to this interdepartmental meeting?

A. Yes.

30 Q. Did it also reflect information that you were able to tell other members who were attending the interdepartmental meeting?

A. Yes.

35 Q. Mr Boyle, you attended the meeting on 9 April 1980. Subsequently, I'm going to take you to a number of different minutes of the meeting that were prepared, but after you attended the meeting, pursuant to your usual procedure, you provided a report to headquarters?

A. I presume so. I don't remember what I said, but I presume so.

40 MCDONALD: Before taking you to the various draft minutes, I'll take you to Exhibit 9.1-47.

EXHIBIT 9.1-47, RED PAGE 66, SHOWN TO WITNESS

45 Q. It's a one-page report. Looking at that document, and I can take you to the bottom of the page, if necessary, but does it appear to be the report that you provided to headquarters after attending the meeting?

A. Yes.

50 Q. Again, if I go to the top left-hand corner, we've got, "Confidential RR to HQS". What does "RR" indicate?

A. "Routine priority".

Q. Then it's got, "CAN 2123 59/6/9 11.4.80". Does that reflect, at least the last digits, that reflects the date on which the Telex was at least prepared?

5 A. Correct.

Q. Then when you say, "For C/PMV", who does that refer to?

A. "Coordinator, Politically-Motivated Violence in Headquarters".

10 Q. Sorry, "Coordinator"?

A. "Coordinator, Politically-Motivated Violence in Headquarters".

Q. If we look at the report, you record that you attended the meeting, and you set out who attended?

15 A. Yes.

Q. Then you comment in paragraph two, "Your telex proved most useful in establishing that the NSW Police had been informed early in the piece about information in ASIO's possession re Virkez"?

20 A. Correct.

Q. The reference to the Telex is the reference to the document that I just took you to, being Exhibit 9.1-46?

A. I believe so, yes.

25

Q. Then you record that:

"AFP (Cavanagh) claimed COMPOL had advised NSW Police on" that date on "information on Virkez known to them."

30

Virkez was known to COMPOL under another name which he used when mixing in the Serbian Community."

Then there's a reference to Mr Cavanagh stating he was going to give specialist evidence. Then in paragraph five:

35

"Meeting concluded that no further action was required on Commonwealth part. Legal and police opinion was that Virkez involvement with YIS, which was rumoured in Croatian community would not support allegation that he was an agent provocateur. PMC will issue summary of meeting."

40

Then finally, you record that you reminded Mr Cavanagh about a transcript of an interview with Mr Virkez.

45 A. Yes. That's what it says.

Q. In it, you record at the end of paragraph five, the "PMC will issue a summary of the meeting."

A. Yes.

50

5 Q. With a meeting such as this, the record of what was discussed and what was decided at the meeting, what level of formality was either required or expected at the time? For example, would there be a formal minutes recorded that would be circulated, and people would have to adopt it, or was it at a more informal level?

A. No, there would've been a formal record kept, and it would've been circulated in draft to ensure that what was contained in those minutes actually reflected what people remembered they had said or contributed.

10 Q. That gave you an opportunity too, if you disagreed or had a different recollection, of raising that?

A. That's correct.

15 Q. Do you recall receiving around April/May at least one or two different drafts of minutes of the meeting?

A. No, I don't recall, but I've been shown them in the documentation before I attended this Inquiry, so I'm aware of them.

20 MCDONALD: Mr Boyle, I'll take you to a number of documents to begin with. Can I first take you to Exhibit 10.4-1(a)?

EXHIBIT 10.4-1(a), RED PAGE 352, SHOWN TO WITNESS

25 Q. Sorry, Mr Boyle. This document, the Inquiry has heard some evidence about. It was created by Ian Cunliffe from Prime Minister and Cabinet, and it reflects, according to Mr Cunliffe, the notes that he was taking of the meeting or the notes that, in a sense, reflect his immediate recollection of what was discussed at the meeting. Looking at the document which goes for about four pages, was that a document that you had ever been shown or was distributed on 1980?

30 A. It may well have been. As I say, my recollection of the details is not good. Certainly, that would've been common practice.

35 MCDONALD: If I then can take you to 10.4-1(b).

EXHIBIT 10.4-1(b), RED PAGE 356, SHOWN TO WITNESS

40 Q. This appears to be the next version of the draft minutes. It only goes for just over about one and a quarter pages, but can you see there - the first thing I should check is the people who are in attendance. You can see that Mr Enfield was the chairperson from Department of Prime Minister and Cabinet?

A. Yes.

45 Q. You knew Mr Enfield?

A. Yes, I had a number of dealings with John.

Q. The next person is Mr St John, again, from Prime Minister and Cabinet. You knew him?

50 A. Yes, but I didn't have a lot of contact with him.

Q. Then Mr Carrington, who you've referred to before, and of course, Mr Cunliffe, who you had met at the March meeting.

A. Correct.

5 Q. Then a number of other people, including yourself as the ASIO representative, and then, again, Mr Cavanagh and Assistant Commissioner Farmer.

A. Correct. I knew both of them.

10 Q. Can you see there it starts off with, "Mr Enfield spoke of the dangers involved if the Commonwealth authority stood by and a miscarriage of justice occurred because of the part played," and then that's crossed off, "Actions by an agent provocateur." Then they record in the next paragraph that you said, "Virkez is an agent run by a Yugoslav Intelligence Service officer from August
15 1978", and "Virkez himself is suspected of being a YIS officer." Then there's a reference to that SIDC-PAV Situation Report, and then you refer to that information that was in the Telex about ASIO officers visiting Assistant Commissioner Whitelaw of the New South Wales Police and telling him that Virkez was an agent. At first, it was "a Yugoslav agent", and then it seems to
20 be handwritten "An agent of the YIS". Can you see the handwriting on the left? "Check with Boyle before there is any wider circulation."

A. Yep. Yes.

MCDONALD: Then, again, just orientating you, if we go to Exhibit 10.4-1(c).

25

EXHIBIT 10.4-1(c), RED PAGE 358, SHOWN TO WITNESS

Q. Can you see there that, again, it's a very similar document, but at least some of the handwritten amendments to, for example, the first paragraph and
30 the second paragraph have now been made?

A. Right.

MCDONALD: Keeping that in mind, the next document I want to take you to is Exhibit 9.1-51.

35

EXHIBIT 9.1-51, RED PAGE 71, SHOWN TO WITNESS

HIS HONOUR: I'm sorry. I didn't get the number.

40

MCDONALD: I'm sorry. Red page 71.

HIS HONOUR: No, the Exhibit number.

45

MCDONALD: I'm sorry, your Honour. 9.1-51.

Q. Mr Boyle, before I take you to certain parts of this document, you can identify your signature down the right-hand bottom of the document?

A. Correct.

50 Q. If we look at the top, it's a letter to the secretary of Prime Minister and

Cabinet, attention Mr Cunliffe, dated 19 May 1980.

A. Yes.

5 Q. If we look at the substance, it's, "Thank you for your letter and a draft copy of the minutes of the meeting for 9 April." You then refer to the second paragraph, and you stated, "I would prefer to see it read," and you put an alternative version of that second paragraph, which was a record of what you said initially at the meeting?

A. Correct.

10

Q. If I can jump to paragraph 3, you say, "My rewording of the paragraph is on the basis of my recollection of what I said, and the information given to me by headquarters for use at the meeting."

A. Correct.

15

Q. When you talk about "the information given to me by headquarters for use at the meeting", you're referring to that Telex that I took you to dated 9 April that set out, in a sense, your briefing for your attendance at the meeting.

A. I believe that is correct.

20

EXHIBIT 10.1-3, RED PAGE 7, SHOWN TO WITNESS

25 Q. Mr Boyle, this appears to be the next version of the minutes, and on the first page, and I'll take you to the section at a moment, it reflects that there, at this point, was a difference between what Mr Cunliffe had recorded in the minutes about what you said, and then what was contained in your letter as to your recollection of what you said and what was based on the information provided to you by headquarters before attending the meeting.

30 If we look at the top, we see that it would appear to contain Mr Enfield speaking about the "dangers" if "Commonwealth authorities stood by, and a miscarriage of justice occurred because of the actions of an agent provocateur". Can I just pause there? When such a term was used at a meeting, did you assume that it would be used in the way that you described before the morning tea break that the way that ASIO understands that term?

35

A. It's difficult to go back that far, but that certainly would've raised a flag for me because ASIO had not described him as an agent provocateur, and to do that, you would need a considerable amount of evidence of his activities and actions. Now, maybe ASIO had that. I don't know, but they certainly didn't make it available to me. I'm sorry. Was that too quick?

40

45 Q. That's fine, Mr Boyle. You're just on the cusp of too quick, I think, Mr Boyle. Could we then look at the next paragraph, this appears to be, in a sense, not contentious. Can you see there it's recorded about the ASIO officers briefing Assistant Commissioner Whitelaw?

A. Yes.

50 Q. And that Mr Whitelaw "was advised that there was no objection to the head of the Police Prosecution Branch being given the information, provided it was not attributed to ASIO, and that in providing the intelligence ASIO was not

suggesting that Virkez was an agent provocateur." Where it appears to be contentious is if we move down the page under that double line, and can we just keep on and see if we can get all of it in. Yes, we can. The first paragraph is what Mr Cunliffe recorded in the draft minutes, "That Virkez is an agent run by the YIS officer from August 1979" and he himself "is suspected of being a YIS officer." Your record was that the section of the minutes that you proposed was that "Mr Boyle said that ASIO information indicated that Virkez had been reporting since August '78 to a suspected Yugoslav Intelligence Service officer working within the consulate." Then you refer back to that SID-PAV Situation Report. And also, again, you refer back to the briefing of Assistant Commissioner Whitelaw of the New South Wales by ASIO agents, et cetera. Your preferred record of what you said at the beginning of the meeting, as you indicated in the letter, that was (a) based on your recollection of what you said?

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10

15

A. Correct.

Q. And (b) the information that had been provided to you in that telex by headquarters?

A. That's right.

20

Q. Was the matter that you took issue with, was the description, if you look at Mr Cunliffe's version, that "Virkez is an agent run by Yugoslav Intelligence Service officer", and that he himself is suspect of being a YIS officer?

A. There are two points I would make. ASIO had no information that indicated Virkez was a member of the YIS. So that would have been misleading if it stood there. And I was also concerned, I think, as far as I can recall, that the decision or the question of him being an agent provocateur had not been raised by ASIO either. The implications of being an agent provocateur has profound policy implications for foreign affairs and for PM&C and for AGS. At that point ASIO had not given me any indication in their briefing to me that they thought Virkez might have been a YIS officer or that he was an agent provocateur. And therefore, I would not allow that to stand in the draft minutes because I considered it misleading. John Enfield's remark there's an agent provocateur was simply his remark, but there was no--

25

30

35

Q. Sorry, Mr Boyle, you've moved into it a little bit too quick.

A. Sorry. All right. In summary, ASIO had not provided to me with any information that Virkez was an agent provocateur, nor had they provided me with any information that Virkez may have been a member of the YIS. I suspect that comment didn't come from ASIO, it may have come from somebody else that was at the meeting. And anyway, I would not allow that misleading information to stand as having come from ASIO. ASIO hadn't told me, and if I had allowed it to stand I would have been held to account by my own organisation.

40

45

Q. Previously I asked you about use of different terms and you spoke about ASIO usage or understanding of agent provocateur. I also asked you about the term "agent", and my recollection was that your answer was something along the lines of "they're managed", but then you said something like, "Managed by ASIO and would report back." An agent can also be possibly an

50

agent run by a foreign government? Not an agent provocateur, just an agent?

5 A. No. I was speaking in the way that ASIO used the term. The term may have been used slightly differently by foreign services, or general understanding by the public. But we were quite precise, the agent had to be managed under control, if you prefer, and had to be directed to a particular target to do particular things. That's a general description. An agent
10 provocateur is directed to carry out certain actions which will provoke a reaction that the intelligence service can manage. In ASIO terminology, an agent is not an officer of the organisation. Therefore, to say that Virkez was an officer of the YIS without evidence of that or some proof of that, would have been misleading to the Commonwealth.

15 Q. In Mr Cunliffe's record where he says that you said, "Virkez is an agent run by a Yugoslav Intelligence Service officer", the use of the word "agent" there, your recollection at the meeting is you did not describe Mr Virkez in that way?

20 A. No, I described - I may have described him as an agent, it depends what the - what ASIO described him to me at that stage. But I would not have described him as an agent provocateur, nor would I have described him as an officer of the Yugoslav Intelligence Service.

25 Q. Is your recollection, and if you don't have a recollection, Mr Boyle, that's perfectly fine, whether you did use, not agent provocateur, but the term agent run by the Yugoslav Intelligence Service?

30 A. I cannot precisely remember what I said at that meeting, it's a long time ago. But I would have described in terms that ASIO had told me or informed me. In that respect I was not an independent, I was going to say agent, but that's probably misleading, I was not exercising independent discretion.

35 Q. It's your evidence that, still looking at that page, your version that you put in the letter to Prime Minister and Cabinet, that, "ASIO information indicated that Virkez had been reporting since August '78 to a suspected YIS officer working at the Consulate General", reflected what you had been told by headquarters?

40 A. That is correct.

45 Q. And what your knowledge was of Mr Virkez's role at the time?

50 A. I had no separate knowledge of Virkez other than what ASIO had told me.

Q. What headquarters had told you?

A. Yes.

40 MCDONALD: Mr Boyle, I'll take you to another document which is not your document, but a document created by Mr Cunliffe, just to see if it jogs your memory about being contacted around this time about the minutes. It's Exhibit 10.1-6, please.

45 EXHIBIT 10.1-6, RED PAGE 12, SHOWN TO WITNESS

50 Q. This is a Prime Minister and Cabinet document. You can see at the top there is a typed extract which seems to be at least part of the draft of the minutes. Then down the bottom it's got, in another handwriting, "and it was

explained that in providing the intelligence, ASIO was not suggesting that Virkez was an agent provocateur." Then can you see on the left,"? Okay with Boyle."?

A. Yes.

5

Q. Do you recall anybody contacting you and having a discussion about the draft minutes?

A. No, I don't. I haven't seen - I wouldn't have seen that document, it was internal to Prime Minister and Cabinet.

10

MCDONALD: The last version that the Inquiry has of the minutes was the one that I just took you to, if we bring that up again, Exhibit 10.1-3, please.

EXHIBIT 10.1-3, RED PAGE 7, SHOWN TO WITNESS

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Q. As I took you to, Mr Boyle, they're an unusual minute because they seem to have the two versions of the second paragraph. Do you recall ever receiving a final version of the minutes of the meeting?

20

A. At this point in time, no, I don't. I think perhaps I should add that the - this was just one exercise that the HLG was involved in for a short time for a specific purpose. We were doing many things differently - or different things, rather, at the same time. So this would not necessarily have stuck in my mind beyond a relatively short period of time.

25

Q. Can I ask you with the procedure with finalising the minutes of the meeting, if there was a matter in the minutes where there seemed to be a dispute between what actually was said, and you've put forward, "No. This is my recollection, and based on the information I was provided, this is what was said", was it a matter of ASIO wouldn't, or you, would not move from that version. You would not agree to minutes of the meeting which did not reflect your recollection of what you said?

30

A. Basically, yes. It wasn't a matter of what I said personally so much. It was where the organisation stood and the information it had provided and how it was being interpreted. I would be responsible for that, and I would be responsible to the Director-General if something flowed from it which could cause embarrassment or created a situation which needn't have been created.

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EXHIBIT 9.1-80, RED PAGE 114, SHOWN TO WITNESS

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Q. I took you to this document beforehand because down the bottom of that page there was a reference to your recollection of what occurred at the earlier meeting on 12 March. If we turn to the beginning of this, you refer to the "Meeting chaired by Enfield on 9 April, which I attended on behalf of ASIO." Then you say:

45

"The correct version of my comments are contained in the HLG memo of 19 May 1980 - those comments were by way of correcting Mr Cunliffe's draft of 13 May 1980. The earlier draft minutes I believe is a document which PM and C did not release but presumably were obtained by Mr [blank]."

50

Then you say:

5 "The contribution I made to the meeting was in keeping with headquarters brief contained in HQ Telex of 9 April 1980, which confirmed oral advice given by headquarters."

10 It would appear from that, this is now May 1982, the evidence you've given today that your version, and you describe it as "the correct version of my comments", were those that you put in that letter to Prime Minister and Cabinet?

A. Correct.

15 Q. And that they were consistent with an oral advice you received from headquarters, and then the Telex from headquarters that I took you to?

A. Correct.

20 Q. Mr Boyle, other than being requested to come in in 1982 and review some files because a subpoena had been issued, is your attendance at the meetings in March and April 1980, was that really the extent of your involvement in inquiries about Vico Virkez and the trial of the Croatian Six in New South Wales?

A. Yes. That's correct.

25 Q. Can I ask you about some other documents that have been provided to the Inquiry, declassified ASIO documents. Again, just for some assistance in procedures that might be undertaken by ASIO.

EXHIBIT 9.1-87, RED PAGE 126, SHOWN TO WITNESS

30 Q. This document, you can see it's dated 6 July 1982. Then it's headed, "Headquarters, ASIO. Yugoslav Intelligence Service (YIS) Further Contacts and Informants". And then, "Please refer to" another "memorandum. The following list of contact may also be included in future papers." There is then a list. If we go to the next page, which is red page 128, you can see that Vico Virkez is listed.

35 A. Yes.

40 Q. You've got, "YIS informant and suspected agent provocateur." Then three and four is redacted information, but it was provided for the Regional Director. This particular document, do you recall this type of document, which seems to be a collation of information about YIS, either agents or people involved with YIS?

45 A. No. I don't. I've never seen the document before. I have no idea to what it relates, in terms of what the request was from headquarters, and it seems to be filling in some gaps or additional information which has become available to the regional office being passed down to me to headquarters' requirement. I don't know what that requirement was. I don't know what the details of that information as it's there. I'm sorry, I can't help you with that.

50 Q. In your answer, you just spoke about "it may reflect further work

undertaken", or maybe "further information that's been obtained."

5 A. That's an assumption on my part. I don't know the details. It goes back to the reference in the paragraph, which I think sort of indicated that this was additional information. Now, why it was being provided and for what purpose or where it came from, I don't know.

Q. We've still got page 128 up there. Can I ask, under "Vico Virkez", the "HQ V/14/58", do you know what that refers to? Is that another file reference?

10 A. I would say that was a file reference to Virkez. It's a headquarters' file reference.

Q. Immediately underneath, the other person has got, "HQT" next to what I would assume is a file reference. What does, "HQT" refer to?

15 A. "Headquarters Trace". It means the first - "Headquarters Trace". T-R-A-C-E. It means that person has come up to notice in some way, not necessarily adverse, and that there isn't sufficient information to open a file on him. So it's a trace in the old record system to ensure that if he turns up again, we can connect and collate the information.

20 Q. Under Mr Virkez where it's got, "COC", that, again, is the case officer?

A. "Case Officer Comment", yes.

Q. With Mr Virkez, having a headquarters file, was it the procedure in the early 1980s that if you had a file, you would be assigned a case officer?

25 A. No.

Q. Do you know how, this particular case officer, would have been identified?

A. No.

30 Q. For example, is it somebody who has expertise or specialist knowledge in Croatian/Yugoslav matters?

A. Without knowing the officer, I couldn't answer that. It could be possibly so, but I could never say it was - inevitably that that was the case, unless I knew the officer and his background, and clearly I don't in this case.

35

EXHIBIT 10.3-48, RED PAGE 185, SHOWN TO WITNESS

Q. Mr Boyle, this might be a challenge to read, but can you see at the top it's an, "ASIO Minute/File Note"?

40 A. Yes.

Q. 3 August. I think it's suggested that it's 1984, but can you see the subject is, "Lithgow bombers' appeal to High Court. Reference attached." Then it reads, "Could you please, as a matter of priority, examine the attached...", and then I'm going to ask for your assistance. Is that, "IR's"?

45

A. No. I'm having difficulty. Hang on. Yeah, it looks like, "IR's".

Q. Would that refer to, "Intelligence Reports" or--

A. It could, or, "Intercept Reports".

50

Q. Intercept Reports?

A. Possibly, yeah. I can't be sure, without seeing the - more of the information that was required or attached.

5 Q.

10 "...and provide your professional opinion as to whether...", and then there's a number of names referring to Mr Virkez. Then, I think, "...is an agent or informant of the Yugoslav Consulate. If an agent he is doing the bidding of the Consulate. If an informant he is merely reporting on separatists"--

A. Yeah. Croatian separatists that is being said.

15 Q. And then, "Could you please provide" - I think "an urgent"?

HIS HONOUR: "...a written opinion."

MCDONALD: "Written". Thank you.

20 Q. "...a written opinion." Can you then see, thankfully in printing, a response?

A. No. I can't see anything, sorry.

Q. You've got to move down the page. Can you see that, Mr Boyle?

25 A. Yes. I can see that.

Q. It records, "Vico's definitely an information source, but there is nothing to indicate that he may be under the control and accepting targeting direction. From these papers, I would classify him in ASIO terms as a" - is that an "I contact"?

30 A. I think it's - it could be an "I" or a "J contact".

Q. Can you help us first with the underlining procedure that's encompassed in this minute file note? Just from its terms, it appears that there's been an appeal to the High Court, and an opinion is being sought from somebody to review files by ASIO to confirm the status of Mr Virkez. Is that a correct interpretation of the request?

35 A. Well, it's certainly a reasonable one. I can't say whether it's a correct one because I just don't know anything about it, but it looks to me as though they're doing a review of the whole case and checking up on what information they actually have, what evidence they have. It tends to bear out what I would not have known at the time, but what I said earlier, that there was considerable reservation as to whether Virkez was an actual agent provocateur other than an agent or informant, and I think at some stage, the Commonwealth Police may have described him as an informant of the Yugoslav Embassy, but I can't add any more to it than that, I'm afraid. There's just not enough information - background information there for me to draw a conclusion.

40 Q. Again, is your understanding of this document that the printing down the bottom, "Vito is definitely an information source", that appears to be the response by the person who reviewed the material and then expressed an

50

opinion?

A. Yes, I think that was the case. That's how I would take it.

5 Q. This, in a sense, review of the material that ASIO possessed about
Mr Virkez, it seems to have been prompted by the Lithgow bombers' appeal to
the High Court. Do you know why that would've prompted such a review?

10 A. I have no idea. I have no knowledge of that. I don't know, for example,
whether people involved in that appeal, judicial or legal or otherwise, had
requested ASIO do a review or to provide information. I have no idea. No
knowledge of that at all.

HIS HONOUR

15 Q. Just at the end of that handwritten response, the reference to an "I" or "J"
contact, what is an "I" or "J" contact?

A. I wish I could tell you, your Honour, but I'm afraid I knew once, but I don't
know now. I can't remember now.

20 MCDONALD: Your Honour, I think I'm at the end of my questioning. I would
appreciate just some time to review the many documents. Mr Boyle could only
give evidence today until 1 o'clock but will be returning tomorrow. Could I
suggest that we finish Mr Boyle's evidence for today, and that he return
tomorrow morning, and then we proceed with Mr Brajkovic's evidence this
afternoon.

25 HIS HONOUR: Mr Boyle, we'll resume with you tomorrow. I think the
arrangement is 9.30.

30 WITNESS: Yes, that's correct.

<THE WITNESS WITHDREW

AUDIO VISUAL LINK CONCLUDED AT 12.54PM

35 LUNCHEON ADJOURNMENT

<VJEKOSLAV BRAJKOVIC, INTERPOSED, SWORN(2.02PM)

<EXAMINATION BY MS MCDONALD

5 Q. Please state your full name?

A. My name is Vjekoslav Brajkovic.

Q. Mr Brajkovic, and you're now retired?

A. Yeah, I'm retired. Yes.

10

Q. Now Mr Brajkovic, I've been informed by those who represent you that you've read through the transcript of the evidence you gave at the trial and there are two changes, or amendments, that you want to make.

A. That's correct.

15

EXHIBIT 2.1, RED PAGE 3375, SHOWN TO WITNESS

Q. Mr Brajkovic, my note is that what you wish to change is towards the top of the page - is that correct? - and the second question.

20

A. Yes.

Q. We'll just wait a sec, Mr Brajkovic. Mr Brajkovic, is it the second question?

A. (No verbal reply)

25

Q. Mr Brajkovic, do you see the second question on the page? This is Mr Shillington--

A. Yes.

Q. --asking you some questions.

30

A. Yes.

Q. Mr Shillington there in the first question asks you, "Then you went on to say...", and there's a quotation. "After they were asking me to go, Detective Morris was holding the torch in the position and he put handcuffs on me." Did you wish to change that to, "He tried to put handcuffs on me."?

35

A. That's correct, yes.

Q. That is the amendment that you would wish to make to that question that was asked of you by Mr Shillington, and to which you answered, "Yes."?

40

A. Yes.

EXHIBIT 2.1, RED PAGE 3290, SHOWN TO WITNESS

Q. Again, towards the top of the page. Again, it's the second question that you wish to amend?

45

A. Yes.

Q. It's your answer to the second question that you wish to change?

A. I want to change this "chain his hands" into the "change his hands".

50

Q. Looking at the second question, can you see you were asked, "Did you ask anybody there if you could use the telephone?"

A. Yes.

5 Q. You see that?

A. Yes.

10 Q. Then you answer, "I asked, but he initially pushed. As soon as I mentioned that, he said, 'No, sit down and shut up.' I come to the chair. I wanted to go, but he pushed me down so he said." Then we've got "chain his hands". Do you see that?

A. Yes. Yes.

15 Q. Do you wish to change "chain his hands"?

A. I want to change into the "change his hands".

Q. Instead of "chain", C-H-I-N(as said), you wish to change it to C-H-A-N-G-E.

A. Yes. Change.

20 Q. Then when your answer continues "so they chained the hands". Do you see that?

A. Yes.

25 Q. That second use of the word "chain" or "chained", do you wish to change that to C-H-A-N-G-E-D?

A. Yes.

Q. With those two amendments to the answer to that question, they were the amendments that you wish to make?

30 A. Yes.

Q. Thanks, Mr Brajkovic.

A. Thank you.

35 Q. Mr Brajkovic, can I ask you some questions about 1979?

A. Yes.

Q. It was on 8 February 1979 when the raid at your house at Bossley Park occurred?

40 A. Yes.

Q. That night, you were taken back to CIB headquarters?

A. Yes. Yes.

45 Q. During the raid, there were a number of different police officers who were present at your house?

A. Yes.

Q. One or two of them, you knew beforehand, like Detective Krawczyk?

50 A. Yes.

Q. Other police officers, you learnt their name that night?

A. No. One of them, yes. Sergeant Wilson.

Q. Others at that time, you didn't know their name?

5 A. No, I didn't.

Q. You were taken back to CIB?

A. Yes.

10 Q. Then in the early hours of the morning - I think it was the early hours of 9 February - you were then taken from CIB to Central Local Court?

A. Yes. two o'clock.

Q. At Central Local Court, you were charged with an offence?

15 A. Yes.

Q. The officers who took you from CIB to Central Local Court were Detective Wilson?

20 A. No, Detective Harding and Detective Morris.

Q. You say Detective Wilson didn't take you back?

A. No. No.

Q. It was Detective Harding and Detective Morris?

25 A. Yes.

Q. Then by that time, you knew the name of Detective Harding. You knew who he was?

30 A. No.

Q. You didn't know who he was?

A. No.

Q. You didn't know who Detective Morris was?

35 A. No.

Q. At that time, the only officer whose name you knew was Detective Wilson?

A. Yes.

40 Q. You might have thought his name was maybe Williams or Wilson? You weren't--

A. That's correct. That's correct.

Q. --that sure?

45 A. Yes.

Q. It was something like Wilson?

A. Yes.

50 Q. Later on, you learnt or it was confirmed that his name was Detective

Wilson?

A. Yes.

5 Q. After being taken to Central Local Court, you appeared in Court the next morning, and then you were taken to Long Bay?

A. Yes.

10 Q. You remained at Long Bay for the period of your committal hearing?

A. Yes, I believe so.

15 Q. Then you remained there in the lead-up to your trial?

A. Yes.

Q. During your trial?

15 A. Yes.

Q. And then until you were sentenced in about February 1981?

A. Yes.

20 Q. For that period, you remained at Long Bay Gaol?

A. Yes.

Q. After you were sentenced, where were you then sent to? Did you remain at Long Bay, or were you sent to another gaol?

25 A. I was - remained in the Long Bay for some time, and after that, we changed to the Cessnock.

Q. Mr Brajkovic, I'm terribly sorry. I didn't hear you then. After you were sentenced, were you transferred to another gaol?

30 A. I think I remained for short while there, and the - I was sent to the Cessnock.

Q. You were sent to Cessnock?

35 A. Yes.

Q. Did you remain at Cessnock until you were eventually released?

A. No.

Q. Where did you also go?

40 A. I go to - I was designated for the work release in Silverwater.

HIS HONOUR

Q. I didn't understand that.

45 A. I was designated from the Cessnock to the Silverwater Gaol.

MCDONALD

Q. Sent from Cessnock to Silverwater Gaol?

50 A. For the work release.

Q. Where the work--

A. Work release. I was - I did - I acquired job from that Silverwater, and I was working in Alexandria.

5 Q. Were you eventually released from Silverwater?

A. Yes.

Q. In 1979, very early on you wrote to the Premier?

A. Yes.

10

Q. In February 1979?

A. I write a letter to that, yes. I believe 24 February.

Q. So 24 February 1979 you wrote a letter of complaint to the Premier?

15

A. Yes.

MCDONALD: Maybe we can bring up Exhibit 11.168, please.

EXHIBIT 11.168, RED PAGE 1514, SHOWN TO WITNESS

20

Q. This is the translation, but I think if we move along we might have the original. Yes. If you look at that page which is red page 1514, that's the letter that you wrote to the Premier?

A. Yes.

25

MCDONALD: Then jumping back to 1512, that was the translation?

EXHIBIT 11.168, RED PAGE 1512, SHOWN TO WITNESS

30 WITNESS: Yes.

MCDONALD

Q. And as a result of making that complaint, you were contacted by a police officer within Police Internal Affairs about the complaint?

35

A. Yes.

Q. Was that Detective Sergeant Shepard?

A. Yes.

40

Q. Detective Sergeant Shepard informed you that he wanted to come out and interview you about the allegations that you made in that letter?

A. Yes. Yes.

45 Q. Detective Sergeant Shepard came out to see you, I think it was in April 1979?

A. Yes.

Q. At that stage you were at Long Bay?

50

A. Yes.

Q. And he brought out another police officer with him who typed questions and answers that you were asked?

A. Yes.

5 Q. The fact that the Detective Sergeant had contacted you and said that he was investigating your complaint, that must have made you feel, at least to some extent, your complaint was being taken seriously?

A. Yes.

10 Q. That you were going to be given an opportunity to put your case about what happened?

A. Yes.

15 Q. Also did you understand that your wife and also Mr Hudlin were going to either be interviewed or provide information to this Detective Sergeant?

A. I was not informed about it.

20 Q. So your knowledge at this time was more that you were going to be interviewed by the Detective Sergeant Shepard?

A. Yes.

25 Q. When he interviewed you in 20 April 1979, the matters or the events of 8 February and 9 February were still very fresh in your mind?

A. Yes.

30 Q. Occurred probably just over two months previously?

A. Yes.

35 Q. You also knew that this was your opportunity to tell Detective Sergeant Shepard what occurred?

A. Yes.

40 Q. And who, in your mind, had acted wrongly towards you?

A. I was not informed about the names of those two officers.

45 Q. Not asking you that.

A. Yep.

50 Q. I'm asking you about what you were thinking when you came to this interview?

A. I was thinking talk and swear that my situation in the words to the higher authority to be investigated about that assault.

55 Q. So you wanted to tell him what you said happened so it could properly be investigated?

A. Yes.

60 Q. Does part of it being properly investigated, to the best that you could, you had to identify who said something to you and who did something to you?

A. I identified officers that assaulted me in narrative way.

Q. In a what way?

A. Narrative, verbally, by words. No, I didn't - I didn't at the time know the proper names to be--

5 Q. But you didn't say that to Detective Sergeant Shepard, did you?

A. I said tall office - a tall officer, the tall detective and the detective with him with moustache, they assaulted me. And that--

10 Q. So can I just pause there, and I'll take you to your questions and answers just in a minute. But is what you did during the interview was when you knew an officer's name you nominated that to Detective Sergeant Shepard?

A. I - which - which - I don't--

15 Q. For example, Detective Krawczyk?

A. Yeah, he was known to me from before.

20 Q. So in the interview, when you wanted to tell Detective Sergeant Shepard about something that happened that involved Detective Krawczyk, you named Detective Krawczyk?

A. That's correct.

25 Q. With Detective Wilson, now to be fair at this time you're still a little bit uncertain whether it's Wilson or Williams?

A. Yes.

Q. But you said to Detective Sergeant Shepard, "Look, Detective Williams/Wilson came in and offered me a cup of coffee", didn't you?

A. Yes.

30 Q. Also, you identified Detective Harding in this interview?

A. That, I was mistaken in getting to--

Q. Alright, maybe if we take it in stages.

A. Yeah.

35

Q. You did identify to Detective Sergeant Shepard an officer that who you nominated as Detective Harding, didn't you?

A. Yes.

40 Q. And you told Detective Sergeant Shepard that this Detective Harding did certain things?

A. Yes.

45 Q. But as you said, there were some officers, at this time, you still didn't know their name?

A. That's correct.

Q. And at that time, you identified them as - I think sometimes you would just say, "Look, a police officer."

50 A. Tall police officer, officer with moustache.

Q. Sometimes you used the word, "Tall officer". There's also a reference to an officer with a moustache?

A. Yes. Yes.

5 Q. Then sometimes you just say, "A third officer" --

A. Yes.

Q. --or, "The two officers who were here previously."

A. Yes.

10

EXHIBIT 11.156, RED PAGE 1440, SHOWN TO WITNESS

Q. Mr Brajkovic, that's the beginning of the first page. Can you see at the top it's, "Questions asked by Detective Sergeant First Class E.S. Shepard of Vjekoslav Brajkovic at the Metropolitan Remand Centre, Long Bay Gaol."

15

A. Yes. Yes.

Q. And then also present was a Detective Senior Constable who was typing the questions and answers?

20

A. Yes.

Q. And you can see there we've then got, "Time commenced", and we start with questions and answers?

A. Yes.

25

MCDONALD: It goes for a number of pages. I think about ten pages. If we can go through to the last page. Yes, if we stop there. Now actually, I'm sorry, if we could go to the previous page right down the bottom. So 1448.

30

EXHIBIT 11.156, RED PAGE 1448, SHOWN TO WITNESS

Q. You can see that Detective Sergeant Shepard is asking you a series of questions, and this was on the topic of what was taken from your house during the raid?

35

A. Which one?

Q. Can you see you said, "My wife she told me, that when she been looking and she pays attention for the rings and the gold chains but she couldn't find them."

40

A. Yes. Yes.

Q. And then right down the bottom, question 37, "Will you now read through the whole of the record of interview." And you said, "Yes."

A. Yes.

45

MCDONALD: Could we go then to 1449.

EXHIBIT 11.156, RED PAGE 1449, SHOWN TO WITNESS

50 Q. And I take it, Mr Brajkovic, you did read through the whole of the interview?

A. Yes.

Q. Because it was very important to get this right, wasn't it?

A. Of course.

5

Q. Then you're asked:

"Q. Do you agree that you have just read each of the nine pages of the interview?"

10

A. Yes.

Q. Is there anything further that you wish to say."

15

In that section, you make some comments about before you were arrested you were very confident with the police and the system?

A. Yes.

Q. And then you talk about the injuries that you'd received?

A. Yes.

20

Q. Then you were asked:

"Q. Will you sign each page of the interview.

A. Yes."

25

A. Yes.

Q. That's your signature there on that page?

A. Yes.

30

MCDONALD: For example, if we jump back to 1148, that's your signature at the bottom of the page.

EXHIBIT 11.156, RED PAGE 1448 SHOWN TO WITNESS

35

WITNESS: Yes. Yes.

Q. Now, can I ask you about the procedure? You participated in this interview with Detective Sergeant Shepard. At the end of the interview, did he provide you with a copy of this?

40

A. Yes.

Q. So, you had your own copy of it?

A. Yes.

45

Q. After this interview with Detective Sergeant Shepard, did he contact you again?

A. No.

50

Q. Did you know that, or hear from either your wife, that she had been contacted to make a statement?

A. No. I wasn't - it's possible, but I'm not aware of that.

Q. She may have told you, but you can't remember now?

A. I don't remember.

5

Q. What about Mr Hudlin? Did he tell you that he'd been approached and--

A. Same thing. Same thing.

Q. So might have told you?

10

A. Yes.

Q. You can't remember now?

A. Yes.

15

Q. Your understanding was that there was going to be an investigation undertaken by Detective Sergeant Shepard into your complaint?

A. Yes.

Q. That involved talking and getting your version of events?

20

A. Yes.

Q. Members of your family who were there, their version?

A. Yes.

25

Q. Did he raise with you that he may talk to some of the - like, the nurse, or a doctor at Long Bay?

A. No. No.

30

Q. Did he say to you that, in addition, part of the procedure would be to say to police officers that you had even nominated, or described as being there, that he would get their account?

A. He didn't say that.

35

Q. You would expect that would be part of the process, wouldn't you?

A. I did - I believe I did ask him to inform me whatever happened, what steps he took, and what is the results, but he didn't come back.

Q. Were you ever told of any of the results?

A. No.

40

Q. You had a copy of this interview?

A. Yes.

45

Q. By the time of the committal, which was roughly in about August 1979, you still hadn't heard back from Detective Sergeant Shepard?

A. No, I never heard anything.

Q. Then at least by 1981, you'd never heard back from him?

A. No.

50

Q. Had you ever tried to contact him again?

A. No.

5 Q. Did you ever try and contact him and say something like, "I made a mistake in my complaint. I've got to tell you something in addition or change something I told you?"

A. No, I indicated to the - another officials that I would like to raise charges because the officer that assaulted me.

10 Q. Sorry, Mr Brajkovic. I didn't hear that. Could you repeat that, please?

A. I said I contacted another authorities in - where I indicate that I would like to raise charges, court charges against the detectives that assaulted me, and there were - consequently, there were visit of the - visiting Magistrate which informed me that before I could raise charges, I have to know proper names,
15 so they were nothing of this - of that.

HIS HONOUR

Q. Who told you that? Did you say the visiting Magistrate?

20 A. Magistrate. Someone in authority. Once I indicated to the - those officer, prison officers, that I would like to see someone from the Court where I would like to raise charges and raise for the assault, then some man - person come, and he informed me before I could raise charges, I need to know proper
25 changes.

Q. Who was it that told you that?

A. I believe visiting Magistrate.

MCDONALD

30 Q. Mr Brajkovic, you spoke about asking or referring to another authority, and then you've referred to a visiting Magistrate. Was this somebody who came to the gaol, to Long Bay?

A. Yes. Yes.

35 Q. What you had in mind at that time was starting like a private prosecution of the police officers so they would be charged with assault?

A. Yes.

40 Q. The person that you spoke to said to you that you needed their names before--

A. Yes.

Q. --you could do that?

45 A. Yes.

Q. You think that person was like a visiting Magistrate at the gaol?

A. I believe so, yes.

50 Q. That conversation with this visiting Magistrate, did that occur in 1979?

A. Yes.

5 Q. You were taken into custody towards the beginning of February 1979. Your committal's in August 1979. Can you give an indication of when in 1979 you had that conversation?

A. I believe soon after Detective Shepard was there. Soon as he left, probably few - a short while.

10 Q. I'm sorry, Mr Brajkovic.

A. After I have a visit from the Detective Shepard, I - yeah.

Q. Your recollection is shortly after. That would've been--

A. Yeah.

15 Q. --towards the end of April 1979, you had--

A. I'm not able to pinpoint the date, but--

Q. No. Detective Shepard saw you towards the end of April 1979.

A. Yes.

20

Q. I'm just looking for a very rough indication of the date. If Detective Sergeant Shepard is there towards the end of April 1979, and the committal is in August 1979--

A. So they in between that.

25

Q. Was it May? Sorry, it started in May. May 1989. It was before the committal.

A. Yes, was probably.

30 Q. When do you say that you learnt or found out the proper names of the detectives?

A. That was during the committal hearing.

Q. How did that come about?

35 A. The prosecutor - police prosecutor, he called the officers into witness box, and as they come, I find out their name.

Q. If an officer came to give evidence in the witness box--

A. Yes.

40

Q. --did you make a note of, "Gosh, that's Detective X"?

A. Yes.

Q. And what did you do with that information at that time?

45 A. I wanted to make sure, and that I'm correct. Then I send a letter again to the Premier or--

Q. I'm sorry. You sent a letter.

50 A. I sent it to Commissioner of Police, a letter indicating that I was wrong about the name that I indicate of the detective, what's his - Detective Harding,

it's supposed to be Detective Bennett, and man tall - tall detective is supposed to be Harding, Detective Harding. And detective with the moustache, it's supposed to be Detective Morris. That's and another - another detective was.

5 Q. You say you sent another letter--

A. Yeah, correction.

Q. --to the Commissioner of Police?

A. Yes. Or Premier, I'm not sure but.

10

Q. But you have--

A. Premier. Premier's Department or Commissioner of the Police. But I believe was - was probably Commissioner of Police.

15 Q. You sent that after the committal?

A. I believe in January 1980. I believe so.

Q. You said January 1980?

A. Yeah.

20

HIS HONOUR

Q. I didn't hear clearly what you said in the letter about the correction you made to who the police officers were, can you just say that again, please?

25

A. I said that instead of that Detective Harding that I indicated during - during the conversation with Detective Shepard, it's supposed to be stand Detective Bennett.

Q. So when you said to Detective Shepard it was Detective Harding, you meant to say Detective Bennett, or it should more correctly be--

30

A. Detective Bennett.

Q. --Mr Bennett?

A. Yeah.

35

Q. And the other one?

A. And tall officer, tall detective it is that Detective Harding. And detective with the moustache, it was Detective Morris. And detective that was standing in front of me is called Detective MacKenzie. MacKenzie. MacKenzie, Detective MacKenzie.

40

MCDONALD: MacKenzie, your Honour.

HIS HONOUR: MacKenzie. Right.

45

WITNESS: MacKenzie.

HIS HONOUR

50 Q. MacKenzie?

A. Yeah.

MCDONALD

5 Q. I'll take you to it in a moment, but your recollection is when you spoke about a tall officer, that was actually Detective Harding?

A. That's correct.

10 Q. When you spoke about the officer with the moustache, that was Detective Morris?

A. That's correct.

Q. Then I think another officer who was there--

15 A. He's in front of me, it's someone that was in front of me, that's Detective MacKenzie.

HIS HONOUR

20 Q. And Detective Harding should have been Detective Bennett?

A. Yes.

Q. So that's four corrections?

A. Yes.

25 MCDONALD: Can I take you back to Exhibit 11.156. I think it's red page 1444. This is part of your answer to question 15, which is where you're telling Detective Sergeant Shepard about everything that had occurred.

30 EXHIBIT 11.156, RED PAGE 1444, SHOWN TO WITNESS

WITNESS: Yes.

MCDONALD

35 Q. On this page, reading from the top, can you see it's dealing with when you arrive at CIB?

A. Yep. Should I read?

40 Q. I'm orientating you to where we're at in your answer.

A. Yeah.

45 Q. Can you see at the top you say, "I carried the suitcase to the lift. Outside in the building, which I would describe as an office, and when we entered the office main door, Detective John told me to give the suitcase to him." And you see many office tables.

A. Yes.

50 Q. Then going down, you say, "We entered into the office on the left-hand side, and after this we've been in the office for about half an hour or 15 minutes, while I'd been left alone with the warning not to look out and to sit

down." Do you see that?

A. I can't follow it, sorry. Could you put point up, please?

Q. It's about 13 lines down.

5 A. 13.

Q. It starts out with the words, "Look out and to sit down."

A. Yes.

10 Q. Do you see that?

A. I could see that.

Q. Then it says, "After this time, Detective Sergeant John Willis or Williams, something like that Detective Harding and another three detectives who entered the office."

15

A. Yes.

Q. Can I pause there. You've now identified Detective Sergeant Wilson, though you're a little bit unsure whether it's Willis or Williams?

20

A. Yeah.

Q. That's right?

A. Yes.

25 Q. Then you've identified Detective Harding?

A. That's Detective Bennett.

Q. Hold on. You record, "Detective Harding and another three detectives who entered the office."

30

A. Yes.

Q. Where did you get the name "Detective Harding" from at this point?

A. The Detective Harding, it comes when we're moving from the Restwell Road to the CIB. Then inside the car, police car, there were conversation in between the Detective Krawczyk and Detective Wilson, where Detective Krawczyk was talking about a man that runs from Australia and he find himself in Greece, and he said - in Greece, and he said he change his name and he change his address, and he mention Harding at same time, when he was talking. He said, "Harding". When he said, "Harding", Detective Bennett, who was driver, he said, "Yes." So I thought this is the Detective Harding from the - Detective Bennett.

35

40

Q. In the car going to CIB, you were in the backseat?

A. Yes.

45

Q. There was Detective--

A. Krawczyk.

Q. --Krawczyk next to you?

50

A. Yes.

Q. In the passenger front seat was Detective Wilson?

A. Yes.

Q. And there was another officer driving at the time?

5 A. That was Detective Bennett.

Q. We're going to take this in stages, Mr Brajkovic. At that point, you didn't know the identity of the driver?

10 A. No.

Q. But because of this conversation about somebody escaping to Greece, where the words - what was referenced to "Harding"?

A. Detective Krawczyk mentioned Harding.

15 Q. Yeah.

A. And as soon as he mentioned the Harding, Detective Bennett say, "Yes."

Q. All right and from that, you assumed that it was Detective Harding--

20 A. That's correct.

Q. --driving the car?

A. That's correct.

Q. Did you ask what the detective who was driving what his name was?

25 A. No.

Q. If we can go back to page 1444. I think we're up to about line 13, or something like that. We've got, "After this time Detective Sergeant John Willis or Williams...Detective Harding and another three detectives who entered the office."

30 A. Yes.

Q. You're saying that after the committal, you learnt that Detective Harding was actually Detective Bennett?

35 A. Yes.

Q. Then if we continue down. In this section, can you see a line which starts, "...him as much I know I didn't have any explosives..."

40 A. Yes.

Q. If we go to the end of that line, do you see you then record:

45 "After this Detective Harding has from his pocket book the notice book and ask me what I think about Serbian nationality am I against them..."

Do you see that?

A. Yes.

50 Q. Then can you see in that section you set out several other questions that

you record as Detective Harding asks you questions and records your answer?

A. Yes.

5 Q. What you're saying now is that that wasn't Detective Harding, but Detective Bennett?

A. Yes.

10 Q. You actually nominate the first name of Detective Harding. Do you see that, "After this Detective Brian Harding and Sergeant Williams and another Detective have left office..."

A. Yes.

15 Q. Where did you get the name from?

A. Probably - probably from the solicitor.

Q. Which solicitor?

A. McCrudden.

20 Q. Before this interview, did you have a discussion with Mr McCrudden?

A. Yeah. He showed me some paper that he brought.

Q. I missed that? Mr McCrudden?

A. He showed me some documents.

25 Q. What documents did he show you?

A. I believe he show to me record of interview.

30 Q. Was this a record of interview that was conducted with you in the early hours of 9 February or at CIB?

A. Well, I state very clearly that no record of interview was conducted ever with me, but the police claim that's the - what - that's what the record of interview is.

35 Q. So, Mr McCrudden showed you a typed interview?

A. Yes.

Q. Which you dispute, but on its face, it was a record of interview between you and two police officers.

A. Yes.

40

Q. From that document, you--

A. I--

45 Q. --saw the name Brian Harding?

A. Yeah, I assume I was searching around, collecting, but still couldn't fit it.

Q. Still couldn't what?

50 A. Couldn't associate name of the persons, all this. I was not orientated. I was, like, disorientated about those names into the assault and record of interview and all these things.

Q. You knew at this time it was important to be accurate?

A. Yes, but I wasn't able to put the name to the Detective Harding, who he was.

5 Q. At the moment, you're saying to Detective Sergeant Shepard that it was Detective - and you're giving a first name - Brian Harding?

A. Yeah.

10 Q. "Who wrote in his book and asked me questions", and now it seems that what you're saying is that in nominating that first name and surname, it was based on some speculation by yourself.

A. It was, yes. It was the based originally from the person that was driving the car.

15 Q. Your account is you got the surname from the trip in the car.

A. Yes.

Q. Then you're saying you got the first name when Mr McCrudden showed you a copy of this--

20 A. Yes, and then I associate this Harding that I could see. The Harding is not only Harding, Harding have a name, Brian, so I said Brian, but that was incorrect. I mean, until I seen the witness box all different people, and I--

25 Q. You didn't tell Detective Sergeant Shepard that you were uncertain or speculating about names, did you?

30 A. No. No, I didn't. I tried to work out, but I left this until they appear in the witness boxes so I could really see in reality, and once I realised I was - my grievous mistake. That's a big mistake. And what this man that comes - tell me that I must know exactly the names, then I was scared. What I'm doing, and then I write a - as soon as I could, I write a letter immediately to the Internal Affairs to the Commissioner of the Police indicating a mistake.

Q. The person who told you that you needed names--

35 A. Yeah.

Q. --according to your evidence today wasn't Detective Sergeant Shepard. It was the visiting Magistrate.

A. Someone - I was told it is the visiting Magistrate, but--

40 Q. That was a separate conversation--

A. That's correct.

Q. --to the conversation that you had with Detective Sergeant Shepard.

45 A. Yes.

Q. You didn't tell Detective Sergeant Shepard that you were uncertain or speculating about names at this point?

50 A. I didn't. I didn't tell him. That I just realise after the - having conversation that this big mistake that I wrongly named the person, then I write letter. I said, "Please, that's mistake."

Q. If we jump back to this. Where the cursor is, can you see it reads, "Detective Brian Harding and Sergeant Williams and another detective have left office, and I have been, myself and other two detectives, left in the room."

A. Yes.

5

Q. This is where we identified one with a moustache.

A. And tall detective. Tall.

Q. Hold on. We'll take it in stages, Mr Brajkovic. One of them with a moustache, you now say that's Detective Morris, was it?

10

A. Yes.

Q. Then I don't think at that point you identify the other detective, and then we've got Detective Williams, in your words, coming back and asking if you'd like a cup of coffee?

15

A. Yes.

Q. Then can we go eight lines from the bottom? The line commences "After say you smart ah". We might have to move down towards the bottom of the page. See where the cursor is?

20

A. Yes.

Q. Then you say, "After this, Detective Williams and two detectives together have left room, but instead of them comes another detective who just comes in front of me, touched his hand on my face and said, 'You bad boy. Why don't you tell us, and we will let you go?'" Do you see that?

25

A. Yes. Yes.

Q. I've described that in my notes as a third unknown detective.

30

A. This is the Detective MacKenzie.

Q. You say that's Detective MacKenzie?

A. Yeah. Then I need to read this. Yes.

35

MCDONALD: Then if we go over to page 1445.

EXHIBIT 11.156, RED PAGE 1445, SHOWN TO WITNESS

Q. Can you see at the top of the page you say, "After this the two detectives who had been previous with me entered the office and they started asking me question again and said, 'Tell us about the explosives that we find in your house.'" Do you see that?

40

A. Yes. Yes.

Q. If you continue down that section, you say:

45

"After this I told them that I have nothing to say, and he said, 'Yes, you will.' At the moment he just walk into door one of the detective who had been staying left-hand side of me, and the detective from the door makes very fast two steps motion with turn of his body, and with his right hand he hits me in the head. As he hit me I turned my

50

head on the left, and from that moment I didn't expect but detective from left-hand side of me with his hand, hit me in the head."

A. Yes.

5 Q. The detective who was from the front door and makes "fast two steps motion and with the turn of his body and with right hand hits me in the head", which detective do you say that is?

A. "Detective from the left-hand side with his hand hit me after this."

10 Q. No, if you read it, it's the detective from the door makes the "fast two steps motion".

A. The man who done that one, that first hits me, that's Detective Brian Harding. And as my head goes to the left, I didn't expect that one, but Detective Morris, he hit me from other side.

15

Q. Right. I'm jumping around a little bit, you say, "And from this moment I saw the detective who had been in front of me is just in possession of the towel, he took the towel and" I think it's, "straightened up and started to twisting them."

A. Yes. Took the hands.

20

Q. Where did the towel come from?

A. There was towel down on the table.

Q. There was a towel on the table, was there?

25 A. Yes. Yes. He took the hands up, diagonally opposite side and put it twisting it.

Q. You say that's Detective Harding?

A. That's Detective Harding, yes.

30

Q. Throughout this, is Detective Harding the taller detective?

A. Yes.

Q. And the detective with the moustache is Morris?

35

A. Yes.

Q. Why you suddenly change from a description of the detective who had been "in front of me", to the "taller detective"?

A. That's - that's the conversation.

40

Q. It was what, sorry?

A. Conversation.

Q. I can't understand that.

45

A. It is why that I find it most suitable to express it.

Q. All right. So originally you were describing as the "detective in front of me"--

A. Yep.

50

Q. --and then he became, "the taller detective."?

A. Yes.

5 Q. If we follow on this page, can we go down to at about point six, "Williams entered the office with a question." Can you see there, Mr Brajkovic?

A. Yes.

10 Q. "After this Detective Williams entered the office with a question, 'Anything?' and the two detectives said, 'Nothing.' Detective Sergeant Williams tells them, 'Let him now he won't tell you nothing.'" Then you record, "After this Detective Harding enter the room. He just been staying with his hands at the back of him near the wall."

A. Yes. That's Detective Bennett.

15 Q. When did he enter the room?

A. After - after they stop it. After Detective Wilson enter and he said, "Anything?" They say, "No, nothing." And he said, "Leave it now, he won't tell you anything." Then Detective Bennett comes.

20 Q. Again, on this page, if we keep on going down, about nine lines from the bottom, the line commences, "The office".

A. Yes.

25 Q. It's got, "The office. Detective Harding tell me, 'Excuse, Vic, this is rough people, we're sorry for this.'"

A. Yes. That's Detective Bennett.

30 Q. You're now saying that you were mistaken, it wasn't Detective Harding, it was actually Detective Bennett?

A. Yes.

EXHIBIT 11.210 SHOWN TO WITNESS

35 Q. Do you see that, Mr Brajkovic?

A. Yeah. Yeah. You want me to read this?

Q. First thing, have a look at it. Do you recognise that document?

A. That's my handwriting, yeah.

40 Q. If you look at the top it's got, "Long Bay, 30.1.80". Do you see that? Mr Brajkovic, do you see at the top it's got the date and location?

A. Yes. Yes. I could see that.

45 Q. Then you refer to your letter of February 1979?

A. Yes.

50 Q. Then you say, you refer to in the next paragraph that Detective Sergeant Shepard had arrived and had come and asked you questions about your complaint?

A. Yes.

Q. Then you say, "After this visit I have received letter from your department signed by Mr W.J. Parson for secretary."

A. Uh-huh.

5 Q. Do you recall what that letter said?

A. No.

Q. You then say, "Today I have been on court and I have trial must start 14 April 80."

10 A. Trial?

Q. You say:

15 "I send you this letter with intent to saw that last weeks I have received depositions from low court and now I must inform you that in my interview given to Sergeant Shepard and due to misidentification of detectives I must correct following:"

A. Yes.

20 Q. Then you set out the corrections that you wish to make to your answers?

A. Yes.

Q. You wrote the letter not immediately after sitting in the committal and seeing the officers, but after you had received the depositions from the Petty Sessions Court?

25

A. Yeah. I want all necessary information instead of the jumping - it was for me better to collect all necessary information before I make changes, otherwise--

30 Q. But you would have known that you made a mistake when you were sitting there in the committal?

A. Yes.

Q. And, for example, the detective with the moustache got in the witness box?

35

A. That's correct.

Q. It wasn't short evidence. Those officers often were cross-examined over a number of days?

A. Yes.

40

Q. You knew then that you had made a mistake?

A. That's correct, yeah.

Q. But you didn't correct it until January 1980?

45

A. Yeah. Yeah. I have a strong reason. I'm not sure why and what, but I have a strong reason that I wanted to be sure. That it is my best intention to send the correction - proper correction without additional correction ever.

Q. You must have told Mr McCrudden at the committal that you'd got things wrong?

50

A. It must probably - most probably I did.

Q. But you would had to, wouldn't have you, because--

A. This letter--

5

Q. He would have been cross-examining Mr Harding about opening a book and asking you questions about Serbia.

A. Yeah.

10 Q. And he didn't do that at the committal. He asked questions alleging an assault using the towel, didn't he?

A. Yes.

Q. So you must have known then of this error that you made?

15 A. I - when I see them in the witness box and I realise that there are big problem, and I realise the significance of the mis-naming the person, I did give him a different name, and I feel very strong obligation to correct this. Send the correction. Very strong - I become emotional about I done, and I--

20 Q. But what I'm saying to you is you realised your mistake immediately when, for example, "Tall detective", or, "Detective with moustache got in the witness box"?

A. Yes.

25 Q. You must have told, for example, Mr McCrudden that it was Detective Harding who, you say, nearly strangled you with a towel, because Mr McCrudden cross-examined Detective Harding about that--

A. Yeah, I don't believe it.

30 Q. No. No. Let me finish my question. You must have told Mr McCrudden during the committal that it was Detective Harding who attempted to strangle you with a towel.

A. It is probable, but most probably I didn't talk in that way about this with the solicitor McCrudden.

35

Q. You don't think you did?

A. I don't believe it.

Q. All right.

40 A. This is my personal - personal thing. I--

Q. Did you show Mr McCrudden the copy of your interview with Detective Sergeant Shepard?

A. Yeah, I believe so. Yeah.

45

Q. If Mr McCrudden was relying on that, he would've been cross-examining another detective about strangling you with a towel. He wouldn't have been cross-examining Detective Harding, would've he?

A. Yeah, I was really into disarray, mental disarray, until I realise--

50

Q. I'm sorry, Mr--
A. Mental disarray.

5 Q. Your mental disarray?
A. Yeah.

Q. This is mental disarray at the committal?
A. Yeah.

10 Q. What mental disarray were you in at the committal?
A. There is the obligation to the solicitor. There is the obligation, my moral
obligation, that I name them wrong name, and all these things, so I was
undecided at that moment until I could make sure 100% that everything was
15 right, then I write this letter that I write to the Internal Affairs or Commissioner,
and I don't know.

Q. Mr McCrudden cross-examined Detective Harding about allegedly
strangling you with a towel.
A. Yes.

20 Q. You must have told him--
A. Must told him. Yes.

Q. --that made a mistake.
A. Yes.

25 Q. It's actually tall detective.
A. Yes.

30 Q. It's actually Detective Harding.
A. Yes. I must - according to the - my observation of the committal hearing, I
must communicate with detective - with solicitor McCrudden and providing him
proper information, otherwise he wouldn't be able to - yeah.

35 Q. No. He's got obligations.
A. Yes, but there's a certain while passed since I realise I must put this on the
proper - on the paper and send it as the correction.

40 Q. What I'm suggesting to you, there would appear to be a delay--
A. Yes.

Q. --in you realising during the committal that you've made a mistake--
A. Yes.

45 Q. --and informing the Premier via this letter.
A. Yes.

Q. Do you agree with that?
A. Yes.

50

Q. Can you explain why there was such a delay?

A. The things was, at that time, were always on my mind, but for some reason, I don't know. I don't know. I could see here. I finally done it. I send a letter.

5 Q. You were in Long Bay for a period from roughly the beginning of February 1979 to February 1981.

A. Where's that?

Q. In Long Bay; that's right?

10 A. Yeah.

Q. During that time, did you come across another inmate called Neddy Smith?

A. I'm not aware.

15 Q. You can't recall meeting anybody called Neddy--

A. No, not--

Q. --at Long Bay?

A. No.

20

Q. You might have, but you just can't remember it now. Is that the position?

A. It could be. It could.

Q. Sorry.

25 A. But I'm not aware. I'm not - there's nothing special that I have with anyone into the - in the gaol when I was there that I remind--

Q. I'm sorry, Mr Brajkovic. I've missed that.

30 A. I said there were nothing special, any kind of relation or friendly or knowingly or anything like that that I established some kind of relation with anyone.

Q. No, I'm not talking about a relationship with anybody. Just talking to anybody. You get to know--

35 A. I was engaged in this case reading the book. I have a--

Q. Reading what book?

40 A. The books. Legal books. I went down in library and collect all this probably 20 books, and I was reading, trying to understand this case. I was preoccupied with that.

Q. You must have, during nearly two years in Long Bay, spoken at times to other inmates in the gaol?

A. It must be, yeah. It must be, yes.

45

Q. It was big?

A. Yeah, yeah. It must be. It must be that I was talking.

50 Q. I'm sorry. When you had discussions with other people, did that include some details about what you were charged with?

A. It could happen.

Q. What the police said that you had done.

A. It could happen, yeah.

5

Q. What the police did to you.

A. Yes.

10 Q. Did you ever have a discussion with anybody - with any of the other inmates about experiences they had had with other police officers that they might've been bashed, or something might've happened to them?

A. It could happen, but I'm not aware of that.

15 Q. When you say you're "not aware", does that mean about 40 years on, you can't remember whether that occurred or not?

A. That's correct.

20 Q. Do you ever recall hearing any information about another prisoner who said, "Mr Harding strangled me with a towel?"

A. No. I - nobody told me that into Long Bay Gaol, but I find the - into the transcript of the trial proceedings that there were persons that--

Q. I'm not interested in what you've--

A. Yeah.

25

Q. --read subsequently.

A. Yeah.

30 Q. We're really focusing on what you can recall during those two years when you were at Long Bay before you're sentenced.

A. I didn't have such a experience that somebody told me exactly that happened like happened to me.

Q. (a) you can't recall that.

35

A. I - no. I'm sure. I'm sure that I never meet anyone to tell me that's - that he - that that person went through what I was experiencing.

40 Q. What about somebody saying to you at Long Bay, "I know X and X says that happened to him"? So they didn't personally experience it, but they'd been told by somebody else that they had been strangled with a towel by Detective Harding?

A. I don't remember anyone that - that told me or informed me there is another person do anything like that.

45 Q. Mr Brajkovic, your evidence earlier today was that you never - your recollection is you never heard anything official from Police Internal Affairs about the result of Detective Sergeant Shepard's investigation?

A. Not that I remember.

50 Q. I know in that letter that I just took you to, where you wrote to the Premier,

you spoke about getting some--

A. Sorry, sorry, sorry, sorry, I apologise. When I write - when I write this letter corrections, I believe I requested feedback.

5 Q. Feedback from who?

A. From the Internal Affairs. And there is the possibility that they are - I remember now there is the possibility that they are - they answer my letter.

Q. I'm sorry, that they answered your letter?

10 A. Yes. There's the possibility. I remember now.

Q. Was that a letter responding, in a sense, at the end of the investigation, or a letter saying, "We've received from the Premier's Department that you've made some corrections."?

15 A. There was, I believe, acknowledgement they received my letter and my request sent away. But nobody sends me results of any kind of that investigation.

HIS HONOUR: I think he's referring to 11.214.

20

MCDONALD: Thank you, your Honour. Can we bring up 11.214?

EXHIBIT 11.214, RED PAGE 1604, SHOWN TO WITNESS

25 Q. Do you see that, Mr Brajkovic?

A. Yes. Yes. That's good, yes. Where you get this, I'm not sure if I - if I receive, I did see that before. But that's good.

Q. It would seem to correspond with the evidence that you just gave that you thought you got some acknowledgement of your letter setting out the corrections.

30

A. Yeah, yeah, yeah, that's good.

Q. Do you recall receiving that?

35

A. Not really. But I'm pleasantly surprised.

Q. Once you'd learnt the names, did you pursue the private prosecution?

A. What did you say? Please, could you repeat?

Q. You gave evidence about the visiting Magistrate, that person, and that you had a discussion with that person who said, "If you want to prosecute those officers for assault you need their names."

40

A. Yes. Yes, that's correct.

Q. When you had obtained their names, after the committal, did you pursue a prosecution of those police officers?

45

A. No. I find myself with bigger even problem with - with that time.

Q. You had enough to deal with with the trial coming up?

50

A. Yeah. That was terrible thing.

MCDONALD: Can I take you to Exhibit 11.218, please.

EXHIBIT 11.218, RED PAGE 1608, SHOWN TO WITNESS

5 Q. Mr Brajkovic, can you see this is a letter, Criminal Investigation Branch, and you can see its "representations to the Premier by" you "concerning alleged actions of police towards him". You see that?
A. I'm sorry, could you repeat that, please?

10 Q. I'm just looking at the letterhead of this letter, and then the reference to "representations to the Premier by" you, "concerning the alleged actions of police" against him.
A. Yes.

15 MCDONALD: If we go through to page 1610, can you see it's signed by Detective Sergeant Shepard?

EXHIBIT 11.218, RED PAGE 1610, SHOWN TO WITNESS

20 WITNESS: Who was write, that's Detective Shepard?

MCDONALD

Q. Yes.
25 A. Who was writing this?

Q. Detective Sergeant Shepard has been, this is his letter.
A. That's Vice - Vice Squad.

30 Q. Yes. But it's Detective Sergeant First Class Shepard who conducted the interview with you.
A. Yes.

Q. This was produced after the end of your trial and after you were sentenced.
35 A. After I was sentenced?

Q. Yes. Do you remember seeing this before?
A. No. I don't. I'm surprised.

40 MCDONALD: Maybe if we go back to page 1608.

EXHIBIT 11.218, RED PAGE 1608, SHOWN TO WITNESS

45 Q. Can you see in the first paragraph it just reports about the trial and that you were found guilty - at paragraph one, there is an account of what supposedly happened at your trial. All right?
A. Yes.

50 Q. Let's jump over that. Then in paragraph two he sets out the complaints that you made?

A. Yes.

Q. Then he says, "There's evidence in support", and he talks about Mr Hudlin providing some support for your complaint. Do you see that?

5 A. So he went there to investigate it. To interview Mr - my brother in law. Jakov.

Q. Yes. Then if we go across the page, in paragraph three he talks about, "24 police have submitted reports".

10 A. Yes.

Q. So they give their account. Then if we jump to paragraph four, he recounts that during your trial you made a number of accusations through your counsel of having been assaulted by police at CIB.

15 A. Yes.

Q. Then I want to take you to paragraph five. Do you see that. He says:

20 "I consider that it would not be beyond the realms of possibility that the complainant and his co-accused would conspire together to inflict certain injuries upon the complainant whilst travelling in a prison van between Central Police Station and Central Industrial Prison or whilst an inmate at that establishment and then making
25 allegations of this nature against the arresting police, having in mind the serious nature of the charges for which he has since been found guilty and the type of person that he is."

A. I couldn't believe it.

Q. Mr Brajkovic, can I just ask you - Mr Brajkovic?

30 A. Yes.

Q. You can see in that paragraph that Detective Sergeant Shepard is making an assertion that it is possible that you and your co-accused agreed amongst each other that they would inflict injuries on you, either in the prison van when
35 you were being taken to Long Bay or even at Long Bay?

A. The lies - the lies introduced into the system by the - another detective that was here. His name is that Krawczyk. He write in his - that he was here in the - he write report to the Internal Affairs suggesting exactly like that. That's--

40 Q. Mr Brajkovic, all I wanted to get from you, and you've rightly said there was some evidence during the Inquiry, for example, from Mr Krawczyk, that he put that in his report, but you just answered, "That's a lie."?

A. That's the lies.

45 Q. So your position is that's completely untrue?

A. Completely untrue. That's fabrication.

Q. All right.

A. This is shame.

50

HIS HONOUR: Just in relation to that report by Mr Shepard, I note the comments he makes about the trial judge of apparently not having any regard to the allegations made or making any comment on it, but he doesn't mention the fact that the trial judge excluded the record of interview.

5

MCDONALD: Your Honour, as has been noted, paragraph one is just wrong, and paragraph four is incorrect as well. And indeed it is rather unusual, because when you look at the total of the correspondence, one of the reasons for the delay in concluding this report was he wanted to wait and see what the trial judge did.

10

HIS HONOUR: Yes. I assume so.

MCDONALD: And it would appear that he's got it wrong, but, yes.

15

HIS HONOUR: Curious.

WITNESS: I was thinking very high of Detective Shepard, very high, and now look what he write. This is nuisance.

20

MCDONALD

Q. So at the time he came to interview you, you had a high opinion of Detective Sergeant Shepard?

25

A. Very high opinion. I was pleasantly surprised - personality and everything, character, but look at what he write.

Q. Mr Brajkovic, a different subject matter. 16 Restwell Road, Bossley Park.

A. Yes.

30

MCDONALD: I want to take you to a couple of documents to begin with.

EXHIBIT 4.1-VV SHOWN TO WITNESS

35

Q. Mr Brajkovic, when you were released from prison, did you return to Restwell Road to live, or did you go and live somewhere else?

A. I can't think right now. Sorry. I'm shocked.

Q. Sorry, Mr Brajkovic. Are you okay? Do you want a short break, or can we move onto street directories?

40

A. Let's move. Let's move.

Q. Are you sure?

A. Yes.

45

Q. My first question is at the time of the raid, you were living in a house at Restwell Road, Bossley Park; that's correct?

A. At the time--

50

Q. Mr Brajkovic, are you okay in continuing?

A. I'm all right. All right.

WOODS: Your Honour, may I support my learned friend's concern that Mr Brajkovic might compose himself?

5

HIS HONOUR: Mr Buchanan, do you think it might--

BUCHANAN: Just a couple of minutes.

10

HIS HONOUR: A few minutes and see if he can proceed.

BUCHANAN: Just to proceed to another topic.

SHORT ADJOURNMENT

15

HIS HONOUR: Mr Brajkovic, are you able to continue? Are you all right to continue?

WITNESS: Yeah, thank you.

20

MCDONALD

Q. Mr Brajkovic, I want to ask you some questions about 16 Restwell Road, Bossley Park.

25

A. Yes.

Q. On 8 February that's where you were living with your family?

A. Yes.

30

Q. After you were released from gaol, did you return to live at 16 Restwell Road, Bossley Park?

A. I believe I was in West Ryde.

Q. You were what, sorry?

35

A. West Ryde.

Q. West Ryde?

A. I believe so, yeah.

40

Q. So you didn't return to the home where you and your family were living?

A. I believe so, yeah.

Q. Have you ever returned there since being released from gaol?

A. No. No. No.

45

MCDONALD: This is Exhibit 4.1-VV.

EXHIBIT 4.1-VV SHOWN TO WITNESS

50

Q. I want to first take you to map 78, please. If we can look towards the top

left-hand corner, can you see there is a road from the top of the map which is called Mimosa Road?

A. Yes.

5 Q. Do you see Restwell Road, which adjoins Mimosa Road?

A. Yes.

Q. Looking at that, Restwell Road, it meets Mimosa, but also meets at the other end Prairie Vale?

10 A. Yes.

Q. At that time, Restwell Road ends at Mimosa Road?

A. Yes. Yes.

15 Q. If we can jump to map 59, this time can you see on the right-hand side in between G and H? Can you see The Horsley Drive?

A. Yes.

Q. Then it meets Cowpasture Road?

20 A. Yes.

Q. Cowpasture Road, if you look at that, Quarry Road meets it?

A. Quarry or Bossley?

25 Q. Do you see Quarry Road?

A. Yes.

Q. Bossley Road underneath it?

30 A. Yes.

Q. And there's a Salter Road. Then Prairie Vale Road meets it.

A. Yes.

35 Q. If we jump back to map 78, you can see to the left of Mimosa Road we had Quarry Road, Bossley Road, Salter Road?

A. Yes.

Q. But Restwell Road, as at 1979, did not extend across Mimosa Road and going down to Cowpasture Road. So it's a smaller road than we might see if we looked at a street directory today.

40

A. Yes.

Q. Within Restwell Road is your property, at that stage, 16 Restwell Road?

45

A. Yeah. It's supposed to be here, yeah.

EXHIBIT 6.9-2 SHOWN TO WITNESS

50 Q. Maybe if we proceed with a hard copy. Mr Brajkovic, while the exhibit is coming up on the screen, do you want to look at the paper copy of it. This was an exhibit that was tendered this morning, and it's an aerial shot that was

obtained through the Fairfield Council. It is an aerial shot of the area, including Restwell Road, in July 1980.

A. 1980?

5 Q. Yes.

A. So did –you find 16 Restwell Road?

Q. I'm sorry?

A. Did you find here 16 Restwell Road?

10

Q. Look, it's up there. This is good. Can I just ask you some questions to begin with about this. Can you see the long road that goes from the top to the bottom?

A. Yes.

15

Q. I'm talking about the road that commences just under where it's got, "Run 7" and a circle.

A. Yes.

20 HIS HONOUR: Just so we can follow this when we look at the transcript later, the exhibit is being shown upside down. The caption, which is obviously upside down, is at the top of the page.

25

MCDONALD: Yes. And I think we're doing that, your Honour, because of the arrow with "north".

HIS HONOUR: Yes.

MCDONALD: But, yes.

30

Q. Mr Brajkovic, the first matter I wanted to draw your attention to is, as his Honour said, "This would appear to be upside down", but the arrow indicates north. Do you see that right at the top?

A. Yes.

35

Q. Now, there is a long road which at the top of the way the exhibit is facing, starts immediately under, "Run 7" and the circle?

A. Yes.

40

Q. Can you see it goes right down to the bottom of the page?

A. Yes.

Q. I want to suggest to you that's Mimosa Road.

A. Yes. Mimosa Road.

45

Q. That's what I wanted to suggest to you. Can you see on the screen, travelling along from the top of Mimosa Road - so we're travelling down, and can you see on the left there appears to be a long-ish driveway to two premises? And then--

50

A. This - this one here? You mean this one here?

Q. Yes. That probably won't help the transcript.

A. All right.

5 Q. I'm just trying to describe to the transcript. We're going down from the top of the way the exhibit is orientated to the bottom, and as we are going down, on the left-hand side there appears to be a long-ish driveway from Mimosa Road to - and it looks like two squares. Do you see that?

A. Yes.

10 HIS HONOUR: A car travelling down that Mimosa Road would make a left to go into that driveway.

MCDONALD: Yes. Yes, thank you, your Honour.

15 Q. Don't take a left at that driveway. Keep on going down, and then the car that we're talking about would appear to come to a road on its left. Do you see that, Mr Brajkovic?

A. I'm not a..(not transcribable)..sorry. Could somebody indicate here what - so that's a picture. Like this.

20

Q. Mr Brajkovic, if you just hold on for a minute.

HIS HONOUR

25 Q. That's the driveway you're pointing to now--

A. This one. The--

Q. --that Ms McDonald was asking about.

A. This is two buildings.

30

Q. You see the big road that goes from the top to the bottom. That's Mimosa.

A. Yes.

Q. Go back to the top.

35

A. Yeah.

Q. Come down. That's the driveway.

A. Yeah.

40 Q. But don't go down that driveway. Keep going down Mimosa.

A. Yeah.

Q. And you come to a road on your left.

A. Here. This one.

45

Q. Yes, that's it.

A. So how I'm looking now, we are go - yeah, we - if you go from the top, you go to the left.

50 HIS HONOUR: Yes, okay. For the transcript, Mr Brajkovic has been indicating

a point where there's a T-intersection with a road going to the left of Mimosa as you're heading from north to south. It's about a third of the way down the photograph, right in about the middle of the photograph.

5 MCDONALD

Q. Mr Brajkovic, as his Honour's indicated to you, we're travelling down Mimosa, and we come to that road, and the car's going to turn left.

A. Yes.

10

Q. What I want to suggest to you, that that road is Restwell Road.

A. Well, I - if you're sure about that, and I accept that one.

15

Q. I'm not sure about it. It's one of the challenges, Mr Brajkovic, that we've got a street directory, and we've got this aerial photograph, and what I was hoping was by looking at the street directory, and looking at the aerial photograph, it might assist you in informing his Honour where your recollection of your house was on the aerial photo, but if it doesn't, that's fine.

A. I believe it's not here.

20

Q. When you say, "I don't believe it's here", are you assuming that the road that you've turned left from Mimosa that I've just indicated to you is Restwell Road, or you just don't know?

A. I don't believe it's Restwell Road.

25

Q. Looking at that road, can you see anywhere - and I know it's an aerial photograph - any premises which might've been your house with the shed at the back?

A. No.

30

Q. Looking at this aerial photograph, it doesn't assist at all--

A. No.

35

Q. --in trying to--

A. No.

Q. --identify where your house was?

A. Doesn't assist me at all.

40

Q. Mr Brajkovic, I've been provided with a diagram by your Senior Counsel--

A. Yes.

45

Q. --Where you were asked this morning Do you still want to have another look just to make sure that - you keep on looking at the aerial photograph. I'm just wondering where you're have a thorough look at it.

A. I can see nothing that's connected that this - in my memory, and it's here. There's no objects there that I could imagine from my memory that's here. I can't see that.

50

Q. I know it's difficult because it's an aerial photograph, but again, looking at

some of the other either properties or what appear to be either developments or maybe farms or anything like that, that doesn't assist you?

A. For this to be Restwell Road, here, this section here, all this must be park. All of this must be park.

5

HIS HONOUR: I didn't catch the word. All this was what?

MCDONALD

10

Q. Park. P-A-R-K.

A. All this section here must be park. That's where the people play.

HIS HONOUR

15

Q. That's on the southern side of that road that was suggested to you--

A. Yeah.

Q. --as being Restwell Road?

20

A. This one. So I don't believe this is Restwell Road, and this is Mimosa Road. I don't believe it. Something's wrong.

MCDONALD: Can I just take you back to the street directory, map 78, please? If we can expand the left-hand corner.

25

EXHIBIT 4.1-VV, RED PAGE 83-1, SHOWN TO WITNESS

Q. Looking at Restwell Road again, Mr Brajkovic.

A. Yes.

30

Q. Can you see on one side of Restwell Road, there is a green area which is marked Terone Park?

A. Yes. Yes. This is on Restwell Road in proper place, that park.

Q. I'm sorry, I missed that answer again?

35

A. That park is in proper place when it comes in relation to that Restwell Road.

Q. When you just recently pointed to the aerial photograph and said, "This should be a park"--

A. Yes.

40

Q. --if it was correct, were you talking about Terone Park?

A. I don't know what's - what's called, but that - this is the more proper.

45

Q. Your recollection of back in 1979 is that there was a park on one side of Restwell Road?

A. Yeah, in the corner of that - of that Mimosa Road and the Restwell Road.

Q. Is your recollection that your house was on the same side as Terone Park or the opposite?

50

A. No. My house would be on that above, above, otherc side.

Q. So your recollection is looking at this roadmap, your house was not on the same side as Terone Park, but was on the other side?

A. On the other side.

5 Q. Is your recollection that your house was to the north?

A. Yes. Yes.

Q. Looking at this street directory, your evidence would be Terone Park was on the south side?

10 A. Yes.

Q. And your recollection is that your house was on the north side?

A. Yes.

15 MCDONALD: They were the questions for Mr Brajkovic, your Honour.

HIS HONOUR: I think that's good timing too.

Q. Mr Brajkovic, you can step down, we'll continue your evidence sometime.

20 A. Thank you.

MCDONALD: I think, your Honour, Mr Boyle is--

HIS HONOUR: Tomorrow morning.

25

MCDONALD: We'll start with Mr Boyle, he's available until 1 o'clock. Then we would resume Mr Brajkovic.

HIS HONOUR: Yes.

30

You can step down, Mr Brajkovic.

<THE WITNESS WITHDREW

35 BASHIR: Your Honour, my instructing solicitor just drew my attention to the timetable that we were circulated with, it didn't indicate that we were sitting tomorrow afternoon, and so she just is seeking confirmation, your Honour, that we are sitting tomorrow afternoon. Because I would certainly seek to question Mr Brajkovic and it would be good to have my solicitor here, she would just have to make arrangements for that.

40

HIS HONOUR: Yes. I would hope that we'll finish Mr Boyle tomorrow.

MCDONALD: I'm hopeful of that, your Honour. I'm sorry, I assumed that Mr Brajkovic was scheduled in for tomorrow afternoon or when Mr Boyle finishes.

45

HIS HONOUR: The version of the hearing schedule I've got has us sitting only until 1 o'clock tomorrow.

50

BASHIR: While we're asking, could we seek confirmation about Thursday morning, just in case, because there's also nothing indicated for Thursday morning.

5 HIS HONOUR: What you're saying is that you'd feel impeded in cross-examining Mr Brajkovic without your solicitor being present, if that was--

10 BASHIR: Your Honour, all I'm saying is she will have to make other arrangements if we are going to be sitting, because currently she's relied on the timetable.

HIS HONOUR: But if it is possible to make other arrangements, please make other arrangements.

15 BASHIR: For both of those times, your Honour?

HIS HONOUR: Yes, please.

20 BASHIR: Yes. Thank you.

HIS HONOUR: I don't want to run the risk of us not finishing.

25 MCDONALD: Your Honour, the problem came about because we anticipated starting Mr Brajkovic yesterday afternoon and that did not occur.

HIS HONOUR: Yes. I understand.

30 MCDONALD: So there's a flow-on effect which hasn't been reflected in the schedule.

35 HIS HONOUR: Yes. We'll have Mr Boyle for as much of tomorrow, but at the most up until 1pm. Then we'll have Mr Brajkovic continuing in the afternoon. And if he's not finished tomorrow afternoon we'll continue with him on Thursday morning. And if Mr Boyle hasn't finished he'll come back on Thursday afternoon.

MCDONALD: Yes, your Honour.

40 HIS HONOUR: Whilst we've got Mr Brajkovic part heard in his evidence, can people just reflect on the evidence that's been given about the location of the house just a moment ago? If there's any doubt about it I'd like it to be clarified with him still available to speak to it. It seems clear to me now it's the north side of Restwell Road.

45 WOODS: I think that's true.

HIS HONOUR: But if there's any doubt about it please let me know and we'll clarify it so that everyone's content with the correct position. I'll adjourn.

50 ADJOURNED PART HEARD TO WEDNESDAY 6 NOVEMBER 2024