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SPECIAL INQUIRY

THE HONOURABLE ACTING JUSTICE ROBERT ALLAN HULME

5 FORTY-FOURTH DAY: WEDNESDAY 5 MARCH 2025

INQUIRY INTO THE CONVICTIONS OF THE CROATIAN SIX

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HIS HONOUR: Yes.

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MELIS: Good morning, your Honour. Before proceeding with oral submissions, there's just one matter of housekeeping. Your Honour, I note for the record that the Inquiry received additional documents following the final hearing block in the Inquiry, which took place in November 2024. Following consultation with the parties, these documents were tendered into evidence in chambers, ahead of the provision of written submissions. For completeness of the tender of those documents, I have for your Honour an updated copy of the list of Exhibits, which I'll hand up now. I'll ask your Honour to mark it as MFI 16.

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MFI #16 LIST OF EXHIBITS AS AT 05/03/25

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As your Honour will see, the index includes the Exhibits which had been tendered as at November 2024 in black text, and new documents which have been tendered in chambers are marked in red text. I'll provide a brief overview of what those new documents are for the record, if your Honour pleases. Tab 10.9 is a minute of Detective Senior Sergeant Prytherch dated 6 August 1979 and titled, "Interview of 4 August 1979". Tab 11.50A-41A is an occurrence sheet titled, "Steven Lazanja", - L-A-Z-A-N-J-A – "Interview Re Possible Identification of Zvirotic", dated 13 March 1979. Tab 11.271 is a document titled "Virkez Notes", dated 20 February 1979, which relates to an interview between Detective Sergeant Turner, Milroy, Virkez.

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Tab 11.272 is a further photograph from the demonstration on 28 November 1976. Tab 11.273 is an undated photograph captured "showing the three boxes containing four separate packages of AN60 gelignite explosive after removal from Valiant sedan", registration number "HLY-378". Tab 11.274 is a letter from Constable PL Drummond of the ACT Police to the officer in charge, Special Branch titled, "Request for Information: Arrest of Maksim Bebic in Canberra on 11 September 1976", dated 19 March 1979. Tabs 12.26-12.30 consist of custodial history profiles for Maksim Bebic, Ilija Kokotovic, Joseph Kokotovic, Mile Nekic and Anton Zvirotic produced by the New South Wales Department of Corrective Services. Tab 13.61 is an article by Vice John Batarelo, B-A-T-A-R-E-L-O, titled "A Troubled Relationship: The Croatian Diaspora in Australia between 1963 and 1973", which was published in the Croatian Studies Review, Volume 10 in 2014.

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Tab 13.62 contains sections 39 and 40 of the *Justices Act 1902 New South*

5 *Wales*, reprinted as at 7 September 1979. Tab 13.63 is an extract of a page from the University of Sussex website, titled "Scare Quotes" which was published in 1997. Finally, Tab 20.90 is a Commonwealth Police Force document titled, "List of Yugoslav Extremists", dated 24 August 1979. Your Honour, further to those documents, Exhibit 11.152, which consists of photographs of Mr Brajkovic's property and shed at Bossley Park has been supplemented with five additional photographs at red pages 1429-1 to 1429-5. Finally, your Honour, I note for the record that the Non-Publication Orders dated 15 March 2024, 17 April 2024 and 20 December 2024 have been
10 lifted by your Honour's instructions on 19 February 2025.

HIS HONOUR: Thank you, Ms Melis.

15 MELIS: Your Honour, I now move to the oral submissions of Counsel Assisting. On 9 February 1981, Maksimilian Bebic, Mile Nekic, Vjekoslav Brakjovic, Anton Zvirotic, Ilija Kokotovic and Joseph Kokotovic, together known as the Croatian Six, were convicted in the Supreme Court of New South Wales of offences in relation to a conspiracy to bomb certain places in Sydney, as well as other offences of stealing or possessing explosives. They each served
20 seven or eight years of their 15-year imprisonment terms. The men's convictions were followed by an unsuccessful appeal to the New South Wales Court of Criminal Appeal, an unsuccessful application for leave to appeal to the High Court, and numerous unsuccessful applications for an inquiry into their convictions.

25 On 30 August 2022, over 40 years since the men were arrested in February 1979, Justice Wright directed that the present Inquiry be conducted to review the convictions of the men under the *Crimes (Appeal and Review) Act*. This Inquiry opened before your Honour on 4 December 2023. Since that time, the
30 Inquiry has heard 43 days of evidence from 37 witnesses, and received some 53 volumes of documentary material, including statements from witnesses who did not give oral evidence to the Inquiry. It has been an extensive and, I would submit, exhaustive Inquiry. Across the next three days, Counsel Assisting and all parties granted leave to appear in this Inquiry will make their closing
35 submissions to your Honour.

Thereafter, upon completing the Inquiry, your Honour must cause a report on the results of the Inquiry to be sent to the Chief Justice of the Supreme Court. Your Honour may also refer the matter to the Court of Criminal Appeal
40 for consideration of the question of whether the conviction of any of the men should be quashed if you are of the opinion that there is a reasonable doubt as to the guilt of any of the convicted persons. Since the Inquiry last adjourned on 7 November 2024, there has been an exchange of written submissions by Counsel Assisting, the Petitioners, and other interested parties, as well as
45 submissions in reply. All the written submissions are on the Inquiry's website.

I pause here to reflect that the written submissions are fulsome and replete. Counsel Assisting's submissions alone exceed 800 pages, as do the Petitioners'. The submissions of all parties serve to assist your Honour in the
50 production of your report to the Chief Justice, to which I have referred. I note

that your Honour has indicated to the parties certain time limits on their respective oral submissions. This is both a necessary and efficient way to proceed. There is a lot of evidence. It is not possible for Counsel Assisting to deal with every aspect of the evidence on our feet today. However, we will
5 endeavour to summarise and analyse the most pertinent aspects of the evidence that found our ultimate conclusions.

The position of each of the Croatian Six is different. Their innocence or guilt at trial was adjudged separately by the jury, and, equally, the outcome of the
10 Inquiry must not be approached on a collective basis. In our written submissions, Counsel Assisting concluded as follows: no reasonable doubt arises as to the guilt of Mr Bebic, Mr Brajkovic or Mr Zvirotic of the charges for which they were convicted; we find reasonable doubt as to the guilt of Joseph Kokotovic, Ilija Kokotovic and Mile Nekic, referred to as "the Burwood trio", of
15 the charges for which they were convicted. The Petitioners submit that reasonable doubt arises as to the guilt of all men. The Director of Public Prosecutions and the submissions of the former police officers argue that there is no reasonable doubt as to the guilt of the Burwood trio.

Our conclusions were reached after a careful and forensic consideration of the totality of the evidence before the Inquiry. We have submitted that it is open to your Honour to find that aspects of the investigation and prosecution were affected by procedural irregularities and police misconduct. We have not come to these findings lightly. Your Honour, Counsel Assisting's oral submissions
20 will be divided into two parts. First, I will deal with the police evidence, namely the information received by police on 8 February 1979, the subsequent raids in Lithgow and Sydney, and seizure of evidence at those locations, and the evidence of the admissions and confessional statements of the accused. The contrasting evidence of the police and the accused will be considered to make
25 submissions on the findings we say are open to your Honour on all the evidence.

Ms Epstein will cover the evidence surrounding the informer, Vico Virkez, including the truthfulness and reliability of Virkez's evidence and his connection
35 with the Yugoslav Intelligence Service, or the UDBa. As part of that analysis, Ms Epstein will also address the Inquiry on the issue of disclosure of information at the trial regarding Virkez's connection with the Yugoslav Government, Yugoslav Intelligence Service or UDBa. The division of topics is deliberate, your Honour. The two aspects - namely, the evidence gathered by
40 police and then the reliability and credibility of Virkez - are the two planks that the Crown relied on at the trial to secure the convictions.

Before I move to the police evidence, there are two areas I wish to make some broad remarks about. First, I will address your Honour on some of the features
45 of this Inquiry, and secondly, I will address the scope and function of the Inquiry. There are features of this Inquiry that made it quite extraordinary and distinctive. Firstly, there is the historical nature of it. The events that give rise to the arrests, charges and convictions of the men unfolded on 8 February 1979, some 46 years ago. The trial was one of the longest running trials in
50 Australian history, with a total of 172 sitting days and 111 witnesses giving

5 evidence in the proceedings. Understandably, the more time that passes since an event, the more difficult it is to recall it, and this has been the experience of a number of witnesses who gave evidence before the Inquiry. It became necessary, at times, to refresh memories on the back of committal and trial transcript and other documentation. We have been very mindful of the fallibility of memory in our assessment of the reliability of witnesses.

10 Secondly, there are starkly contrasting accounts of events given by the Croatian Six compared, for example, by the former police officers. The contrasting accounts relate to significant factual matters, including the men maintaining that no explosives were found at their premises by police, that they made no admissions of their involvement in the conspiracy to bomb, and for some, that they were assaulted by police. Faced with such differing accounts, we have looked at all the evidence, made credibility findings of the witnesses, and weighed it all up. Importantly, we make the observation upfront that it is possible to find a witness more credible and reliable in respect of one matter and not as credible or reliable in respect of another. We will come to some examples of this shortly.

20 Thirdly, there is a rich political story sitting behind the events surrounding the arrest of the Croatian Six. Following the Second World War, approximately 50,000 Croatians migrated to Australia. By 1979, there were a number of Croatian political organisations operating within Australia. Croatian migrants, some of whom included the Croatian Six, were testing their new political freedoms in Australia by protesting against their former government. The Croatian nationalist movement aimed to separate Croatia from the Federation of Yugoslav and establish an independent state.

30 Fourthly, the Croatian Six were charged during a time that has now become synonymous with police corruption in the squads of the CIB in the New South Wales Police Force. There is new evidence available to the Inquiry that was not available at trial. Namely, the evidence of the findings of the Wood Royal Commission into corrupt police practices. The types of corruption uncovered by the Royal Commission were the subject of exploration through all the former police witnesses who gave evidence before this Inquiry. This was because the Croatian Six allege they were the subject of corrupt police conduct and the fabrication of evidence against them. One notable former and proclaimed corrupt officer was Roger Rogerson, who was a member of the raiding party at Burwood, where the Kokotovic brothers and Mr Nekic lived. Rogerson made remarks to the media of his experiences of a culture of police corruption, including load ups, verbals and assaults. He died on 21 January 2024, before he could give evidence to this Inquiry.

45 I will come to say more about the findings of the Wood Royal Commission and how this has been considered in the present Inquiry. Related to this point is the involvement of the New South Wales Police Special Branch, whose functions at the relevant time included intelligence gathering through its Ethnic Community Unit including with respect to the Croatian community. A further overlay was the monitoring by ASIO of so-called Croatian extremism that had generated security concerns within Australia since the early 1960s. One

further and related historical event that preceded the events of 8 February 1979 are what became known as the "April Fools raids".

5 On 1 April 1973, a series of raids were conducted by a squad of 260
Commonwealth and New South Wales police at 68 Croatian homes at Sydney
and Wollongong, making arrests, seizing explosives, weapons and
documents. This was the largest single raid on Croatians in Australia. The
raids were considered part of the stepping up in investigations into Croatian
terrorism, which preceded the Yugoslav Prime Minister's visit to Australia. The
10 raids resulted in the prosecution of 14 Croatians, of which five were charged
with possession of explosives, three were acquitted and two were convicted.

15 Fifthly, the Inquiry has before it new evidence that was not available at the time
of the trial, including declassified ASIO documents that shed further light, for
example, on the activities of Virkez, including his contact over time with the
Yugoslav Consulate. The Inquiry also has the police Internal Affairs Branch
investigation into the complaints made by Mr Brajkovic in respect of alleged
police misconduct against him. Finally, the story behind the convictions of the
Croatian Six has been the subject of media reporting over time.

20 Notably, in 1991, journalist Chris Masters tracked down Virkez and interviewed
him. Paul McGeough also wrote an article that appeared in the Sydney
Morning Herald in 1991 about his interview with Virkez. Journalist Hamish
McDonald has written numerous pieces and books on the case against the
25 men. The Croatian Six have also given media interviews since they were
released from prison. There has been a recent ABC podcast about the
case. All relevant media has been received by the Inquiry and we have
considered it in the mix of evidence available, including any statements made
more recently to the media that are inconsistent with the evidence given at the
30 trial, particularly by Virkez.

There are also features of the Inquiry, your Honour, that have been limiting
and bear mentioning. First, given the passage of time, some key witnesses
have passed away and the Inquiry has not had the benefit of their oral
35 evidence. In particular, we mention Virkez, Roger Cavanagh, officers Noel
Morey, John Perrin and Ted Turner, Crown Prosecutor David Shillington QC
and Mr Nekic. The absence of witnesses necessarily effects the completeness
of the evidence gathering process and has a potential implication for the
assessment of the evidence of which the Inquiry must be mindful.

40 Of the Croatian Six, the enquiry only heard from Mr Brajkovic. The jury had
the benefit of hearing from all the men at trial. Mr Zvirotic, Ilija Kokotovic and
Joseph Kokotovic were not parties to the application considered by Wright J
that gave rise to this Inquiry. However, their convictions are also the subject of
45 the Inquiry based on the Court's own motion. Letters of invitation to participate
in the Inquiry were sent to Zvirotic and the Kokotovic brothers in August 2023
and October 2024. However, no response was received.

50 Another limiting factor has been the express exclusion of section 17 of the
Royal Commissions Act from the powers available to your Honour. Section 17

of the *Royal Commissions Act* expressly abrogates the privilege against self incrimination but provides protection to the witness in respect of the subsequent use of the evidence in any civil or criminal proceedings, except in perjury proceedings. While the policy rationale for the exclusion of section 17 from an Inquiry like this one operating under the *Crimes (Appeal and Review) Act* is unknown, the appreciable effect is that an Inquirer may be deprived of relevant evidence.

This was a particular concern in this Inquiry as there had been allegations at trial of police misconduct which the Inquiry intended to explore with former police officers. Were any admissions to be made by former police officers, it is understandable that they might only wish to give that evidence with the protection in the nature of that offered by section 17. The implications of the exclusion of section 17 has the net effect of impeding the aims of inquiries operating under the *Crimes (Appeal and Review) Act* such as to prevent the Inquirer having all available evidence necessary to discharge the scope of the Inquiry. Our submissions urge reform in this respect.

I now move to the scope of the Inquiry, your Honour. An Inquiry such as this must commence with the fact that a conviction has been recorded but that questions or doubts have been raised sufficient to justify the Supreme Court directing an Inquiry be conducted. The Inquiry may consider any information that may shed light on the guilt of the convicted persons, whether that information is favourable or unfavourable to the person.

The Inquiry is not fettered by tactical or forensic decisions at trial or by the way the Crown or defence cases were conducted. The ultimate task of the Inquirer is to consider all the evidence in order to determine whether overall there is a reasonable doubt as to the guilt of the Croatian Six. Reasonable doubt should be given its ordinary meaning. That is, a doubt which your Honour considers reasonable. It does not mean any doubt no matter how slight. Reliance can be placed on material that was not admissible against an accused at trial insofar as your Honour is satisfied the material to be relied upon is in fact reliable and bears upon the question of whether there is a reasonable doubt about the conviction.

We adopt the submissions of the DPP in this respect at paragraphs 9 and 167 to 171 of the Director's written submissions. So far as any question or doubt may concern a conflict of evidence or the reliability of a witness or may depend on fresh evidence concerning aspects of the case proven by the Crown, those matters must be weighed in reaching an opinion about them. It is on that final point, your Honour, that I now turn to the events of 8 February 1979.

Vico Virkez, otherwise known as Vitomir Misimovic was an informant and key prosecution witness in the trial. Virkez confessed to being a co-conspirator in the bomb plot. He first informed the New South Wales Police of the conspiracy on 8 February 1979 which prompted a widespread series of coordinated action against the Croatian Six commencing at Lithgow and continuing in Sydney later in the evening of 8 February. The truthfulness and reliability of Virkez's evidence was strongly challenged during the trial. Ms Epstein will address the

Inquiry on all evidentiary aspects relevant to Virkez.

5 The narrative does, however, start with Virkez and it is important that I raise
some of the evidence he gave now. The evidence was that on 29 January
1979, he attended Lithgow Police Station and spoke to a uniformed
policeman. At the time, he asked to see a detective but was told that no one
was there. He requested a detective to attend his address after 5pm. This did
not occur. On the day of the raids, Virkez again attended Lithgow Police
Station at around 12.45pm. He spoke to Senior Constable Ingram for around
10 30 minutes and reported the conspiracy plan to him.

15 The rough notes of this conversation with Ingram are before the Inquiry. If you
could please bring up Exhibit 4.2-95 red page 669, these being the rough
notes of Ingram. If you could please turn over to the next page. These notes
are important in understanding the nub of the case against the Croatian
Six. We keep coming back to them in our written submissions because we say
they offer some of the most reliable evidence of the conspiracy and the key
players in it. Lithgow Police were far removed from the CIB and Special
Branch.

20 There was no reason for Ingram or Detective Marheine, with whom Ingram
worked, to be untruthful in their evidence about what Virkez told them. We can
see from the notes, Virkez mentioned Zvirotic, Bebic and Brajkovic and where
they lived. We can also see that Virkez mentioned that Bebic was to come to
25 his home with explosives and 50 kilos is recorded, that he and Bebic were to
assemble time bombs, that the bombs were to be placed in various places in
Cabramatta, Fairfield, Newtown and water pipes at 3am.

30 He mentioned being taught how to make bombs in Fairfield by Brajkovic, that
he believed someone in Burwood was keeping explosives, that Brajkovic had a
number of switches in his house, that Bebic knew the names of the others who
were to help with bombs from Sydney and that Zvirotic was one of the two
bosses. I note for the record, your Honour, the notes continue on for another
four pages, your Honour, where those details are recorded. On the same day,
35 Virkez also spoke with Detective Marheine. There are no notes of that
conversation.

40 The rough notes made by Ingram, whilst reliable, do not record the totality of
what Virkez may have told police that day. Marheine told the Inquiry that
Virkez mentioned that he and Bebic had been to Sydney a few times and had
lunch with Zvirotic and Brajkovic. What was not known at trial but is known
now is that Virkez had earlier that day spoken with a person at the Yugoslav
Consulate by the name of Kreckovic and in that conversation disclosed the
conspiracy and named Brajkovic, Bebic and Zvirotic. Ms Epstein will elaborate
45 further on this conversation.

50 Again, throughout our written submission, we come back to this recorded
conversation because unlike other parts of the story, there is actually
consistency in what Virkez told the Consulate and the police that day and it
formed some of the most reliable evidence that your Honour has. What

happened next happened rather quickly. Ingram called Special Branch and the Armed Hold Up Squad. A team of members from the Special Weapons and Operations Squad was assembled to travel to Lithgow. Our submissions at Part 7 outline the timeline of 8 February 1979 and the various communications and conferences between officers. We do not elaborate on those now.

The prevailing case theory at trial was that New South Wales Police and the Special Branch set about to fabricate evidence in respect of the Croatian Six with the view to disposing of troublemakers within the Croatian community. The Petitioners, in their primary submission at paragraph 322, submit that it can be inferred that Detective Inspector Perrin of the Special Branch made the decision to use the information provided by Virkez in Lithgow as the opportunity to get the men considered to be the most dangerous members of the Croatian Republican Party off the street and that Special Branch decided to work towards the conviction of the men. The Armed Hold Up Squad and Breaking Squads were brought in to be "the strong arm". In an interview with Sasha Uzunov, Roger Rogerson said his involvement in the raids on the Croatian Six was brought about because the CIB was "the muscle of the job".

As already mentioned, the Special Branch took an active role in monitoring the activities of the Croatian community, including the Croatian Six. Detective Jefferies' evidence was that the Special Branch kept index cards or dossiers on various individuals who had come to attention. There are examples of these in the evidence. If we could, please, bring up Exhibit 11.76, red page 922. We can see here, your Honour, by way of example, an index card relevant to Ilija Kokotovic, and reading through it, for example, we can see an entry dated 26 November 1977 which notes, "Joseph Kokotovic, a member of the Croatian Republican Party, was observed distributing pamphlets to persons entering Unisearch House". It further goes on to say, "At 8pm on 26 November 1977, subject and Vjekoslav Brajkovic were seen to ignite and throw" - over the page to red page 923 - "marine distress flares into the carpark and foyer of Unisearch House."

In his evidence at trial Jeffries accepted that he had expressed the view previously that members of the Croatian Republican Party were extremely radical and potentially dangerous. There is evidence of the political involvement of the Croatian Six including attending demonstrations and otherwise being members or sympathisers of the Croatian Republican Party in Sydney, and I've directed your Honour to some examples of that and there are others in the brief of evidence. The criminal histories also establish the political activism of the Croatian Six. However, nothing in those histories suggest a tendency for violence or criminal activity of the type for which they were arrested in February 1979. It is submitted that the evidence of political involvement might suggest a motive for Special Branch to round up extremist elements in the Croatian community. However, it also provides evidence of a motive for the bombing conspiracy. It must be considered in line with the totality of the evidence available to the Inquiry.

I move to aspects of that evidence now. I want to next address your Honour on the evidence connecting the six men. Our written submissions consider the evidence available to show the connection or relationship between the men at paragraph 2976 and following. Overall we say there is evidence sufficient to demonstrate a connection between them. There are some examples that bear mentioning. Mr Brajkovic accepted that he knew Zvirotic, Nekic and the Kokotovic brothers. He denied knowing Bebic or Virkez, although said he might have seen them both previously and denied either had ever visited his house. Mr Brajkovic's denial must be considered in light of a letter given to Detective Milroy by Virkez on 7 March 1979 at Parramatta Gaol purportedly written by Bebic.

Could we, please, bring up Exhibit 11.50, red page 223, if we can first, the original? This is the original of that letter, your Honour, written in Croatian. If we could now, please, go to red page 223-1, being the translation of that letter. In our submission, we consider that it is open to the Inquiry to find that this letter was indeed written by Bebic, that being the most likely scenario. It is significant, in our submission, that the letter commences with the words "To my friend, Vijeko Brajkovic", or in the alternative translation "friend". It is expressed in language of familiarity and comradeship, including using the following words, "It is clear to me that someone betrayed us". Brajkovic was shown the letter during his evidence to the Inquiry. He said that he had never met, heard of, or had any dealings with Bebic before the trial. However, he spoke to him while he was in prison. He did not receive the letter and saw it for the first time in the context of the present Inquiry.

We can see that the letter ends with, "Everything for Croatia". However, Brajkovic repeatedly denied that Bebic was his friend. He further explained that in Croatian if you put a quotation mark then that means the opposite of what's written. He stated that it means something very, very nasty. It is submitted that Brajkovic was not forthcoming in respect of knowing Bebic. His explanation around the use of quotation marks does not assist his case.

Zvirotic denied being a friend of Brajkovic. Again the veracity of his denial should be assessed by reference to the letter at Exhibit 4.2-62. Could that, please, be brought up? Could we have the translation of that? Thank you. That was the original letter, your Honour, and I'd just go to the translation, red page 534.

This is the translation of the letter. It commences, "Dear friend Brajkovic" but continues by stating, "We have not met but God and good fortunes willing we will meet". This is suggestive of a closer connection between the two. It is also relevant that both Virkez and Bebic identified to police that Brajkovic and Zvirotic were involved in the conspiracy. Zvirotic also denied having any substantive association with the Kokotovic brothers or Nekic. However, this stands in contrast to Stipich's statement to the Inquiry in which he explained that Ilija Kokotovic had introduced him to Zvirotic in about 1976 at a Catholic centre hall in Summer Hill, and continues to describe how "these men", referring to the Kokotovic brothers, Nekic and Brajkovic, were promoting a free democratic and independent Croatia. Further Stipich's evidence was that he

attended Zvirotic's place with Ilija Kokotovic one evening around the beginning of 1977. There is nothing to contradict this evidence given to the Inquiry by Stipich.

5 I move now, your Honour, to the topic of the meeting that is said to have occurred between various members of the Croatian Six on 26 January 1979 where the conspiracy was discussed. In our written submissions at section 65 we have extrapolated the evidence available to your Honour about the meeting said to have taken place where the conspiracy was discussed. Virkez told the
10 trial that the meeting took place at Brajkovic's house on 26 January 1979. The records of interview of the Croatian Six contain some variation amongst the answers as to where the meeting was held. For example, Bebic said it was at Zvirotic's house and Zvirotic also said it was at his house. Brajkovic said there were a couple of meetings and they were at his house and Zvirotic's
15 house. There was also no specific date nominated by any of them, just statements like meetings having taken place "for the last month". At trial the accused denied that there had been any meeting on 26 or 27 January as described by Virkez.

20 We have found that the alibis of the accused for the weekend of 26 January 1979 were not strong and our reasons are detailed at paragraph 3150 of our primary submissions. The totality of the evidence sufficiently points to at least Virkez, Bebic, Brajkovic and Zvirotic coming together at some point in time to discuss the plan, albeit there is variation as to the dates. However, as I'll come
25 to, the evidence as to the Burwood trio's involvement in planning meetings is vague and insufficient to establish their presence at any meeting where the conspiracy was discussed.

I now move to the evidence concerning each of the Croatian Six. We consider
30 the evidence around Bebic's involvement first, because in our submission, that evidence and the evidence of the raid at 6 Macaulay Street, Lithgow and subsequent admissions made by him and Virkez, if accepted, provide the background to the case against the other men in Sydney. There has never been a suggestion that the explosives found during the Lithgow raid were
35 planted or the evidence in respect of them fabricated. That evidence was confirmed by the presence of Captain Barkley of the Army on scene, as well as the photographs of the explosives taken by the local photographer Len Ashworth. Some of these can be found at Exhibit 4.1-C, red pages 5 to 7. They're just on the screen now. We can just scroll through them. These
40 are photographs of explosives that were found in the black Valiant.

In this way, the Lithgow raid stands somewhat apart from the Sydney raids at Ashfield, Burwood and Bossley Park. Indeed very little was done by police by way of taking precautions before raiding those properties. The Army was not
45 called, nor were photographers brought on scene. Our written submissions, in Part 8, contain all the evidence available with respect to Bebic.

But I would like to move now to the evidence concerning the pre-raid evidence. As mentioned, Virkez named Bebic both to police and in his call to
50 the Consulate on 8 February. Virkez told police that Bebic was to attend his

home between 2.30 and 3 o'clock pm with 50 kilograms of explosives, and that Virkez himself was to buy three clocks to then make time bombs. On Virkez's narrative, he and Bebic put wires in clocks and then travelled in Virkez's black Valiant to collect the explosives. They were observed by officers Marheine and Ingram leaving Virkez's house at about 5.05pm and attending Bebic's shed at Hepburn Street to collect a spade. According to Virkez, they drove to Hassans Walls to retrieve the explosives. Police lost sight of the car after it departed Hepburn Street. The men were again observed by police returning to Macaulay Street at about 5.30pm.

We observe in our submissions the very short timeframe in which all these activities are said to have occurred. However, ultimately, we do not think Virkez's version is inconceivable. Between 5.30pm and the raid at 7.20pm, according to Virkez, the explosives were unpacked, boxes burned, and explosives prepared. Bebic refuted Virkez's version of events. He gave a very detailed account of what he recalled happening on the afternoon and evening of 8 February before the raid. If fabricated, one wonders why he would not opt for a simpler story. Conversely, there was time for Bebic to consider the case against him before giving evidence at trial, and to weave a story that had an explanation for each element in the pre-raid account of Virkez and police.

On Bebic's version, he had no knowledge of the explosives being in the Valiant. On his version, either Virkez retrieved the explosives on his own or they were put in there at another earlier time, and Bebic had no knowledge of this. The credibility of the latter scenario should be considered by reference to the photographs of explosives in the back seat of the car which were covered by a bedspread, and we can see that in the photograph at Exhibit 4.1-C, red page 3. If we could also turn to page 4. In his Record of Interview, which was resumed on 9 February 1979, Bebic gave the following responses. Could we please bring up the interview at Exhibit 4.1-D. If we could please go to red page 12. Starting with question 56:

"Q56. Now, will you tell us what you did with the detonators and the explosives after you stole them?

A. I hide them in hole up in mountains.

Q57. What do you mean you hid them in a hole?

A. I dig hole and put in.

Q58. Whereabouts in the mountains do you hide them?

A. Up over there."

And he points towards a street of Lithgow. If we scroll down a little bit further, at question 71:

"Q71. What did you do with the explosives after you got them yesterday?

A. We take back to my friend's - Virkez - house, and we cut and make for bombs.

Q72. Are they the four bundles of explosives we found in the back of the black Valiant?

A. Yes."

5 Zvirotic also allegedly told police in his Record of Interview that Bebic was to make the bombs in Lithgow and bring them to Sydney. Bebic made various concessions at trial in relation to his knowledge about the explosives and associated devices located at the various sites, noting that he had visited the sites alone and in the company of Virkez with the purpose of learning how to use explosives, and practicing with them in anticipation of going opal mining in 10 South Australia. He even admitted to returning to a location where Virkez had left some explosives inside a tree trunk near Hassans Walls. He separated the explosives from the detonators to make them safe and put them in a garbage tin.

15 These admissions by Bebic, your Honour, are significant, because the sites he named, the activities he said occurred there and the items that he said were buried there are consistent with the sites he took police to on 9 February 1979 and the items that were seized at those locations. We refer the Inquiry to the 20 photos of the site visit at Exhibit 4.1-H and the contemporaneous notes taken by Detective Milroy during those site visits. The handwritten notes can be found at Exhibit 11.74, red page 560, and the typewritten transcription of those handwritten notes can be found at Exhibit 11.241, red page 1654. Bebic said he was threatened by Milroy and did not go to those sites voluntarily. This was 25 after police had allegedly beaten and threatened him the night before at Macaulay Street and back at the police station at Lithgow. I will say more about that momentarily.

30 If true, however, it begs the question: if police assaulted Bebic and fabricated his confessions, why then ask him and not Virkez alone to take them to the various locations around Lithgow where the explosives were hidden? Police already had one person, Virkez, willing to talk and implicate the others. It is unlikely that police would not use Virkez alone to gather their evidence if Bebic was being uncooperative. We observe that, on Bebic's own account, he had 35 helped Virkez steal the explosives. He knew where the explosives were buried. He thereby had access to the explosives, and he had knowledge and experience in the use of the explosives through practice.

40 The fact that opal mining might have been what motivated the theft of the explosives is not to say that Virkez and Bebic's motivations in respect of those explosives did not change over time. It is entirely plausible that, having met with Bebic and Virkez in January 1979 and learning that they possessed explosives, the idea to redirect the use of those explosives was suggested by one of Brajkovic or Zvirotic. The Inquiry need not draw any conclusion to this 45 effect, but this case theory would be consistent with the evidence about how the explosives then came to be obtained by each of the accused.

50 Conversely, if Bebic's version is true, then Virkez had to have fabricated the evidence of Bebic's knowledge and involvement in the retrieval and preparation of the explosives on the afternoon and evening of 8 February,

thereby framing him in the conspiracy. This is a particularly critical juncture in the entire narrative of this conspiracy. In trying to resolve the conflict, we circled back to the fact that, earlier that day, Virkez had communicated with two separate agencies, the Yugoslav Consulate and Lithgow Police, about his knowledge of the conspiracy and the persons involved, including Bebic, who was to be responsible for transporting a very large quantity of explosives to Sydney that night with Virkez. His communications to this effect, we say, are credible.

Moving now, your Honour, to the alleged assault on Bebic during the raid. Bebic alleged that he was assaulted during the raid at Macaulay Street by every officer who attended, except Detective Simmons. We have found that the evidence is not sufficient to demonstrate that an assault took place of a kind described by Bebic. Bebic said he felt ill during the site visit on 9 February 1979. Could we please bring up, again, Exhibit 4.1-H, red page 38. We observe that, to the untrained eye, neither this photo nor any of the photos taken during the site visits show any signs of Bebic having been assaulted the night before. Indeed, during the site visits, Bebic was observed laughing when recounting the reason why he had been practicing with the explosives. He said, "Make sure bombs work. Don't want to blow self up in Sydney."

When asked about this, Milroy recalled that Bebic "actually smiled a few times as we were walking around, and it was quite noticeable". There was new evidence before the Inquiry, given by Ingram, suggestive of Bebic having been assaulted. Your Honour would recall Ingram's evidence that he overheard someone at the Lithgow police station on the night of 8 February saying that Bebic was being or had been punched, and Bebic said, "You kill me. I'll be dead. I'll tell you nothing". Ingram was asked whether the officers he overheard were saying that they had been involved in or had witnessed Bebic being punched, or that they had been relaying what Bebic had said to them. Ingram was not sure.

This evidence is not without its limitations. Ingram did not see who the officers were and was unable to identify them to the Inquiry. This may suggest that the officers were likely from Sydney and previously unknown to Ingram in Lithgow. Ingram appears to have heard a snippet of a one-way conversation between these officers. The context of the conversation is unknown. It is, however, noteworthy that since that time, Ingram felt compelled to tell a friend what he had overheard. However, he did not tell any police officer about it at the time or at any time, including his colleague at Lithgow, Marheine. It was raised for the first time at this Inquiry in answer to a question from his own counsel. This evidence is to be juxtaposed with Ingram denying seeing any other police officer assault or threaten any of the accused, including Bebic. He was given the opportunity by your Honour to proffer any other information he thought was relevant to the Inquiry, and he said there was nothing further.

Ingram's evidence is also to be weighed against what Milroy told the Inquiry about the evidence. He rejected any suggestion that Bebic said those words or that he or anyone else relayed that Bebic was saying these things. Milroy

and Turner were the officers who interviewed Bebic at Lithgow and had him in their presence the most on the night of 8 February. We submit that Milroy was one of the most reliable and credible witnesses to give evidence before this Inquiry. He gave the impression of having been a fastidious, competent and honest officer. He was a prolific note-taker, as evidenced by his various handwritten and typed notes of conversations and his duty books.

If Milroy is to be accepted as a witness of truth, it is very difficult to see why he would be forthcoming in some respects and untruthful in respect of his denial of participating in or witnessing any assault on Bebic. It is submitted that whilst Ingram was a credible witness who did his best to assist the Inquiry in recalling events, when weighing up his evidence about the words he overheard in the police station with the evidence of Milroy, Milroy's evidence is to be preferred.

I now turn, your Honour, to the various admissions said to have been made by Bebic. On the police account there were a number of times that Bebic made admissions to police during and after the raid. First, he made admissions to Simmons in the presence of officer Musgrave. Your Honour would recall that Simmons had his hand injured quite badly during the raid, with Bebic allegedly slamming the door on his finger. Simmons recorded that Bebic had indicated where the bombs were in the Valiant and said, "We make very big explosive and put clocks and connect detonators at very last". He did this with his injured hand. The Inquiry does not have the notes. They were also not tendered at the committal or trial. There is, therefore, no way of knowing precisely what Simmons wrote in his notes so as to compare them to what he and Musgrave recorded in their statements about this conversation.

It is submitted that it is highly improbable that Simmons was able to record very much with a broken finger. He may have recorded some key words. It is more probable that the substantive content of that conversation was recorded after the fact back at the police station. Whilst we query just how much Simmons was able to physically record in his notebook, it is submitted that there is little to call into question Musgrave's denial of a verbal in this respect, as was suggested by the Petitioners. Musgrave did not have a great recollection of events, often needing his memory refreshed through his statement, but there is nothing upon which to attack his credit on this point. Detailed admissions were also made to Turner and Milroy in the lounge room at Maccauley Street and again in the Records of Interview on 8 to 9 February and 20 February 1979, both of which I will come to.

Assuming those other admissions were not fabricated, police did not need to fabricate further admissions in their case against Bebic. Further to the point, if police were going to verbal Bebic it seems unlikely they would have chosen Simmons with his injured hand to be the recorder of the verbal. For all these reasons, we submit that the admissions made to Simmons in Musgrave's presence are reliable.

I now turn to the admissions made by Bebic to Turner and Milroy in the lounge room. Milroy's evidence was that he took notes of a conversation between Turner and Bebic in the lounge room of the Lithgow premises, during which

Bebic volunteered the names of the Burwood trio as co-conspirators. In addition, Bebic made various admissions about having participated in the bomb conspiracy. Bebic said that the conversation with Turner and Milroy in the lounge room and admissions made there never happened. Could we, please, bring up Exhibit 11.66, red page 287, this being Milroy's statement. If we scroll down to the bottom of the page we can see there, your Honour, it says, "Detective Turner and I then took the defendant, Bebic, to the lounge room of the house where Detective Sergeant Turner said to him, "My name is Turner and this is Milroy. Do you understand me clearly?" Bebic replied, "Yeah". Turning over the page, he's asked some questions about whether the bombs are safe.

Scrolling further down, please. Turner says, "I'm going to have to talk to you about the bombs we found in the car outside" and he's then cautioned. Scrolling further down. Turner says, "Max, this is a pretty serious matter. We bear in mind we found in your possession some bombs together with time clocks to set them off. It is quite obvious to me why you've bloody well got them". Bebic says, "Who traitor? Who tell?" The conversation continues - further down, please, and on to the next page - Bebic says, "All right. I tell. I know boss. I only help". He then goes on, Turner asks, "What are your friends' names?" Bebic says, "Tony Virovich, Vic Brakovich", and I pause here, your Honour, to note the spelling that is used there in Milroy's statement of the names. Milroy says, "Whilst I was recording this conversation in a notebook I said, 'Hang on a minute.' I then completed my notes and I said, 'Okay.' Bebic continued, 'Joe and Ilija Kokotovich, Mil Neckie'. I said, 'Where do they live?' Bebic said, 'Tony at Ashfield, not know name of street, not know others' houses.'" "Can you show us their houses?" Bebic says, "Could know two, not know all."

Again I pause there to note the spelling in Milroy's statement of the names of Joe and Ilija Kokotovic and Mile Nekic. This will become significant to something further I will say in a moment. This conversation is significant, not only for the various admissions made by Bebic about his involvement in the conspiracy but also because he named the Kokotovic brothers and Nekic as co-conspirators. On the police case this was the first point in time that they learnt of their involvement, that they learnt of the involvement of the Burwood trio. The lounge room conversation was recorded by Milroy in Turner's shorthand notebook and later typed out. These notes can be found at Exhibit 4.2-4 and Exhibit 11.38, as well as Exhibit 11.241.

In answer to the suggestion by counsel for the Petitioners that the names of the Burwood trio were furnished to Milroy and Turner and then incorporated in the verbals of Bebic, Milroy gave this evidence. If we could, please, bring up transcript page 328, line 24 to 32. Milroy was asked, "Weren't the names of the Burwood three, Ilija and Joseph Kokotovic and Mile Nekic furnished to you and Detective Turner and you incorporated them in the verbal, the verbals, plural, of Max Bebic". Milroy answered:

"That's totally incorrect. Mr Bebic actually provided the names. He sat next to me in the lounge and he could see me writing them as I

wrote them down as best I could based on what he was saying, and as you can see, I didn't write, spell their names correctly, and then in the Record of Interview he actually writes down the names on a piece of paper himself and those names were included."

5

It is submitted that there is force and logic in this answer given by Milroy. Other than Bebic denying the conversation occurred, there was no other evidence to bring the lounge room conversation into question. Counsel Assisting submits that Milroy's evidence should be accepted. The admissions made in the lounge room, in their entirety, are reliable.

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I now come to the two typed records of interview of Bebic.

HIS HONOUR: Just before you go on. The statement of Mr Milroy that you referred to a moment ago - you asked me to take note of the spelling of the name.

15

MELIS: Yes.

HIS HONOUR: The way it's spelt in the statement, is that the way it's spelt in the actual notes?

20

MELIS: No, your Honour, and that's what I'm going to come--

HIS HONOUR: You're coming to that?

25

MELIS: In the actual notes, in the handwritten notes, your Honour?

HIS HONOUR: Yes.

30

MELIS: Yes, your Honour.

HIS HONOUR: So K-O-K-K-T-O--

MELIS: Yes, your Honour. The notes and statement - the notes of Detective Milroy, his handwritten notes, and what has been put in the statement, his statement, are the same.

35

HIS HONOUR: Thank you.

40

MELIS: It has been suggested that there was clear evidence that Turner and Milroy collaborated in the preparation of their evidence and that insofar as the products of that collaboration contained assertions that Bebic made admissions and omitted accounts of the violence inflicted on him, the collaborations to produce such material were scumdowns of the corrupt kind. The evidence does not lend itself to such a finding. For the reasons canvassed previously, Milroy was a credible witness and should not be the subject of adverse credibility findings. He was the typist and witness in every Record of Interview for Bebic. Counsel Assisting has found that there is evidence sufficient to find that the Records of Interview were voluntarily made

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and signed. They were verified by independent officers.

5 In the first Record of Interview Bebic was asked by Turner to give him the names of the other men again and Bebic wrote them down. Could we, please, bring up Exhibit 4.1-E? Bebic said he wrote these names down under duress because he was being threatened by Turner with a wire cable. We do not believe the evidence supports this. It is reasonable to have asked Bebic to give police the names again in circumstances where they were recorded quickly and without reference to proper spelling in the lounge room. The
10 incorrect spelling of the names, together with the inclusion of the words, "Hang on a minute" as we saw in Milroy's statement, do not suggest a deliberate construct of a verbal by Turner and Milroy after the fact. Bebic's spelling of the names on the piece of paper is also consistent with the way they were recorded in the Record of Interview.

15 Again if we could, please, bring up Exhibit 4.1-D, red page 9. Scrolling down, please. We can see there at question 31 Bebic is asked, "Would you give me the names of those persons again?" Answer, "Yeah, I will write down", and "(Bebic writes names down on paper, Zvirotic, Tony; Brajkovic, Vjekoslav; Nekic, Mile; Kokotovic, Joseph; and Kokotovic, Ilija)". This is in contrast to the
20 information earlier provided from Lithgow by McDonald in what's become known as "the first screed", as well as Milroy's notes of the lounge room conversation, subsequently recorded in his statement, which, as we've observed, all consistently misspelt the name. Could we please bring up the
25 first screed, Exhibit 4.2-82, red page 640. We can see there, your Honour, that the names of the five men as recorded in the first screed are spelt and recorded consistently with the way in which they were recorded by Milroy in his notes and statement.

30 In this way, if the Record of Interview was a verbal, it would have required someone to tell Turner and Milroy how to spell the names correctly, and for them to have the foresight to include the correct spelling in the Record of Interview, but for Milroy to maintain the incorrect spelling in preparing his statement and notes. Again, this seems highly elaborate and highly
35 unlikely. At trial, Bebic admitted to drawing a diagram, also in the presence of Milroy, but denied it was a diagram of how to construct a bomb, and said he was ordered to do it. If we could please bring up Exhibit 4.1-Q. This is the first page of the diagram, your Honour, and if we could go to the second page. That is the second page.

40 The conversation around the drawing of the sketches was, again, recorded by Milroy, and happened while they were waiting for Turner to commence the Record of Interview. We make the following observations about this evidence: first, the drawing does somewhat resemble bomb components;
45 second, there is no logic in the idea of Milroy threatening Bebic to make the drawing if, on Bebic's case, police fabricated the admissions against him. If this was true, why would police require a further piece of evidence in the nature of a drawing like this? As to the Record of Interview on 20 February 1979, Bebic denied being interviewed at all and, rather, coerced into signing
50 various papers, including the Records of Interview.

This version does not withstand scrutiny. Partway through the interview, a solicitor by the name of Higgins entered the interview room, while Milroy remained at the typewriter. He spoke to Bebic about a property matter of some kind. Bebic said he never spoke to Higgins. It belies logic why police would make such a thing up. Again, the Inquiry has the reliable and credible evidence of Milroy. The Petitioners invite the Inquiry to give no weight to the evidence that senior officers confirmed with Bebic the accuracy of the purported Records of Interview and that he had no complaints. To suggest that these interviews and the admissions contained in them were fabricated would require the Inquiry to also accept that those two officers, namely Pringle and Ray, were part of the plot to conspire to implicate Bebic.

Pringle and Ray were not members of the CIB in Sydney. They did not have any significant role in the raid in Lithgow. They were sufficiently independent to verify the Records of Interview. It is submitted that there is no evidence to suggest they were part of a conspiracy to fabricate evidence against Bebic and the other accused. In conclusion, your Honour, the findings that we say are open on the evidence in respect of Bebic are summarised at paragraph 3099 of our primary submissions. We repeat that we find no reasonable doubt as to the guilt of Maksimilian Bebic.

I now move to Mr Brajkovic. Virkez mentioned Brajkovic in his telephone call to the Consulate. He referred to him as "the organiser". He also named him to Ingram on the same day. Bebic implicated Brajkovic at the first opportunity in the lounge room at Macaulay Street. For the reasons we have previously stated, both sets of admissions are reliable and provide probative evidence of Brajkovic's involvement in the conspiracy. On the Crown case, Brajkovic was found by police in possession of explosives contained in a white plastic bag on the night they raided his house at Bossley Park and arrested him. The items can be seen at Exhibit 4.1-MM. The items that were included in the white plastic bag, your Honour, did not include the masking tape, the clock and the two soldered batteries that can be seen in that photo.

Police also alleged that Brajkovic admitted to possession of the explosives at the house and again in his Record of Interview. The evidence was that he was shown the explosives both in his home, in his workshop room, and again in the interview room at the CIB. The explosives were also shown to Mrs Brajkovic and Mr Hudlin at the CIB during their interviews. The evidence of the white plastic bag loomed large in the Inquiry, and was tested with all witnesses relevant to the Bossley Park raid. The Inquiry will recall it was evidence that did not always feature in statements at first instance, or it was otherwise first mentioned in cross-examination at committal or at voir dire. This evidence features in section 42.4.4 of our written submissions and is analysed at section 68.2.1.

The white plastic bag was a particular feature in the examination of Detective Krawczyk, when the Inquiry discovered two versions of his statement about the events of 8 February. One version made no mention of the white plastic bag at all. The other version was changed to specifically add the sighting of the bag. Exhibit 4.2-36, your Honour, is the statement that mentions the bag,

whilst Exhibit 11.153 does not. It is submitted that Krawczyk's evidence to the effect that he did not know that there were two versions of his arrest statement was not credible. It is submitted that this points to a deliberate action by Krawczyk to strap up his evidence and ensure it was consistent with the narrative that Brajkovic had been found with a white plastic bag containing explosives.

Albeit this, it is submitted that there is insufficient evidence to suggest that Krawczyk never saw the bag and that the amendments were a fabrication of what, in fact, occurred. The bag and the explosives were not photographed in situ when found. They were photographed later on 16 March 1979, together with the clock, soldered batteries and masking tape, which was previously shown on the screen. The items found and seized at the property were itemised in a property list prepared by Detective Wilson on 16 February 1979. It is submitted that the evidence is most aligned with police discovering a white plastic bag with explosives at Bossley Park. In coming to this conclusion, we have scrutinised the evidence closely.

The timeline of events that was prepared shortly after the raid mentioned the discovery of the white plastic bag. This is Exhibit 11.89, red page 1288. We can see at the top of the page there, your Honour, mention of the fact that:

"Helson turned the spot in his vehicle on Brajkovic and he was searched. Helson then shone the spot around the area in which Brajkovic had been lying. White plastic bag located in same spot. Helson said, 'What's that? Someone have a look at that.' Harding picked up the bag and Helson shone the spot inside it. Brown paper bag containing detonators located. Newspaper parcel containing two sticks of gelignite taped together with several loose flares also located."

It is submitted that there is insufficient evidence to establish the exercise of drafting the timeline of events as a corrupt scumdown. In their evidence at committal and trial, police did not conceal the fact that a document had been produced after the raid and was used by them in drafting their statements. The Inquiry also has the evidence of officers Cook, MacKenzie, Robinson and Bennett in respect of the bag, which we say can be relied upon. It is open to your Honour to find that the practice of police discussing their evidence amongst themselves and collectively refreshing their memories before giving evidence had the potential to contaminate one another's evidence, particularly in respect of the white plastic bag. However, in our submission, there is insufficient evidence to find a corrupt scumdown in respect of this evidence.

The Petitioners say that what has never been explained is what rationale there would have been for Brajkovic to have had the alleged explosives with him at the time he was apprehended around the front of his property. They ask, why wouldn't he try to hide them? It isn't altogether inconceivable that, after coming home from shopping with his wife and daughter and noticing police outside his premises, that Mr Brajkovic might become anxious and, together with grabbing

binoculars with which to watch the police outside, he also grabbed explosive items in his home and put them in a bag, paranoid that police were on to him, so to speak. The evidence around whether Brajkovic admitted to possessing the explosives, we say, is less reliable. This is because of what we come to say next about the assault on Mr Brajkovic and the officers implicated in that. However, even absent reliable evidence of Brajkovic admitting to possession of the explosives, we submit that the totality of evidence points to the explosives belonging to Brajkovic.

I now move to the alleged assault of Mr Brajkovic. Brajkovic maintained at trial that the typed Record of Interview, allegedly conducted on 8 February 1979 back at the CIB, was a complete fabrication and never happened. The trial judge excluded the interview because he was unable to make up his mind on the issue of whether the confessional material contained in it was given voluntarily. There was cogent medical evidence that on 9 February 1979, Brajkovic had injuries that corresponded with injuries or blows he said were inflicted on him. Brajkovic was convicted absent the admissions in the Record of Interview. It is submitted that there is reasonable doubt that the Record of Interview was produced through the cooperation and voluntary admissions of Brajkovic, and should be similarly excluded from the Inquiry's consideration.

Brajkovic alleged he was beaten in the interview room, including being strangled with a towel by Harding. His solicitor, McCrudden, spoke about complaining to the Court the next day that Brajkovic had been beaten up. He told the Magistrate, "Look at him. You can see he has been beaten". Brajkovic's alleged mistreatment was the subject of a complaint by him that was investigated by the Police Internal Affairs Branch, led by an officer named Shepard.

Police involved in the raid were directed to make reports. The Inquiry called for all the police reports, Shepard's findings and any other associated Internal Affairs documents. A number of former police officers were examined on those documents. They often provided more detail than the police statements and provided fertile ground for examination. All police denied any assault on Brajkovic in those reports. It was not until this Inquiry that Mr Brajkovic discovered the results of that investigation. In his letter to the Chief Superintendent of the Police Internal Affairs Branch dated 17 April 1981 in which Shepard gave his findings, he commented as follows. Exhibit 11.218, red page 1609, paragraph 4:

"During his trial the complainant made a number of accusations through his counsel of having been assaulted by police at the Criminal Investigations Branch prior to being charged with these matters. The trial Judge did not make any comment on these allegations and apparently he and the jury failed to place any importance on the matters raised in court as he was convicted and sentenced on all charges."

As your Honour observed during the hearing, the comment is clearly erroneous and misleading. The trial judge in fact excluded the Record of Interview on the basis that he could not be satisfied that it had been given

voluntarily.

The letter went on to say, at paragraph 5:

5 "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 the Central Industrial
10 Prison or whilst an inmate at that establishment, and then make
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."

15 This opinion was shared by a number of officers in their reports to Shepard,
including officers Harding, Pettiford, Morris, Krawczyk and Helson. The
evidence about this is explored in section 42.5 of our written submissions. It is
submitted that there is no evidence to support this opinion and it should not
carry any weight before this Inquiry. Despite the denials of Krawczyk, Harding
20 and Helson to the Inquiry that these officers participated in a corrupt
scrumdown in response to Shepard's Internal Affairs investigation it is
submitted that there is sufficient evidence to infer that there was discussion
amongst them about how they would respond to the allegations of
assault. There had to be. It is inconceivable, in our submission, that they all
independently came up with the same theory.

25 The former police officers submit that the Inquiry is no better placed than
Maxwell J was in 1980 to determine the issue of whether Brajkovic was
assaulted. Further it is submitted that the Inquiry is in fact at a comparable
disadvantage given a number of witnesses are deceased. We respectfully
30 disagree. This Inquiry has been extensive and exhaustive. It was not limited
by the rules of evidence and it has had access to evidence that was not before
the trial, including the Internal Affairs investigation. In the absence of any
other plausible or reasonable explanation it is open to this Inquiry to make a
positive finding for the first time that Brajkovic was assaulted. We do not
35 accept the submission made by the police officers that his injuries were "likely
self-infliction in the custodial context".

There is also new evidence that was received by the Inquiry which, in our
submission, fortifies the finding that Brajkovic was assaulted. A person by the
40 name of Steep also alleged around the same time that he was assaulted by
Harding with a towel that was used to strangle him in the interview room at
Port Macquarie Police Station. In his evidence to the Inquiry, Harding denied
he did this in both the case of Steep and Brajkovic. Harding sought to explain
45 the similarity by telling the Inquiry that allegations were being orchestrated
against him by a group of criminals including Neddy Smith and Steep. Harding
said that at some stage prior to the Croatian Six trial, Steep came up with this
allegation of strangulation by towel.

50 The modus operandi of a detective using a towel to strangle a suspect is very
unusual. It is also noteworthy that Harding gave evidence in the Steep matter

that there had been a violent struggle between him and Steep on the stairs on the way up to the first floor of the police station where he was to be interrogated. Harding also said that he had put Steep into a headlock. Both these concepts of a violent struggle, and putting the person in a headlock, were also features of Harding's evidence at trial, and we would say, provided as an explanation for the injuries sustained by Brajkovic on the night of 8 February, to conceal the truth of the assault. But even this explanation is at odds with the police evidence consistently to the effect that no one saw any injuries after the arrest of Mr Brajkovic at the house, at CIB or at Central Police Station.

The medical evidence, however, is compelling. Mr Brajkovic sustained injuries consistent with an assault upon him. There being no other reasonable explanation, the assault must have happened at the CIB with police turning a blind eye to it. It is submitted that Steep's allegations give greater weight to Brajkovic's version of what happened in the interview room. Harding's evidence is not to be accepted in this regard. The Inquiry would be at the very least troubled by the similarities between Brajkovic's allegations against Harding and those by Steep. Our submissions at annexures 2 and 3 give a chronology of Brajkovic, Steep and Smith's periods of incarceration at Long Bay Prison, as well as a timeline of when Steep and Brajkovic first raised complaints against Harding regarding strangulation by a towel. We conclude that those chronologies do not support the submission of the police officers that reference to a towel by Brajkovic only arose when, by some avenue or other of prison gossip, an allegation by a prisoner called Steep came to the ears of Mr Brajkovic.

If the Inquiry were to make a finding that Brajkovic was assaulted by Harding and Morris, who were both in the interview room, it is submitted that it is highly probable that other officers, particularly those who attended Bossley Park and remained at the CIB, had knowledge of this assault. This is particularly so of officers Pettiford, Krawczyk and Helson, who we say had colluded in what they told Shepard. The reason for doing this was likely because they had knowledge of the assault perpetrated on Brajkovic. This in turn casts doubt on the evidence they gave both at trial and before this Inquiry. It is also open to the Inquiry to find that Wilson, as the officer in charge of the Bossley Park raid, and one of the officers who took Brajkovic for charging, also very likely had knowledge of the assault. It is submitted that there is insufficient evidence for the Inquiry to be satisfied that Bennett had knowledge of the assault on Brajkovic.

Unlike the officers I have just referred to, there is insufficient evidence from which the Inquiry could make adverse credibility findings against Bennett sufficient to question his evidence about his lack of knowledge of an assault on Brajkovic. The same can be said of officer MacKenzie. Officers Robinson and Cook did not return to the CIB and they had a more limited role in the raid. However, because of the unreliability of those witnesses it is not possible to conclude with any certainty that Brajkovic admitted to possessing the explosives in the presence of any of those officers. That evidence should be excluded from consideration. Even so, if the Inquiry accepts that the white

plastic bag with the explosives was found at Bossley Park, it follows that those explosives must have belonged to Brajkovic. This is further probative evidence of his involvement in the conspiracy. In conclusion, your Honour, the overall findings we invite the Inquiry to make with respect to Brajkovic are outlined at section 68.5 of our primary submissions. We repeat that we find no reasonable doubt as to the guilt of Mr Brajkovic.

I now turn to Mr Zvirotic. Zvirotic was named by Virkez and Bebic. Virkez mentioned him to both Ingram and in his call to the Consulate. Bebic told police in his Record of Interview on 8 February that it was "Tony's plan". These admissions, we say, are reliable and probative evidence as to Zvirotic's involvement in the conspiracy. Police found a list of weapons that Zvirotic had given to Virkez. This is at Exhibit 4.1-WWW, red pages 159 and 160. The first page shows the list of weapons written in Croation, and the second page is an English translation of that list. Virkez's evidence was that Zvirotic had given him the list at the end of December in 1978 in Ashfield, and told Virkez and Bebic, who was also there, to buy the items on it to use against Lovokovic. Zvirotic accepted that he had written the list but said it was contained in an exercise book of his and denied having given it to Virkez, thereby distancing himself from Virkez. The implication arising from Zvirotic's denial is that the evidence that the list of weapons was found at Virkez's premises was fabricated.

On this theory detectives found the list in an exercise book at Zvirotic's premises, tore it out of the book and all colluded to give evidence that the list had in fact been found in Virkez's premises on 8 February. In our submission, this scenario is unlikely. If detectives located the list in Zvirotic's room and were able to identify its contents, noting that it is in Croation, although some words are recognisable in English, it seems unlikely that they would then concoct a story to suggest the list was in Virkez's possession. It would have been sufficient for the case in respect of the murder conspiracy of which none of the men were ultimately convicted, that the list was in Zvirotic's possession. We raise this because it casts significant doubt about Zvirotic's credibility. It also demonstrates the incredulity of a significant number of police officers colluding to fabricate a detail that is relatively peripheral to the evidence of the conspiracy.

I now move to evidence of the alleged assault on Zvirotic. Zvirotic alleged that he was assaulted during the raid, being grabbed by the hair and pulled downstairs. He also said he was assaulted at the CIB, including police opening his hand finger by finger and pushing a pistol into his right hand and a magazine into his left. Significantly, Sister Jefferies saw Zvirotic on 9 February 1979. He complained of an assault the night before. Zvirotic's complaints to Sister Jefferies do not encompass the full gambit of injuries of which he gave evidence at trial. For example, he alleged he was struck on the knuckles several times until they bled, and that Detective Carroll stomped on Zvirotic's bare feet several times, yet no such complaint was made to Sister Jefferies. He also said he was beaten using a towel, pistol butt, elbows and hands by a group of detectives to the point of falling to the floor and feeling groggy, but no such complaint was recorded by Sister Jefferies.

Detective Carroll was vehement in his denials of the allegation of assault, describing it as "completely false". In contrast, Carroll was forthright in his account of the struggle on the stairs with Zvirotic at the Ashfield premises, stating, "I think back in those days, well, I think any struggle was probably violent". For this reason, and in circumstances where he appears to otherwise be a witness of truth, Counsel Assisting submits that his evidence from trial and to this Inquiry about the allegations of assault on Zvirotic should be accepted and that Zvirotic was not assaulted in the way he described. Assessing the evidence overall, we submit that the injuries complained of by Zvirotic to Sister Jefferies were consistent with injuries that might have been sustained during the struggle on the stairs. Moving to the evidence of explosives found at Ashfield. Two half sticks of gelignite and one delay electric detonator were found at the Ashfield premises. These can be seen in the photo at Exhibit 4.1-AAA, red page 94. Of the officers who gave oral evidence to the Inquiry, officers Burke, Kennedy and Jefferies had an actual recollection of having seen the gelignite in situ.

It is unclear the extent to which Kennedy's recollection was a true one versus one that arose after having read the materials provided to him. Carroll did not see the gelignite in situ but confirmed that when he was downstairs with Zvirotic, Jefferies came out and told him that it had been found. Overall, Counsel Assisting submits that there is insufficient evidence to call into question the veracity of the police account of having located gelignite and other items in Zvirotic's room. As stated, Carroll was a credible witness. If he is believed as a witness of truth, the Inquirer can comfortably conclude that he was told by Jefferies of the items having been located in the premises.

Moving to the admissions attributed to Zvirotic. On the police account, Zvirotic did not agree to a typed Record of Interview but agreed to the admissions being recorded in a notebook by Carroll. This does raise some suspicion. The only credible explanation given to the Inquiry about why a suspect might refuse a typed interview but agree to have it recorded in a notebook was given by Grady who indicated that suspects might wish to avoid a formal Record of Interview because it would be booked into the person's property and travel with them to gaol.

Carroll said that a typed interview versus a notebook interview are, "Equal in same value if they're admitted as evidence", whether signed or unsigned. There was no signed or unsigned recorded of interview and no signed or unsigned notebook interview in evidence at trial or before the Inquiry. There is Jameson and Carroll's oral evidence in the trial and before this Inquiry about it. Counsel Assisting submits that there is insufficient evidence to call into question the veracity of the police account of the Record of Interview.

Carroll should be accepted as a credible witness who did not condone police misconduct. If that submission is accepted, it follows that his evidence about the interview with Zvirotic and the admissions made there should also be accepted. Those admissions, together with the other admissions of the accused, are contained in full in annexure 1 of our written submissions. There

is one specific matter I wish to address that responds directly to a submission made by the Petitioners that Zvirotic was verballled by police.

5 At paragraph 839 of their primary submissions, they refer to a particular statement attributed to Zvirotic in his Record of Interview. The statement is as follows, "Fabian Lovokovic, we kill him too. Like I say before, or like I told you before, we Croatian Republican Party. Fabian kick us out of inter-committee council. He traitor too". First, the Petitioners submit that the Croatian
10 Republican Party was at the time of trial and had always been a member of the Inter-Committee Council, thereby undercutting this aspect of Zvirotic's interview.

There is, however, evidence before the Inquiry that supports the veracity of what Zvirotic had said in his interview, namely that the Croatian Republican
15 Party had been expelled from the Inter-Committee Council. Our submissions in reply at paragraph 72 and following deal with this evidence. On one view, the fact of the inclusion of this statement in Zvirotic's interview may strengthen the credibility of the police account about the interview. The Croatian
20 Republican Party's expulsion from the Council was a relatively obscure fact.

If the interview were indeed a fabrication, it was a surprising inclusion. Moreover, if a fabrication, the source of this information must've been Jefferies. The Inquiry would need to accept that Jefferies had provided
25 this information to CIB detectives for the purpose of a verbal against Zvirotic but did not consider it relevant to other members of the Croatian Six. This does not withstand scrutiny. Second, the Petitioners appear to submit that Zvirotic's reference to, "We Croatian Republican Party" is indicative of the interview being fabricated as there was no evidence of Zvirotic's membership
30 of the party.

However, the evidence at committal of the minute secretary for the Croatian Inter-Committee Council named Avdic, A-V-D-I-C, tends to support the proposition that Zvirotic was a member of the Croatian Republican Party or at
35 least held himself out to be one. The evidence of this is at Counsel Assisting's reply submissions at 72 and following. Avdic indicated that Zvirotic and Nekic were present at a meeting of the Inter-Committee Council on behalf of the Croatian Republican Party.

This also further calls into question Zvirotic's credibility in light of the evidence
40 given by him at trial that he had never been a member of the Republican Party or sympathiser of it. In conclusion, your Honour, the overall findings we invite the Inquiry to make in respect of Zvirotic are outlined at paragraph 3319 of our primary submissions. We repeat that we find no reasonable doubt as to the guilt of Anton Zvirotic. Your Honour, I note the time but if okay, I'll continue for
45 another ten minutes.

HIS HONOUR: Very well.

50 MELIS: I now move to the evidence against the Burwood trio. Counsel Assisting submits that there is reasonable doubt about the guilt of Joseph and

Ilija Kokotovic and Nekic. Bebic volunteered very little information about the Burwood trio's involvement. Although he provided their names, he did not suggest they were present at the 26 January meeting, nor did he provide any information about the specific roles they were to fulfil in the conspiracy other than the vague reference to Ilija possibly being a boss, but he was not sure.

As such, it is submitted that little weight can be placed on Bebic's evidence in respect of the Burwood trio. While the evidence establishes Bebic believed the men to be involved in the conspiracy, his words are too nonspecific to attribute particular acts of involvement in the conspiracy to the Burwood trio distinct from what he said about Brajkovic and Zvirotic. Virkez named Ilija Kokotovic as a co-conspirator during his 10 February 1979 interview with Marheine as well as at trial.

We conclude that there is insufficient evidence to suggest that Virkez fabricated the evidence of Ilija's involvement. However, again, we say that little weight attaches to that evidence given that Virkez did not speak to him and it does not provide probative evidence of his involvement in the conspiracy. Turning to the evidence of explosives found at Burwood, two half sticks of gelignite, four electric detonators and five relay delay connectors were found at the Burwood premises. These can be seen at Exhibit 4.1-XX.

We note in our submissions the lack of precautions taken by police during this raid as well as the other Sydney raids and we'll make some further comments about this shortly. However, we ultimately find that there is evidence sufficient to find that there were in fact explosives found in the Burwood premises. Officers Howard and Grady gave compelling evidence. Howard had a positive recollection of finding the items inside the attic. Grady offered a clear explanation of how he separated the explosives and detonators in the car on the way to the CIB.

Grady and Howard's evidence was in contrast to Lydia Peraic who denied the presence of the explosives at the house. In our submission, Grady and Howard's evidence should be preferred. There can be no doubt that the events of 8 February 1979 would've been emotional and the evening of the raid chaotic. Lydia had every reason to believe in her husband's innocence. In the circumstances, her memory of events may have been unwittingly influenced by what she wanted to see rather than what she in fact saw.

However, the evidence as to the explosives at the premises carries different weight in relation to the Burwood trio as it does with the other accused. There were three men present in the house. The presence of explosives does not necessarily implicate all three in the conspiracy. The explosives may have been known to be there by all three but only one connected with the conspiracy. Only one or two of the men might've known about the explosives at all. The presence of the explosives at the premises, therefore, we say is not probative evidence of the involvement of one or more in the conspiracy.

HIS HONOUR: The items were said to be on a small table in a small attic from

which three men were seen to be in the process of leaving at the time the police arrived. I wonder what alternative reason there could be for those men to be in that room with that material clearly present to anyone who would be in the room.

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MELIS: That's certainly an inference that is available to your Honour. There's simply, in our submission, insufficient evidence on the material to conclude either way what they were all doing in the attic around the table with the explosives at the time. I guess, your Honour, it is a question around the question of possession and knowledge of those explosives, but we note your Honour's observation.

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HIS HONOUR: Was this an issue that was ventilated at trial, that there was doubt because it might be only one or two, not all three, in possession of the items? My broad recollection is that it was put to the jury on both sides as all or nothing.

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MELIS: Yes, your Honour. That is also our understanding.

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HIS HONOUR: Okay, thank you.

MELIS: Moving onto the admissions, your Honour, said to be attributed to the Burwood trio. In the same way as Zvirotic, Joseph Kokotovic and Nekic both refused a typed interview but agreed to having handwritten notes taken of the interview. Ilija's interview was typed. We have previously observed the curiosity of this, three accused refusing typed interviews on the same night in respect of the same matter but agreeing to police handwriting the interview instead. Even so, as mentioned, we separate the interview of Zvirotic from the Burwood trio and say there is sufficient evidence to doubt the veracity of Zvirotic's Record of Interview.

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The handwritten notes for Joseph and Nekic were not verified. If they were meant to act as a substitute for a typed Record of Interview, then, in the same way as a typed Record of Interview, they should have been independently verified, as required by police instructions. It is open to the Inquiry to be critical of this. Ilija's typed Record of Interview with Howard and Parsons was also not independently verified. Ilija allegedly became agitated, thumped the table and refused to answer questions or continue with the interview.

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Additionally, we observe that the interviews of the Burwood trio follow a similar sequence of questioning. In our written submissions, at paragraph 3357, we extrapolate the sequence there. When these interviews are compared, they read very similarly to one another, raising a suspicion that they were constructed by police. It is a difficult task to assess whether, in fact, police fabricated these interviews and, if they did fabricate them, how they went about achieving this. For example, was one interview taken, from which the others were modelled? Did one of the Burwood trio make admissions that were falsely also attributed to the others? Were all three interviews wholly or partially fabricated? These are questions which cannot be resolved on the state of the evidence.

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We are unable to conclude, your Honour, that every aspect of the records of interview was a fabrication. This is important in assessing the evidence of the hijacking allegation, for example, and how it came to be put to the other accused. The allegation of the plot to hijack an American aircraft first arose during Ilija's Record of Interview, before he was asked about the murders. He volunteered the information. The evidence was that Jameson was then called out of the room by Howard, who told him about the hijacking plot. Jameson then put the allegation to Zvirotic. Howard also told Grady and Counsel, who then put the allegation to Joseph. Godden told Nekic that Ilija had told Howard about the hijacking plot. The plot was also put to Bebic on 9 February.

The hijacking allegation would have been an unusual topic on which to fabricate evidence. There was no reason for police to fabricate these allegations on top of the allegations of the bomb plot. It seems excessive that they would think they needed to do this in order to secure convictions. Moreover, if police did fabricate the evidence about the hijacking, why did they choose Ilija as the person to volunteer the information first? On the police account, he was agitated, and the interview was ultimately suspended. Howard's account of Ilija's interview appeared credible. There is an available argument that Ilija's Record of Interview was genuine and possibly served as a template on which the others were based. However, there is insufficient evidence to conclude that this was the case. The theory is supposition only.

For these reasons, we say there is a sufficient basis to cast doubt on the veracity of the Records of Interview of the Burwood trio. It is submitted that your Honour should err on the side of caution and exclude the interviews from the Inquiry's consideration of the guilt of the Burwood trio. In conclusion, our overall conclusions with respect to the Burwood trio are summarised at Counsel Assisting's submissions, at paragraph 3367. We otherwise reiterate, your Honour, that on the totality of the evidence available, there is reasonable doubt about the guilt of Joseph and Ilija Kokotovic and Mile Nekic. I note the time, your Honour.

HIS HONOUR: All right. We'll take the morning break.

SHORT ADJOURNMENT

Yes.

MELIS: Your Honour, there are a number of overarching matters that need to be addressed that have some bearing on our overall findings. The first matter I wish to address is the matter of Stipich. Stipich was also the subject of a raid and charge of possessing explosives on 8 February 1979. He was never charged with the conspiracy to bomb. The Petitioners submit at paragraph 597 of their written submissions that, "It can and should be concluded that the Stipich charge was false and was founded on fabricated evidence of possession of explosives". The Petitioners submit that this, in combination with other matters, renders the evidence of what happened to Stipich of substantial probative value when determining the truth or otherwise

of the police evidence against the Croatian Six. You can see the submission made also at the Petitioners' submissions at paragraphs 597 to 598. In our written submissions we have addressed why the Stipich case is of little assistance to the Inquiry in its findings about the Croatian Six. We address these matters at paragraphs 367 and following, and in our analysis at paragraph 2822 and following.

There is nothing in the Stipich matter that might assist the Inquiry as urged by the Petitioners. To the contrary, there are significant differences between the police treatment of Stipich and that of the Sydney based accused. There was no allegation of possession of gelignite with intention to cause explosion. There were no verbal admissions, no mention of Stipich by any of the Croatian Six. There is, moreover, an unsatisfactory state of evidence about why the matter was dismissed in the Local Court. Stipich himself told your Honour that police had found detonators in his bedroom and he had read the inscription on them. All these matters would cause the Inquiry to give the matter little weight when assessing the case against the five Sydney based men.

The Petitioners further used the Stipich case to suggest that the raid at Willmot was part of an organised operation in which men perceived to be members of the Croatia Republican Party were loaded up and verbaled. This is at paragraphs 658 and 664 of their written submissions. If that assertion were to be accepted it begs the question why Stipich was not pursued by police in the same way as the other men. If police fabricated the admissions of the other men including each implicating one another as co-conspirators, one would expect admissions to be attributed to Stipich or at least the other men admitting that Stipich was a co-conspirator. The reliance on the Stipich case does not assist the Inquiry in any material way with its findings.

Another overarching matter is that of the Wood Royal Commission. The Commission uncovered numerous instances of bribery, money laundering, drug trafficking, fabrication of evidence, destruction of evidence, fraud and serious assaults in the squads of the CIB. However, it would be wrong to paint the former CIB officers who gave evidence to the Inquiry with the broad brush of corruption. There were clearly instances of corruption, but that is not to say that all officers either had direct knowledge of those practices, nor that they had had a perception of corrupt practices occurring. Every former officer was examined on this topic and their responses are summarised in Part 5 of our written submissions and in the relevant sections in the parts relating to each raid.

We submit that the preferable approach to the findings of the Wood Royal Commission is to understand those findings in the context in which they were made, to use those findings to test the witnesses on their knowledge of the use of any corrupt practices in this case and then to consider and weigh that evidence against other available evidence, and that is what we have done. Our approach is exemplified in the conclusions we have reached about certain corrupt scumdowns having occurred in the case of Mr Brajkovic and in respect to the assault of him. Some officers whom the Inquiry heard from were

indeed called to give evidence to the Royal Commission. Some were referred to the DPP. There is, however, no finding of guilt recorded in respect of corrupt practices against any former officers involved in the raids of the Croatian Six.

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The next broad topic I wish to address is that of admissions. The Petitioners submit that the Inquiry should give no weight to the evidence that the Sydney accused made admissions - sorry, that all accused made admissions. Although we accept that the admissions should be carefully
10 scrutinised, in our submission, they should be assessed in light of the evidence as a whole. The starting point should not be to discount the admissions in their entirety. The Petitioners submit that the admissions particularly attributed to the Sydney accused was sufficiently similar to the details set out in the first and second screeds, for those two documents to have been the likely source
15 of the admissions. This is at paragraph 1013 of their submissions.

Additionally, it is put that the other sources of the verbals of the accused were, (1) the papers police found in Zvirotic's room at Ashfield and seized relating to the civil action he was taking against Tomo Mlinaric and his accounts of the
20 assault upon him by Mlinaric, and Mlinaric's conduct of affairs at the Croatian Club, and the other source being the records of Special Branch, including information contained in index cards and dossiers, some of which I took your Honour to earlier. This hypothesis assumes police gathered these various pieces of information and created admissions attributable to each of the
25 accused in either handwritten interviews or typed interviews and that this was done at some time after the raids. The theory points to a highly elaborate and coordinated set of events.

This theory also assumes that police charged all the accused on 8 and
30 9 February and then worked backwards to fabricate the evidence that founded the charges. On any view, this scenario would have taken a meticulous amount of coordination and liaison amongst police. It does not withstand scrutiny. The officers from Lithgow, namely Milroy and Turner, had returned to the CIB on 10 February 1979, making lists of what was needed for the brief of
35 evidence. The running sheets before the Inquiry begin on 13 February 1979. This can be found at Exhibit 11.50A, and show that enquiries were being made in respect to all accused and aspects of the case early on. The evidence paints a picture of an active investigation, not of a conspiracy to take discrete pieces of information and fabricate evidence against each of the
40 accused that was consistent and could withstand scrutiny before a jury.

The next matter that requires addressing is this idea that there was a stash of explosives at the CIB. An important limb of the Petitioners' case theory is that police had a cache of explosives from which to draw upon in order to fabricate
45 the evidence of finding explosives at the residences of the Sydney based accused. We observed that the Wood Royal Commission did not consider any cases involving police loading up suspects with gelignite. There was no indication in the findings of the Wood Royal Commission of police having a stash of gelignite at the CIB, or any other type of explosive. The cases
50 considered involved load-ups with rifles or drugs. In our submission, this is

significant. Gelignite is a distinct product and Rogerson's comments to the media about criminals fearing "getting a couple of sticks of geli found in their cars or in their possession" do not withstand scrutiny, and should not be relied upon.

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The suggestion is also made that the gelignite photographed on 16 March 1979 and produced to the Dangerous Goods Branch, by reference to the Bossley Park raid, may in fact have come from the Moorebank Army depot on 15 February 1979. Your Honour will recall a recording to the effect in Milroy's duty book that he had gone to the Moorebank Army depot and collected some gelignite. Again, there is no basis for this submission. To the contrary, if Milroy, as the officer in charge, was collecting gelignite from Moorebank to be used in a fabrication of evidence against the Croatian Six, why would he choose to record the event in his duty book? Again, it does not withstand

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A further submission is advanced on behalf of the Petitioners that the lack of a recording and accounting system used by police for the explosives found in Lithgow meant there was nothing to prevent the unaccounted detonators being diverted to an improper use. This is at the Petitioners' submissions at paragraph 205. It is far from ideal that there were unaccounted detonators. However, this does not necessitate a finding that they were diverted to an improper use. The more likely reason is human error in recording. If there was an intention to take explosives away to be placed in a stash at the CIB and used for improper purposes, one would expect there to have been more unaccounted items of explosives than just the detonators. Additionally, we query whether in fact the evidence is sufficient to disclose that there are missing detonators.

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We refer to the analysis in this respect in the submissions on behalf of Mr Bennett at paragraph 130 and following. It is open to the Inquiry to find that there are no missing detonators and that Captain Barkley may have made a mistake in his evidence as to the count at the time of the trial. In any event, it is submitted that whatever the finding on the count of detonators, there is no evidence to support the argument that those detonators were diverted to an improper use, nor that this somehow tends to show a practise by police to stash explosives.

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The next overarching matter I wish to address is that of police precautions. It is submitted by the Petitioners that the failure to call in the Army in Sydney supports the case that there were no explosives at the premises. The argument is premised upon police having an expectation prior to the raids that no explosives would be found there or at least knowledge that there would not be anything there and therefore there was no need to call in the Army. On this argument, there was already a conspiracy on foot by police to conspire against the Sydney men and fabricate evidence of finding explosives before they'd even attended the premises.

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This submission should not be accepted. On any view, there was evidence from Virkez that someone in Burwood was keeping explosives, that Brajkovic

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taught Virkez how to make bombs in Fairfield, that Brajkovic had a number of switches in his house and that Zvirotic was one of the two bosses. We refer here, your Honour, to Ingram's rough notes which I took the Inquiry to earlier on. On this evidence, it cannot be said that police knew that no explosives
5 would be found and therefore made a conscious decision not to call the Army.

As submitted by the DPP in their written submissions at paragraph 183, the lack of precautions was in all likelihood a product of a cavalier attitude that prevailed at the time and nothing more sinister. The next matter I wish to
10 address is the absence of corroborative evidence from an independent source. The Petitioners advance the broad submission that in the absence of corroborative evidence from an independent source at the Sydney raids, police evidence of admissions and of possession of explosives in this case should be regarded as ipso facto suspect.

They submit that it is a class of evidence which should be discounted unless corroborated by an independent source. This is at paragraph 65 of their submissions. In our submission, there is no doubt that admissions need to be
15 carefully scrutinised. For this reason, we have submitted that the Inquiry would treat Wilson, Helson, Morris, Harding, Pettiford and Krawczyk's evidence overall with caution, given the submissions we have made about those officers. The police evidence about the finding of explosives should be, again, assessed in light of the evidence as a whole.

In our submission, it should not be discounted entirely in the absence of corroborative evidence. To do otherwise would lead to an incomplete consideration of the materials. In our submission, the lack of photographs is
20 insufficient to create a reasonable doubt as to the existence of the explosives at each of the Sydney premises. One must consider the surrounding evidence. In each of the Sydney raids, the explosives were photographed, albeit not in situ.

The explosives were taken to the Dangerous Goods Branch for examination, albeit in the case of the Bossley Park raid they were taken at a significantly
35 later time. The explosives should've been entered into an exhibit book and were not. However, in respect of the Bossley Park raid at the very least, the explosives, the clock and other items taken from Bossley Park were recorded and accounted for in the property list created by Wilson on 16 February. This is at Exhibit 4.2-30.

This serves as another piece of evidence of the items found at that property. We otherwise again adopt the submissions of the DPP at paragraphs 189 and 194 that while aspects of the police procedures employed
40 during the Sydney raids seem irregular by contemporary standards, they must be assessed by reference to the resourcing and technology that was available at the time. A similar submission is made by the former police officers at paragraph 46 of their submissions.

Whilst on the topic of police procedures, your Honour, there is one matter that I
50 wish to raise by way of clarification, and that is in respect to Police Instruction

Number 31. This is Exhibit 14.12, red page 130. Could that please be brought up on the screen? Your Honour, this Instruction is referred to in our submissions at paragraph 567 and I just want to clarify one matter for the record. This Instruction Number 31 is headed, "Arrests" and if we continue to scroll down, it includes guidelines for questioning offenders and oversight of records of interviews by senior members.

If we could just keep scrolling down. At red page 132, if we could go there please. At the bottom of the page, we can see the words, "New pages 289-290 amended 26 July 1979". Your Honour, those assisting sought confirmation from those representing the Commissioner of Police that this Instruction was indeed in place as at 8 February 1979. Based on that response, I can confirm that Instruction 31 was introduced in 1977. Pages 289 and 290 were amended on 26 July 1979 and page 293 to 294B were also amended on 26 July 1979. Pages 289, 291 and 292 were in operation as at 8 February 1979.

HIS HONOUR: It's also referred to in your submissions at paragraphs 1966 and 2002.

MELIS: May your Honour please. Your Honour, in conclusion, there is a reasonable doubt as to the guilt of Joseph Kokotovic, Ilija Kokotovic and Mile Nekic for the reasons we have advanced both in our written submissions and today in oral submissions. There is no reasonable doubt as to the guilt of Maksimilian Bubic, Vjekoslav Brajkovic and Anton Zvirotic for the reasons advanced in all our written submissions and oral submissions today. Unless there is anything further, your Honour, I will pass on to my learned friend Ms Epstein.

HIS HONOUR: No, thank you, Ms Melis.

EPSTEIN: Your Honour, I will be addressing your Honour on the evidence as it relates to Vico Virkez. As your Honour is aware, the Inquiry has received a significant volume of documents that relate to Virkez and also heard oral evidence. I intend to briefly give the Inquiry an overview of the more significant aspects of that evidence and then address your Honour on the conclusions Counsel Assisting say can be drawn from the evidence before the Inquiry.

Before I turn to the evidence before the Inquiry, I will take your Honour through some aspects of the proceedings at trial and on appeal in the Court of Criminal Appeal that are addressed more fulsomely in our written submissions. Virkez's credibility was a live issue at trial and on appeal. It appears that at the time of trial, there were suspicions about Virkez's identity and some limited information was known at trial. It was common knowledge that he had been known by another name, Vitomir Misimovic, and he was questioned about his ethnic background.

He also made it known in his evidence that he had met with an official from the Department of Immigration and had asked about arrangements being made for him to leave Australia for another Commonwealth country. Most significantly,

at Exhibit 2.1-36 red page 1023, Virkez was cross examined on any association he had with the Yugoslav Intelligence Services and with the Yugoslav Consulate in Sydney. The defence had access to an address book belonging to Virkez that contained the phone number of the Yugoslav Consulate.

Virkez was asked why he had that number, to which he responded, "Possibly I have been calling them and swearing at them in all kinds of manner". He was then asked, "But not with a view to contacting them about spying on Croatians?", to which he responded, "No". The material the Inquiry has received into evidence that I will come to shortly calls into question this evidence. There is evidence before the Inquiry that could've been used at trial to demonstrate that Virkez was lying in his answers about his contact with the Consulate and which demonstrates that he informed the Consulate about activities in the Croatian community.

This, in my submission, was a significant matter that was relevant to his credibility. Indeed, in the Court of Criminal Appeal, Crown Prosecutor Shillington was asked about the relevance of any evidence that established that Virkez was an agent of the Yugoslav Intelligence Services, or YIS. He accepted that insofar as Virkez was an operative, that question was relevant to his credit and if it went to his credit, it could be used in cross-examination to show some bias, and that was at Exhibit 2.4-7, red page 9477.

I will shortly take your Honour through that evidence and the other key evidence received by the Inquiry. Ultimately, however, the question for your Honour is the relevance of this evidence in the context of the Inquiry's task under section 82(2)(a) of the *Crimes (Appeal and Review) Act*, namely, the determination of whether there is a reasonable doubt as to the guilt of the convicted persons.

In closing address, the Crown summarised Virkez's evidence and addressed the various lines of attack on Virkez's credibility. As to the allegation that Virkez was an agent for the Yugoslav Government who put about to set up Croatians in the country, at Exhibit 2.1-152, red page 4866, the Crown Prosecutor submitted:

"There is not a skerrick of evidence to suggest that this man was some sort of undercover agent, an UDBa or Yugoslav representative, and again, having seen him - a modest man working in Lithgow in a modest job, not living down in the centre of things in Sydney - what effective things could he be doing up there in Lithgow to uncover embarrassing Croatians here in Sydney?"

During the course of trial on appeal, a number of subpoenas were issued by defence to Commonwealth agencies and the New South Wales Police. The Commonwealth subpoenas in particular attracted claims of Crown privilege, as it was then called, now public interest immunity. The details of those submissions are set out in sections 25 and 27 of our written submissions. Could I take your Honour to two examples of such subpoenas

issued at trial to the Commissioner of Federal Police and to the Director-General of ASIO. Those are found at Exhibits 5.10-1 and 5.10-7, and I'd ask that the latter be brought up on screen. If you could scroll down, please, to the next page. Thank you. If that could be enlarged.

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Your Honour, the two subpoenas to the two organisations were in the same terms. Your Honour will see that those subpoenas sought documents relating to three of the Croatian Six, the Burwood trio, as well as to Virkez. As we set out in section 25.1.1 of our submissions, the ASIO subpoena was set aside on the ground of privilege. The Inquiry has now received documents that would have fallen within the terms of that subpoena. Most significantly, the telephone intercepts between Virkez and the Consulate prior to 8 February 1979, as well as on the day itself, are now available and were not available to the defence at trial or at any time throughout previous proceedings. The subpoena to the Federal Police was not set aside. A key document was produced to defence, but only in redacted form. That document is Exhibit 11.1, telex 66/2, a telex from the Commissioner of Police. I'd ask that that be brought up in its redacted form. Exhibit 11.1. I'm sorry. Yes. Exhibit 11.1 being its unredacted form, thank you. If that could be enlarged; the first paragraph in particular.

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Your Honour will see the first sentence in the first dot point:

"At approximately 11am this date, being 8 February 1979, a telephone call was received at the Consulate from a person stating his name as Vitomir Misimovic"

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and the address,

"who stated that he had been instructed, with three other persons named Brajkovic, M Bebic, and A Zvirotic, to place explosives in the Elizabethan Theatre, Newtown, the Balkan Travel Service, the Brana Travel Service, and the Hajduk Jadran Club. No other information available. This Force"--

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being the Federal Police,

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--"not informed until 3.15pm and New South Wales Police not advised by the Consulate officials. New South Wales Police have now been advised by this Force."

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The redacted form that was produced to defence at trial is at Exhibit 5.6-7, red page 662, and I'll ask that that be brought up. Your Honour will see, there, the redactions. They have the effect of masking the fact that Virkez had called the Consulate, or the unnamed - Virkez, as named there, had called the Consulate at 11am on 8 February 1979. What is revealed in that paragraph with the redactions is the content of the call, but not to whom the call was placed. A version of the telex that revealed this information was ultimately produced by the Commonwealth entities in the Court of Criminal Appeal, and that is the document at Exhibit 4.3-1.1. Subpoenas were also issued to the New South Wales Police, at both trial and on appeal, and I will return to those in due

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course.

5 The result of the various subpoenas issued in the Court of Criminal Appeal, as well as the evidence given by Roger Cavanagh of the Federal Police in those proceedings, was that defence were aware by the time of the Court of Criminal Appeal proceedings of the connection between Virkez and the Yugoslav Consulate. In addition to telex 66-2, which recorded Virkez's contact with the Consulate on 8 February 1979, the subpoena issued in the Court of Criminal Appeal to the Department of Prime Minister and Cabinet yielded a number of documents, including two that I will ask to be brought up on screen. First, 10 Exhibit 5.6-10, red page 671-89. Exhibit 5.6-10, red page 671-89. This was a redacted version of minutes of a meeting of Commonwealth agencies that took place on 12 March 1980. This revealed that a meeting had taken place at Parramatta Gaol between Virkez and Cavanagh, who was the Principal 15 Intelligence Officer at the AFP.

The minutes record Cavanagh's conclusion that Virkez was "a low-level agent". There is also an unredacted version of these minutes at Exhibit 10.1-12, red page 21, however, the redactions are not presently 20 relevant. Second, Exhibit 5.6-10, red page 671-90. This is a redacted version of a letter from Roy Farmer, the Assistant Commissioner of the Federal Police, to Prime Minister and Cabinet, dated 11 March 1980, reporting on Cavanagh's meeting with Virkez. Your Honour will see, in paragraph (b), that the letter reports that "Virkez, in the opinion of the interviewing officers, has been 25 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. He was the original informant in the matter to both the New South Wales Police and to the Yugoslav Consulate-General in Sydney."

30 The letter further refers to New South Wales law being anxious to secure Virkez's voluntary cooperation, given the importance of his evidence for trial. The unredacted version is at Exhibit 9.1-38, but perhaps can be more easily seen at paragraph 779 of our written submissions, where the redaction is marked in bold.

35 HIS HONOUR: Sorry, what paragraph, again?

EPSTEIN: 779. Your Honour will see that the redaction relates to what is referred to as "delicate sources", which we understand to be the telephone 40 intercept of the phone call at the Consulate, being the original source of the information that Virkez had been in contact with the Consulate. Now, other documents that were produced pursuant to this subpoena to Prime Minister and Cabinet in the Court of Criminal Appeal are set out in our written submissions at paragraph 770, and I will not take your Honour to them now. In 45 addition to the documentary material, the other development of relevance in the Court of Criminal Appeal proceedings was the evidence given by Roger Cavanah. Following a subpoena for Cavanah's attendance in that Court, Cavanah swore an affidavit on 29 May 1982, which is Exhibit 4.3-5, and I'll ask for that to be brought up.

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Could I take your Honour to paragraph 6, in particular. The affidavit referred to Cavanah's two meetings with Virkez, on 21 February and 7 March 1980. In respect of the first meeting, Cavanagh says at paragraph 6 that in the course of the interview he said to Virkez, "I have been told by the Yugoslav Consulate General that you called them on the morning of 8 February 1979 and gave information which led to your own arrest and that of a number of members of the Croatian Republican Party". Virkez said, "Yes. I did". Cavanah then said, "I suggest to you that you have, in fact, been an informant of the Consulate General for some time, and that you have visited their premises on a number of occasions". Cavanagh says:

"At that time, I did not know that this suggestion was a fact, but I was seeking to obtain a response from Virkez. He at first denied this claim, but later said, 'You're right, but I have only been giving them information about things in the community. I wanted no part of this plan to blow up people. That's why I got scared and told everyone about it.'"

Cavanagh asked, "What things in the community?" To which Virkez responded, "Who were on committees. I collected pamphlets and newspapers to hand on to them". Cavanagh said, "I think you are more than just a casual informant. I suggest to you, you are, in actual fact, an officer of UDBa", to which Virkez responded, "No way. I only got involved because they told me it was my duty as a patriotic Yugoslav. I have never been paid for it". Virkez did not, during the interview, make any further statements regarding his relationship with Yugoslav authorities.

Cavanagh also gave evidence in the Court of Criminal Appeal on the issue of Virkez's connections to the Yugoslav authorities. His evidence was to the same effect as his affidavit. He conveyed his impression that Virkez was carrying out, "a minor function which is often requested by a number of governments. He was not an agent in the true sense. He was simply providing information". That is at Exhibit 2.4-10, red page 9564. At red page 9566, Cavanagh did not agree that Virkez was necessarily under the day-to-day instruction of the Consulate General, but that he had been asked, in general terms, to provide community information. At red page 9568, Cavanagh said that the major thing that was passed on to New South Wales Police was that, in his opinion, Virkez was not a professional agent.

Can I turn, now, to the new evidence before the Inquiry. That evidence is summarised in section 29 of our written submissions, and I will take your Honour now to some of the key documents and oral evidence. First, the ASIO intercepts. The Inquiry has received ASIO records that show that Virkez was in contact with the Yugoslav Consulate from as early as 14 August 1978. Intercepts between Virkez and the Yugoslav Consulate reveal that Virkez had a handler named Grce, G-R-C-E.

Your Honour, in our submission, these intercepts demonstrate the nature of the relationship between Virkez and the Consulate. They show that Virkez provided information to the Consulate and at times received encouragement or

instruction, but was not, in our submission, under the day-to-day control of his handler, nor did he receive explicit instructions to undertake particular tasks. Although the Petitioners point to discrete occasions on which Virkez made suggestions to Grce, this does not, in my submission, alter the fundamental nature of the relationship revealed by the intercepts.

The Petitioners also rightly comment that the Inquiry can infer that Virkez and Grce had contact outside of what was recorded by ASIO. This must be correct because in the first intercept available on 14 August 1978, which is Exhibit 9.1-1, it is apparent that the two men had a pre-existing relationship. The intercepts also revealed that Virkez and Grce arranged to meet on at least one occasion, for example, in Exhibit 9.1-5. It might be reasonably expected that they had met on another occasion or other occasions. As such, the Inquiry does not know the full extent of the relationship between Virkez and the Consulate. However, what is available, in our submission, is instructive of the nature of that relationship.

The second key piece of new information that is available to the Consulate (as said) is the transcript of Virkez's call to the Consulate on 8 February 1979, which is Exhibit 9.1-15. As your Honour is aware, and as Ms Melis has referred to, Virkez attended Lithgow Police Station at around 12.45pm on 8 February and spoke to Senior Constable Ingram. Before this occurred Virkez had called the Yugoslav Consulate and reported the bombing conspiracy. He named Brajkovic as the organiser and also referred to Zvirotic and Bebic. He said one bomb was to be placed "where the dam is, another one at the Hajduk Club, another at Balkan". Virkez would be driving two men who would place four bombs in Newtown, one of which would be where the singers are going to be. The man at the Consulate, Kreckovic, told Virkez to report the conspiracy to the police. I will return to the substance of this call shortly.

The Inquiry has also received evidence that New South Wales Police, and particularly Special Branch, were made aware by Sergeant Prytherch of the Federal Police of Virkez's call to the Consulate on 8 February 1979. Can I ask that Exhibit 9.1-17, red page 23, be brought up. This is an ASIO memorandum dated 20 February 1979. If paragraph 3 could, please, be enlarged. Paragraphs 3 and 4 refer to the fact that at around 3.30 of that day Detective Sergeant Prytherch had obtained information from Bozo Cerar of the Yugoslav Consulate in the context of a discussion about other matters. During the conversation Cerar informed Prytherch of the details of Virkez's call to the Consulate earlier that day. The Yugoslav Consulate General had not made any attempt to contact the Police Force at that time, but having learnt of this information the Commonwealth Police advised Detective Jefferies of Special Branch who "sounded surprised" when told of the plot. By that time, of course, Virkez had already contacted the Lithgow police.

Could I then ask that Exhibit 11.50, red page 208, be brought up? Consistent with the ASIO memorandum Jefferies made an entry in the running sheets on 12 March 1979, referring to the telephone message he had received from Prytherch on 8 February 1879 (as said). The first paragraph of this document

records the telephone message that was "to the effect that" Prytherch "had received information from Bozo Cerar, the Vice Consul for Yugoslavia", earlier that day that Virkez "had telephoned the Consulate with information" about the bombing. The testimony before the Inquiry also confirms this evidence was passed on to CIB detectives, specifically Jefferies' evidence to the Inquiry at transcript 709 line 10, to 711 line 9, and page 2498 lines 20 to 32, was that he thought there was a discussion with Morey, McDonald and Perrin, although he could not be sure if Perrin communicated the information to Turner or Morey on 8 February.

Milroy's evidence, at transcript page 416 line 46, to 417 line 10, and 1817 line 9 to 32, was also that he would have read the entry on the running sheet dated 12 March 1979 about the communication from Prytherch to Jefferies. In addition, the evidence establishes that telex 66/2, which I have already taken your Honour to, was received by Special Branch by at least 26 March 1979, and that is by reason of an occurrence pad entry by Krawczyk of that date at Exhibit 11.50, red page 226. As such, there is a significant body of evidence establishing that New South Wales Police were aware of Virkez's phone call to the Yugoslav Consulate from early on in the investigation. The third piece of evidence that I wish to refer your Honour to is the report of the Special Inter-Departmental Committee on the Protection Against Violence, on Croatian activities in Australia, dated 28 February 1979. That is Exhibit 9.1-21, that I will ask to be brought up on screen.

Your Honour will see the first paragraph on that page, being paragraph 32, refers to the arrest of nine Croatians on 8 February 1979 and the allegations by police. At paragraph 34, the critical paragraph, the report refers to the fact that one of those arrested - I interpose, that being Virkez - was to act as driver for those involved in the proposed bombing operations. Significantly, the report notes:

"for a period of at least six months prior to the arrests, that person also 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 in New South Wales."

The document is relevant because it refers to Virkez's contact with the Yugoslav Consulate for six months prior to the arrest. The evidence before the Inquiry establishes that New South Wales Special Branch had been given a copy of this document in February 1979. That is recorded in the second Inter-Departmental Committee meeting minutes at Exhibit 10.4.1A, red page 352 to 355.

Jefferies accepted in his evidence to the Inquiry that the report to the SIDC-PAV was something he would have seen regularly in his role and considered that Perrin and Krawczyk would have also had access to it. That is at transcript page 651, line 7 to 12. Further, the evidence establishes that Assistant Commissioner Whitelaw of the New South Wales Police had reviewed the report by at least 14 March 1979 and had sought permission to tell select senior officers involved in the case about the contents of the

report. Your Honour will see that in Exhibit 9.1-46. Whitelaw had also indicated he would brief the head of the New South Wales Police Prosecutions Branch about the nature of the information but "in a non-attributable manner", by which we infer that the head of the Branch would be informed, without
5 reference to the source of the information, that is an ASIO telephone intercept of the Yugoslav Consulate.

The fourth topic of new evidence relates to what was known by New South Wales Police about Virkez's ties with the Yugoslav Consulate by reason of
10 Roger Cavanagh's enquiries with Virkez. Cavanagh's interview took place with Virkez on 21 February 1980. As I have taken your Honour to, the substance of the interview was revealed in his affidavit sworn 29 May 1982. Cavanagh had also given evidence, that I have referred your Honour to, that the major thing that was passed on to the New South Wales Police, was his opinion, that
15 Virkez was not a professional agent, but that New South Wales Police, and in particular Turner, had been informed that, "He's just like a lot of others in the community, he's been handing on material from time to time, but he is certainly no professional agent". That is at Exhibit 2.4-10, red page 9568.

The new evidence that has emerged before the Inquiry adds to Cavanagh's evidence to confirm, in our submission, that New South Wales Police were aware of Cavanagh's interview with Virkez and the information he obtained from Virkez on that day. In the Court of Criminal Appeal, the defence were given access to Exhibit 4.3-7, red page 751, which I'll ask to be brought up on
25 screen, and which is the letter from Assistant Commissioner Farmer of the AFP to the Secretary of the Prime Minister and Cabinet. The first sentence of the third paragraph before the indented portions indicates that Virkez was interviewed by the AFP following consultation with the New South Wales officers in charge of the case. Subparagraph (b) then refers to the information obtained by Cavanagh. When asked about this in his Inquiry evidence, Milroy could not recall consulting with Cavanagh about the interview – that is at transcript page 1828 lines 1 to 7 – but thought that if there had been an official request for assistance from New South Wales Police there would have been a formal process that was followed with a report back to the Assistant
30 Commissioner. That's at transcript pages 1826 line 11, to 1827 line 59, and pages 1866 lines 26 to 41.

Milroy's duty books that are before the Inquiry also suggest ongoing contact between him, Turner and Cavanagh. Could I ask that Exhibit 11.71B, red
40 page 417 be brought up. This is the duty book entry dated 22 February 1980, the day after the interview. That day the duty book records, "9.45pm out Detective Sergeant Turner to Ansett building and convey Shillington and White to Federal Police headquarters and conference with Roger Cavanagh re Croatian matter". Milroy's duty books refer to other meetings he had attended
45 with Cavanagh. Most significantly on 8 April 1980, Milroy and Turner flew to Canberra and met with Cavanagh at AFP headquarters. That's at Exhibit 11.71B, red page 436.

The following day on 9 April 1980 at 8.30am, Milroy and Turner attended a
50 further conference with Farmer and Cavanagh. That's at page 437. Also on

9 April 1980, the second Inter-Departmental Committee meeting took place, attended by Cavanah, amongst others. At that meeting, the response to Virkez's letter to the Prime Minister was discussed, as well as Cavanagh's interview with Virkez at Parramatta Gaol. From this sequence of events, it may be inferred that New South Wales Police were aware of the content of the interview between Virkez and Cavanagh and met with Cavanagh in close proximity to key events about Virkez. It may also be inferred that there was a level of coordination between New South Wales Police and Cavanagh, and that New South Wales Police were aware of the full extent of the content of Cavanagh's interviews with Virkez.

I pause here to note that there is debate in the various submissions to your Honour about the extent of the knowledge of the Crown Prosecutor, Mr Shillington, about these matters. Certainly, in the minutes of the Inter-Departmental meeting of 2 April 1980, the minutes record Cavanagh stating that Shillington was "fully informed on the background of the case" and "knows all about Virkez's YIS links". That is Exhibit 10.4-1(A). Indeed, this accords with the duty book entry that I have just taken your Honour to, that shows Milroy, Turner and Cavanagh meeting with Shillington and his instructing solicitor the day after Cavanagh's interview. It also accords, in our submission, with Milroy's evidence to the Inquiry that the information obtained from Jefferies about Virkez passing on information about the Croatian community was conveyed to the Crown Prosecutor. That, in particular, is at transcript page 295, lines 16-48.

Richard St John, who was present at the second Inter-Departmental meeting and gave evidence to the Inquiry, also recalled learning that the New South Wales prosecution had been briefed about Virkez's links to the Yugoslav authorities. He had obtained clarification that this included lawyers acting for the prosecution, as well as police. Your Honour will see that at Exhibit 15.31, red page 269, paragraph 28, and transcript page 3047, lines 17-26. Ultimately, however, it may not be necessary to resolve the question of the extent of the Crown Prosecutor's knowledge. That is because, in our submission, the critical matter is that there was information in the possession of New South Wales that was relevant to the defence at trial and that was not disclosed. Where the responsibility lay for that disclosure, and precisely who knew what, is perhaps secondary to the matters that the Inquiry must examine.

The next category of new information before the Inquiry is Jefferies' interview with Virkez on 10 February 1979. The Inquiry has heard evidence from former Detective Senior Constable Victor Jefferies about an interview he conducted with Virkez at Lithgow Police Station on 10 February 1979. During that interview, Jefferies learnt a number of aspects of pertinent information from Virkez, namely: first, Virkez was a Serb, not a Croatian; second, he had approached the Yugoslav Consulate twice, and been rejected, and told to go to the police in relation to this matter; third, Virkez wanted to work for the Consulate as an informer; and fourth, Virkez was an ardent Yugoslav and thought he was doing something to further the Yugoslav cause by informing on the Republican Party and their aims, objectives, actions and membership. The relevant transcript pages are set out at paragraph 922 of our written

submissions.

5 Jefferies also raised with Virkez, during the interview, the YIS and
UDBa. Virkez denied being a member of either. That's at transcript page 588,
lines 15-25, and 590, lines 11-35. In this context, Jefferies said that it was
commonly understood that UDBa included the YIS also, and so therefore he
understood that when Virkez denied being a member of UDBa, that extended
10 to a denial of being a member of the YIS. Jefferies gave evidence to the
Inquiry that he produced a report about his interview with Virkez for Special
Branch records that would have been provided to Inspector Perrin. He said he
also showed the report to Turner, although Turner was not provided with a
copy. No report of this nature has been produced to the Inquiry, despite
searches by the Commissioner of Police. Your Honour has, at Exhibit 11.70,
15 red pages 306-47, a letter from the Commissioner of Police outlining the
searches that have been performed in order to attempt to locate the report.

The absence of the report is also notable because the Inquiry has before it
another report prepared by Jefferies and another Special Branch officer,
McNamara, dated 8 March 1979, entitled, "Preliminary Report Concerning the
20 Arrest of Five (as said) Croatians on 8 February 1979 at Lithgow and Various
Suburbs of Sydney", directed to the attention of the officer in charge of Special
Branch. That report is Exhibit 11.5. Despite setting out details regarding the
particulars of each individual arrested, including Virkez, it does not refer to
Jefferies' interview with Virkez, the information he obtained, or any other
25 report. Jefferies accepted, in his evidence to the Inquiry, that the report plainly
implied that Virkez was Croatian, but also accepted that by the time it was
drafted, by reason of his 10 February interview with Virkez, he had ascertained
that Virkez was not Croatian. That's at transcript page 2435, lines 19-34.

30 The evidence given to the Inquiry by Jefferies is of some significance in light of
the evidence given by Jefferies at committal. Could I ask that Exhibit 2.3-32,
red page 7671, be brought up, being Jefferies' evidence at committal. In this
page, Jefferies was cross-examined about the interview he had with Virkez on
10 February 1979. Move down the page, please. Keep going, please. Now,
35 your Honour can see there, at about a third of the way down, what's on the
screen:

"Q. Do you recall the date you spoke to him?

A. It would've been 10 February 1979.

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Q. You put certain questions to him about Croatian affairs in this
country?

A. Yes.

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Q. And elsewhere?

A. Yes, sir.

Q. Would it be fair to say that he answered those questions that
you put to him that he could answer?

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A. He answered some questions, sir. Yes."

Clearly, at this point in time, the issue of Virkez's interview with Jefferies on 10 February was known, and attempts were being made to elicit information about that interview. Over the page, on page 7672, he was asked some further questions about the interview. He was asked about the nature of the discussion. That, your Honour can see towards the end of the page now:

"Q. Was it in the nature of an informal discussion?

A. It was in the nature of a discussion on Croatian political affairs."

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Could you scroll down further, please. Your Honour will see there, on the screen, in the second half of the screen, questions were asked about whether Jefferies made a report of the meeting, which he denied. Now, on page 9673 (as said), on the following page - just start at the top of the page, please, and scroll down. Just a little bit further. Thanks. Towards the bottom of the page there now, Jefferies was asked whether he had questioned Virkez on a possible connection with UDBa, and responded, "No" indicating that he did not raise that question. Now, without taking your Honour to it further, on page 7675, Jefferies was asked why he did not take notes of the meeting, and responded, "Because what he told me, sir, I knew most of anyway". On page 7676, he indicated in response to an answer that Virkez had told him nothing new during the interview of 10 February.

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On page 7678, he was asked whether he inquired about Virkez about his use of the name Misavovic, M-I-S-A-V-O-V-I-C, and was aware that there was another name which he used. Again, Jefferies responded, "No". In our submission, the name that I have just read out is likely a transcription error, and it was likely that the reference to Misavovic should be read as Misimovic. Section 29.8.3.4 of our written submissions addresses the evidence given by Jefferies in this Inquiry about the inconsistencies in his evidence at committal, and his evidence to the Inquiry about his interview of Virkez on 10 February 1979. Suffice to say that two critical conclusions can be drawn.

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First, Jefferies, and therefore New South Wales Police, were aware from 10 February 1979, by reasons of what Jefferies was told by Virkez, that Virkez was "an ardent Yugoslav" who had approached the Yugoslav Consulate with a view to informing on the Croatians. Second, this information was not disclosed to defence at committal or trial, and, indeed, some of the answers given by Jefferies at committal that would have revealed this information were, at the least, misleading, but also possibly knowingly false. Your Honour, I am about to move on to our next category of documents. I note the time.

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HIS HONOUR: All right. We'll take the lunch break.

LUNCHEON ADJOURNMENT

Yes.

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EPSTEIN: Thank your Honour. The sixth category of new evidence that the

Inquiry has received are various Commonwealth documents that provide assessments on the nature of Virkez's association with the Yugoslav authorities. As we have said in our written submissions, in our submission, the Inquiry need not rely upon the label that has been affixed to Virkez's relationship with the Consulate that is contained within those assessments. That is because the Inquiry now has the source material available to it, namely the telephone intercepts between Virkez and the Consulate and can form its own assessment as to the nature of the relationship.

I will refer your Honour to only two more documents that fall into this category. The first is Exhibit 10.9. This is a minute prepared by Detective Sergeant Prytherch of the Federal Police on 6 August 1979. It refers to a visit to Virkez in gaol by members of the Croatian Civil Rights Defence Committee, at which meeting Virkez revealed that he was the police informant. He was asked why he did such a thing and he said, "I am a member of the Black Hand". The second document refers to this document in turn and is Exhibit 10.3-16.

Your Honour will see a minute dated 13 August 1979 which refers to information about the Black Hand prepared by the Federal Police. The minute comes to the conclusion that the Black Hand no longer exists but the name was used on occasion to intimidate opponents. Can we turn to the next page? Your Honour will see there an assessment by an officer under the name of A. Radford. Ultimately, your Honour, our submission is that there is insufficient evidence to conclude that Virkez was a member of such an organisation.

Although at times he claimed membership of such an organisation, this document suggests that such an organisation did not continue to exist or have any presence in Australia by 1979. The seventh category of new information before the Inquiry are media interviews. Virkez participated in two media interviews in 1991, the records relating to which are before the Inquiry. On 26 August 1991, a Four Corners episode entitled, "Cloak & Dagger" was broadcast featuring an interview between Virkez and journalist Chris Masters.

The footage of that episode is at Exhibit 13.1 and the transcript is at 13.2. In that interview, Virkez claimed that he had undercover training from his membership of the Serbian Black Hand and had been spying for Yugoslav authorities since the early 1970s. He had learnt to make bombs previously and had passed on information about a group that was killed in Yugoslavia in 1972. He claimed to have been "the best Croatian that they ever had". He was asked whether he was given instructions by police about what to say during the trial of the Croation Six.

His answers were at times difficult to understand, but in brief, he said he was told what to say in court and was given a list in gaol of Yugoslav names so that he couldn't make mistakes in court. He was coached what to say and did not know whether the evidence he had given was true or not. In what are described as the "rushes reels" available to the Inquiry that accompany the

episode, Masters asked Virkez were they all guilty of a conspiracy to blow up all of those targets, to which he answered, "No". He was further asked could it be that they were all innocent, to which he responded, "Yeah, could be".

5 The references to those statements are found at paragraphs 1135 to 1136 of
our written submissions. On the same day in August 1991, Paul McGeough, a
Sydney Morning Herald journalist, published a newspaper article reporting on
another interview with Virkez. That is at Exhibit 13.9. The article referred to
10 Virkez's claim that he was a member of an Australian cell of the Black Hand
and that he had infiltrated several Croatian terrorist and political groups in
Australia in the 1970s.

He claimed to have been informing to ASIO as well as to UDBa and stated that
15 he spoke to ASIO by telephone and that they would put him through to a man
called Kavanagh, spelt with a K instead of a C. He denied having been
employed by UDBa and said it was ASIO and the police that were working for
UDBa, not him. He also claimed to have told ASIO that a Croat plot was
afoot. Before leaving Australia, he said he was given a blank passport which
20 he collected from police headquarters.

When he left Australia, he said there were police everywhere and two men
from ASIO accompanied him on the plane until they reached India. Virkez said
that he had lied in court. He claimed, "Some of these men were wrongly
25 convicted, but there was nothing I could do". He said he did not know who
was involved in the plot, stating, "I don't know which of them was guilty. I told
them what I did know, but I could not tell them what I didn't know". He said
that Bebic and Zvirotic would not have been involved, but later still said they
might have been involved in the planning, but "I still can't say who was going to
do what."

30 In our submission, Virkez's interview with McGeough was, at times,
inconsistent. At times, he made statements implicating members of the
Croatian Six. For example, he stated that Bebic had stolen the explosives and
that Virkez had not been involved in that act. When he was asked, "Do you
35 really think that they were seriously planning to blow up any of those things?"
he responded, "There were two serious plans. One or two of them, but not all
of them". We address the credibility of Virkez's interview further at
paragraphs 1137-1138 of our submissions. Ultimately, as with the Masters
interview, we submit that the Inquiry should approach with caution the
40 accounts given by Virkez in his interview to McGeough. There is no evidence
in the documents obtained by the Inquiry that Virkez was in contact with ASIO,
let alone that he was an informant to ASIO.

Such a proposition is also inconsistent with many of the ASIO documents that
45 were at pains to conceal the fact that ASIO only knew about Virkez's links to
the Yugoslav Consulate by reason of the phone tap at the Consulate, that is,
and not by reason of any direct contact with Virkez. Nor is there any credible
evidence that Virkez was accompanied out of the country by ASIO or given a
blank passport by New South Wales Police. Overall, your Honour, while the
50 media interviews are important pieces of information before the Inquiry, we

submit that Virkez's accounts that took place over a decade after the events in question should be treated with considerable caution, and greater weight should be placed on the contemporaneous records of what occurred.

5 Your Honour, what I have just told the Inquiry is a summary of some of the key documents and evidence received by the Inquiry, which expand upon what was available to the defence at trial and before the Court of Criminal Appeal. Before I turn to a more detailed analysis, I wish to make two points at the outset. First, the Petitioners emphasise what they say was Virkez's animus
10 to the Croatian people, which they say demonstrates a motive to frame innocent Croats or engineer what has been described as a false flag operation. For example, the Petitioners place significant weight on the letter Virkez wrote to the journalist or columnist Bogljub Samarzdic - that's B-O-G-L-J-U-B S-A-M-A-R-Z-D-I-C dated 23 August 1979, which is
15 Exhibit 7.5-4. In that letter, Virkez referred to having betrayed these Ustase, stating, "For I have been for the past nine years with Ustase organisations, and there isn't an organisation of which I haven't been a member". On red page 69, he refers to the fact that, from his father's family, 35 Misimovics were killed by the Ustase.

20 The Petitioners further refer to an ASIO source, who reported having met with Virkez after his release from gaol, during which conversation Virkez claimed that his family had been massacred by the Ustase and that, because of that hatred for them, he decided to join the Ustase terrorist groups and work
25 against them. That document is Exhibit 10.3-43, red page 178, and is referred to at paragraph 1315 of the Petitioners' submissions. The first point to note is that both of these accounts were given after Virkez's arrest and incarceration. At this point, it appears that Virkez was disgruntled about his incarceration. It is a safe inference that he blamed the Croatian Six for his
30 incarceration. He appeared to have a belief that he had done the right thing by reporting the conspiracy to the police, but had ended up in gaol regardless. The degree of animosity he revealed in these accounts should, therefore, be viewed with some caution, and does not necessarily describe how he felt prior to his arrest.

35 Second, and in any event, in our submission, the Inquiry should proceed on the basis that Virkez's conduct does, indeed, demonstrate a certain level of antagonism to the Croatian community. There is no doubt that he was informing on Croatian groups. He did not consider himself Croatian, and he
40 allied himself to the Yugoslav Consulate. Whilst the depth of his antagonism might be debated, his conduct demonstrates behaviour in which he insinuated himself in a group for purposes other than a true allegiance to their cause. It is also true that this might provide a motive to lie and, even further, to frame innocent people. As to the former, the evidence suggests that Virkez did lie in
45 his evidence to the Court at trial by denying that he had been in contact with the Consulate for the purpose of spying on Croats.

He similarly misled New South Wales Police in his Record of Interview at Exhibit 4.2-9, red page 298, where he pretended to be "fighting for our
50 country". But as to the latter, whether Virkez, in fact, framed innocent

Croatians in this case must be viewed by reference to the evidence as a whole. It is too simplistic to say that because he had a motive to lie, or was motivated by a hatred of Croatians, anything that he has said in his various accounts should be rejected. This point is reinforced by the nature of the evidence Virkez ultimately gave at trial. If he was truly motivated by a strong hatred and a desire to frame the Croatian Six above all else, one might expect that he would have implicated all of the Croatian Six in the conspiracy. However, in fact the evidence he gave at trial at Exhibit 2.1-27, red page 884 was that he had never previously spoken to Joseph Kokotovic or Nekic and his evidence about his interactions with Ilija Kokotovic at Exhibit 2.1-27, red pages 884 to 885 were in equivocal terms.

In cross-examination, he said that he did not speak with Ilija Kokotovic during the meeting at Brajkovic's place on 26 January 1979. That's at Exhibit 2.1-35, red pages 1020 to 1021. This, in our submission, does not suggest the actions of a man who is so motivated by hatred that he wished to frame the Croatians in whose company he had been or was a person who was masterminding a false flag operation. The second point I wish to make at the outset is that Virkez's various accounts should be viewed with caution.

As I have just said, the evidence suggests he did lie at trial. We have also suggested he embellished his stories in other accounts including in his Four Corners interview to Chris Masters and his interview with Mr McGeough. That being the case, the Inquiry should carefully examine his accounts by reference to their context. Your Honour will have seen from our written submissions that we place significant weight on Virkez's call to the Consulate on 8 February 1979 as we submit that this is a reliable account given the circumstances in which it occurred and when one has regard to what was actually said.

Turning to an analysis of the new material before the Inquiry, can I first address the issue of non-disclosure of information relating to Virkez's ties to the Yugoslav authorities to defence at trial. At section 13.1 of our written submissions and section 3.7.7 of our reply submissions, we refer to the law of disclosure at the time of trial in 1980. The modern common law duty of disclosure requires disclosure of evidence relevant to the accused and specifically exculpatory evidence or evidence that might be relevant to an issue in the case.

That common law duty had not been recognised as at 1980. It was first recognised by the High Court in *Grey v The Queen* [2001] 184 ALR 593, over two decades after the trial. Nonetheless, it is apparent that information was withheld from the defence at trial that could have been used in the cross-examination of Virkez. Further, as I have indicated, subpoenas were issued to the New South Wales Police during the course of proceedings. That information that was withheld from trial includes information that was responsive to some of the subpoenas issued.

Specifically, a subpoena issued at trial that was directed to Special Branch records, which is at Exhibit 5.10-2, would have captured any report prepared by Jefferies about his interview with Virkez on 10 February if such a report

existed. The information gleaned by Jefferies was not otherwise disclosed to the defence, and as I have said, this included Jefferies withholding information at committal when asked. A subpoena issued to the New South Wales Police in the Court of Criminal Appeal, Exhibit 4.3-4, was answered by Jefferies with
5 nil response. Your Honour will see that at Exhibit 2.4-8 red page 9472.

Despite this, the SIDC-PAV report which was within the possession of New South Wales Police including Special Branch and was responsive to the terms of the subpoena. The report was significant in that it described Virkez having
10 reported to the Consulate for six months prior to the arrests. Defence were not otherwise informed about Virkez's ties to the Yugoslav Consulate at trial. The copy of Telex 66/2 that was provided was redacted in relevant parts so as to mask that information and that Telex had been in the possession of Special Branch from at least 26 March 1979.

The information known by Cavanagh as a result of his interview with Virkez was disclosed during the CCA, but again, not at trial despite that information, we say, being in the possession of the New South Wales Police. Overall, there was significant information within the knowledge of New South Wales Police
15 20 that was not disclosed to the accused at trial. Although disclosure requirements are not what they were today, material that was responsive to subpoenas was not disclosed.

That information could've been used in cross-examination and further undermined the statement made by the Crown in closing address that "there is not a skerrick of evidence to suggest that this man was some sort of
25 undercover agent, an UDBA or Yugoslav representative", or at the very least would qualify that statement. All of this being the case, there is evidence that suggests that key material was not provided to the accused at trial that
30 could've been used to their benefit to undermine the credibility of Vico Virkez.

In our submission, that was a mishap in the trial processes. Nonetheless, the test of this Inquiry is not whether there was a miscarriage of justice or an error in the trial processes or some other error of law. The test under s 82(2)(a) of the CAR Act is whether there is a reasonable doubt about the guilt of the
35 Croatian Six. While an error in the trial processes may inform that question, it must be viewed with the totality of the evidence. We therefore return to the three scenarios referred to by the Court of Criminal Appeal about Virkez, namely whether (1) Virkez was an agent provocateur who fabricated evidence of the conspiracy, (2) whether Virkez's association with the Yugoslav
40 Consulate was such as to destroy his credibility wholly, or (3) whether Virkez insinuated himself into the company of the Croatian Six, whom he knew to be active in the Croatian independence movement and discovered that the plot was underway. I add to that a fourth alternative, that Virkez was an agent
45 provocateur in the sense that he induced the other members of the group to plan a conspiracy, that is, a real conspiracy was afoot, albeit one that was provoked by Virkez. For the reasons that we have set out in our written submissions, we submit that the Inquiry should find that the third scenario, that concluded by the CCA, is the most likely.

I turn now to a consideration of the nature of Virkez's ties to the Yugoslav Consulate and the question of whether he fabricated evidence of a conspiracy. As to the first issue, the nature of Virkez's ties to the Yugoslav Consulate, this is addressed in detail in our written submissions at
5 section 32.1. Can I first note that the Inquiry has received into evidence a range of documents that have provided varying assessments about the label to affix to Virkez's relationship with the Yugoslav authorities, ranging from "agent" to "informer" to "community source".

10 The terminology is also used in varying ways. In our written submissions we have adopted the terminology described by Michael Boyle, a former ASIO officer who gave evidence to the Inquiry, and that has also been used in the ASIO parlance in the documents before your Honour. Boyle explained that the
15 term "agent" describes someone who was managed or under control and was directed to a particular target to do particular things, but was not an officer of the organisation. That is at transcript page 3094, lines 2 to 11. In contrast to an agent, ASIO documents describe an "informer" as the same as a human source, see in particular Exhibit 10.3-50.

20 In our submission, the most probative evidence of what Virkez actually did is what can be discerned from the contemporaneous records, rather than the after-the-fact assessments by the various officials. The Inquiry has the benefit of the telephone intercepts between Virkez and the Consulate to make this
25 assessment. As I have said in our submission, that evidence establishes that Virkez was acting primarily in the nature of an informant, although he would at times receive instructions or encouragement and at times himself provided suggestions to the Consulate about people to observe.

30 Although the Inquiry may not have the totality before it of the nature of Virkez's relationship with the Consulate, it is unlikely, in our submission, that the relationship was significantly different to that recorded in the intercepts. Virkez resided in Lithgow. He worked as a labourer. He was not known by Jefferies as someone who frequented Croatian community events. This does not
35 suggest someone who had deeply infiltrated the Croatian community, rather it suggests he was on the outskirts of the action and had some limited contact with others via his association with Bebic and Zvirotic.

This assessment also accords with how Virkez described himself to
40 Cavanagh - someone who provided information to the Yugoslav Consulate. Of course, he may have been misrepresenting his position to Cavanagh and indeed he did not seem to tell Jefferies the extent of his association with the Consulate. However, this is another factor in assessing the true relationship that Virkez had with the Yugoslav authorities. Ultimately, the evidence does
45 not lie so high as to establish Virkez was an agent, a YIS operative, or a member of UDBa. His role was limited to informing his handler at the Consulate about the Croatian community.

50 Next, can I turn to the question of whether Virkez fabricated the evidence of a bombing conspiracy at the behest of the Yugoslav authorities or for any other reason. As I have noted, the fact that Virkez had the ties he had with the

Yugoslav authorities and informed on the Croatian community indeed may have provided him with a motive to lie or to embellish or fabricate aspects of his story. However, that does not necessitate the conclusion that he did in fact fabricate a story. In our submission, the most cogent evidence of Virkez's role in the conspiracy was his phone call to the Consulate on 8 February 1979. We address this at section 32.3 of our submissions, and that transcript, in our submission, is not consistent with prior involvement of the Yugoslav authorities with the conspiracy.

10 Could we, please, bring up the transcript which is 9.1-15? Your Honour will see just above the second hole punch mark on the left, one of the first matters raised by Virkez was, "I am in some sort of trouble". Kreckovic immediately asks, "What trouble?" and Virkez proceeds to describe the conspiracy. Kreckovic asks several questions to elicit information, if we can scroll down further. He asks about the location of the plot and then over the page, at the top of the page, "Who is involved?" and whether Virkez had been to the police. This is strongly suggestive that Kreckovic had no prior knowledge of the conspiracy. He was actively seeking information about a conspiracy of which he knew nothing. Further, Kreckovic's response in asking questions and advising Virkez to contact the police is not consistent with the involvement of the Yugoslav authorities in the plot. Your Honour will see next to the first holepunch that Kreckovic says, "Can you telephone the police, give them this information?". He then says, "We are here a diplomatic institution and we do not wish to get mixed up in things like that". He tells Virkez to go to the police.

During the call, Virkez nominates the names of Brajkovic, Bebic and Zvirotic. If you can scroll back to page 17, about point 7 on the page. If you stop there, towards the bottom where Virkez says, "Vjekoslav Brajkovic", he refers to other individuals whose names he does not know. If Virkez was acting as an agent provocateur intending to implicate possibly innocent members of the Croatian community, one would expect him to have a clear idea of the identities of the individuals he was implicating. He lacks some details about the conspiracy.

35 That is inconsistent, in my submission, with the story being a fabrication. The nature of the conversation also lends support to Virkez being a low level informant rather than an agent under control. Virkez has to identify himself to Kreckovic, who is not Virkez's previous handler. At the outset of the call, Virkez appears to be familiar with Kreckovic, stating, "Is that Sloba", although Kreckovic is not familiar with Virkez. Over the page at 18 at about point 2 on the page, Kreckovic has to ask Virkez what his name is. "Do you know me? Vito?" to which Kreckovic replies, "What's your name?".

45 Overall, the telephone conversation is consistent with Virkez's account that he became involved in the bombing plot and it quickly escalated to a degree that he was very concerned that people might be killed. It gives credence to his account and suggests that at the least, Bebic, Brajkovic and Zvirotic were, to Virkez's knowledge or belief, involved in the conspiracy. It also tells against the fourth hypothesis I posed to your Honour that Virkez provoked or induced the group to conspire to blow up targets.

5 This phone call should also be considered with the fact that prior intercepts do not reveal any discussion about the bombing conspiracy. That is not determinative as it may have been discussed in other ways and indeed during the phone call that is on the screen, Virkez refers to having been at the Consulate previously in identifying himself. It is nonetheless probative evidence that there are no recorded intercepts of discussions of this nature.

10 The Petitioners have also submitted that Virkez's evidence is unreliable because it expanded over time, varying in scope and adding more details. While it is true that by the time he gave evidence at trial Virkez volunteered more details than he had previously, his evidence at trial was not inherently inconsistent with what he said to the Consulate and subsequently to police in his Records of Interview. For example, he told the Consulate that there were others in Sydney involved who he did not know. He did not say anything
15 inconsistent with this at trial. While he gave evidence that Ilija Kokotovic was present at the meeting on 26 January 1979 at Brajkovic's house, he did not testify that he knew Kokotovic would be involved on 8 February 1979.

20 As I have said, his evidence about Ilija Kokotovic was in vague terms. Virkez also referred to a previous meeting at Brajkovic's house in his first Record of Interview, albeit without mentioning a specific date. For the reasons we give at section 32.4.2 in our written submissions, the evidence of there having been a previous meeting should be accepted. Virkez attended Lithgow Police Station shortly afterwards on 29 January 1979. In the Consulate call, Virkez informed
25 Kreckovic of having previously attended Lithgow police station to report on the conspiracy.

30 The timing is consistent with a meeting having occurred around 26 January and Virkez wanting to volunteer information to police at that time. The timing of his first visit to police also suggests that Virkez was genuine in his actions. If he was motivated by animus to particular Croatians to fabricate a story, there is no reason why he would not have pressed on with his report to police on 29 January. Instead, the fact that he only returned to the police station on 8 February, the day that the bombing was to occur, is consistent in
35 what is conveyed in the call with Kreckovic, namely that he had found himself in trouble, was scared about that and wanted to inform authorities before the plot proceeded that day.

40 Finally, we address the question of whether Virkez was coached to give false evidence at trial at section 32.4.3 of our written submissions. Briefly stated, we submit that there is insufficient evidence to establish that Virkez was so coached, despite what he said in his media interviews. Three matters tell against that conclusion. The first is, as Ms Melis has already submitted, we submit that Milroy was a credible witness who gave comprehensive evidence
45 to this Inquiry.

50 As an officer in charge who is intimately involved in the preparation of the case and who visited Virkez in gaol on several occasions, if Virkez was coached to give false evidence, Milroy would have known. We submit this is unlikely. Second, if Virkez was coached to give evidence, one would expect

that he was also told to implicate Joseph Kokotovic and Nekic. He did not implicate either of those men. Further, his evidence about Ilija Kokotovic at trial was in equivocal terms. In his second Record of Interview at Exhibit 4.2-8, red page 303, Virkez referred to Brajkovic supplying bombs with "his mob" but
5 said, "Who would be with him? I don't know". As such, his various versions from the Consulate call to his interview to his evidence at trial were consistent in who he implicated as involved in the conspiracy.

10 Third, Virkez's evidence at trial was consistent with what he told the Consulate at the outset, as well as what he reported to Ingram when he attended Lithgow Police Station on 8 February. This, in our submission, is a significant matter. The call to the Consulate was credible. Significant weight should be placed on what Virkez said during that call. These matters, as well as the
15 other matters referred to in our written submissions, point against a finding that Virkez fabricated evidence or was coached to give false evidence. The third matter, the consistency with the Consulate call, is also relevant to the suggestion made by the Petitioners that Virkez's Record of Interviews were fabricated by New South Wales Police. In our submission, there is no reason why Marheine, a detective from Lithgow, far removed from the CIB, would
20 have fabricated the Record of Interview, particularly in circumstances where Virkez had already made substantial admissions to Ingram when he first attended the police station.

25 As to the suggestion that Virkez's evidence at trial was fabricated at the behest of New South Wales Police, on the account of David Collier, his legal representative on sentence, Virkez was not pleased with the sentence he received and thought that he should have received a lighter sentence. That's in Exhibit 15.20 paragraphs 23 and 31. He complained about the nature of his incarceration in his letter to the Prime Minister. He refused to come to court on
30 27 May 1980, partway through his evidence. That's at Exhibit 7.5-6. By all accounts, he appeared to be a reluctant witness. That evidence is not consistent with him being a witness who had received an inducement to give evidence or simply learnt the evidence he was told to give by police or anyone else.

35 In our submission, the evidence overall tends to establish that while Virkez had ties to the Yugoslav Consulate, they were in the nature of that described by Roger Cavanagh in the Court of Criminal Appeal, a low level informant who provided information about the Croatian community or otherwise described as
40 a community source. The evidence does not tend to establish that he was an agent under regular control or receiving regular direction or instruction from the Consulate. More significantly, there is insufficient evidence, in our submission, to establish that he was receiving instructions or directions from the Consulate or any Yugoslav authority in relation to the bombing conspiracy.

45 The Consulate call is telling in this respect. It supports the conclusion reached by the Court of Criminal Appeal on appeal that Virkez happened upon a real conspiracy, found himself out of his depth and turned to the Consulate and then to the police to report what was in fact happening. He was not an agent
50 provocateur in the sense that he fabricated evidence of the conspiracy or in

the sense that he joined the group and provoked them to commit a crime. While his subsequent accounts should be viewed cautiously by the Inquiry, insofar as they are consistent with that call they should be given weight. Although the nondisclosure to defence was significant, in our
5 submission, there is no reasonable doubt as to the conviction of the Croatian Six that arises by reason of the information now known about Vico Virkez. Unless there's anything further, your Honour, those are my submissions.

10 HIS HONOUR: No, thank you. Yes. Mr Buchanan, are you ready to start?

BUCHANAN: Thank you, your Honour. If I could, before embarking upon our submissions proper, just respond to a couple of matters that came from our friends this morning. On the question of association, Ms Melis pointed to the
15 letter dated 7 March 1979 that on that date Mr Virkez handed to Detective Milroy at Central cells. The submission by our friends is that it is open to the Inquiry to find that it was written by Mr Bebic and emphasis was placed upon the expression, "To my friend Vjekoslav Brajkovic" and "all for Croatia" at the end, both in inverted commas. The submission by our friends is that
20 Mr Brajkovic's explanation about the quotation marks did not assist his case. Your Honour would be aware of our submissions that it is not just in the Croatian language that quotation marks are used to signify irony or the opposite of what is explicitly written; that occurs in the English language as well.

25 One academic piece on the subject went into evidence in the Inquiry, which has a name for the use of quotations marks for a purpose of changing its meaning, changing the meaning of the words inside the quotation marks, as scare quotes, S-C-A-R-E. Your Honour, I won't take the Inquiry further on that
30 other than to remind the Inquiry that our submissions are at paragraph 1753 through to 1768 of our primary submissions on that point, and they are followed by detailed submissions as to the absence of evidence suggesting a prior association between Mr Bebic and Mr Brajkovic. Those submissions are in paragraphs 1769 to 1800.

35 As in Counsel Assisting's written submissions, the argument is put by Counsel Assisting that conclusions can be reached that meetings took place as testified to by Mr Virkez, from the contents of the police interviews of the accused persons. Your Honour would appreciate that our submission is that that is not
40 a reliable basis upon which to proceed in making an assessment of Mr Virkez's evidence, given that police evidence of admissions is itself something to be treated with reservation. I'll be going to that subject in a little bit more detail later.

45 In relation to the Lithgow explosives, the only evidence, your Honour, that the explosives in Mr Virkez's car were possessed by Mr Bebic were the evidence of the police of Mr Bebic making admissions to that effect, and the evidence of Virkez. Both sources of evidence are, we submit, suspect and to be very
50 seriously considered as to whether weight can be placed upon them. The submission was made this morning by Counsel Assisting that it was true that

Mr Bebic gave a detailed version of events on 8 February as he recounted them, but the submission by Ms Melis was that there was time for Mr Bebic to have devised an explanation for each element of the case against him.

5 Well, that is, of course, something that can be said against anyone who has not had the trial the day after they've been arrested and have been held in custody with nothing else to do. But what we point to, your Honour, is - and your Honour will find this in our submissions - the man wasn't very smart. For
10 Mr Bebic to maintain an account, which we submit he did, consistently in his evidence-in-chief and cross-examination, in that degree of detail, and the contents of it, we submit, being cogent, are inconsistent with him having made them up because he wasn't bright enough, basically, to have done it, on all of the evidence that's before the Inquiry.

15 Counsel Assisting point to Mr Bebic's Record of Interview, Exhibit 4.1-D. Your Honour understands our submission, of course, that the two Records of Interview are unreliable, that your Honour would accept Mr Bebic's evidence that he signed them under duress on 20 February when the pieces of paper comprising those documents were brought up to Lithgow by Detectives Turner
20 and Milroy.

Counsel Assisting point to a portion of the Record of Interview of Mr Zvirotic to the effect that, "Max make bombs and bring them to Sydney". We have our
25 submissions, your Honour would be aware, paragraphs 1319 to 1364, that what is now known but was not understood at the trial, which is a significant matter which has not been caught up in the submissions that your Honour has received from Counsel Assisting, is that Virkez was the explosives expert, not Bebic.

30 Furthermore, Bebic tried and indeed until the Inquiry took place, succeeded in concealing his expertise in dealing with explosives. That somewhat undercuts the suggestion that reliance can be placed, we submit, on the admission attributed to Mr Zvirotic, that, "Bebic make bombs and bring them to Sydney".

35 In relation to the admissions attributed to Mr Bebic by Detectives Simmons and Musgrave, the submission was made - I'm sorry, your Honour, I'm not going to all the points that we make about each of the bodies of evidence mustered against the accused, but rather picking out, as your Honour would understand here, matters to which I'm responding that have fallen from Counsel Assisting
40 today. The submission was made that there is nothing to attack Detective Musgrave's credit. That would be right if the Inquiry overlooked the role he played in the Rendell matter. The Inquiry has our submissions on that subject at paragraphs 678 to 681 of our primary submissions.

45 The submission was made in relation to the evidence of admissions generally that the Inquiry would accept the evidence given by Turner and Milroy that Bebic had taken part in and voluntarily signed the Records of Interview up at Lithgow because those Records of Interview were verified by independent senior officers. Your Honour has our written submissions, paragraphs 711 to
50 712, as to the evidence from Roger Rogerson that that senior officer

confirmation process was a joke, that the officers who provided that service to investigating detectives were those who had trained the investigating detectives in how to construct and deliver a verbal.

5 HIS HONOUR: He was talking about CIB officers confirming an interview, whereas Mr Bebic was spoken to by non-CIB people.

BUCHANAN: Your Honour, in our respectful submission, one cannot
10 compartmentalise the various agencies. As the Inquiry has seen, officers moved into and through and out of CIB, and that does not of itself necessarily mean that CIB was the source of all evil, but rather that there was fluidity. There was movement of officers from station to station and into the metropolis and out into the country areas. The fact that officers might not have themselves at that time been stationed at CIB does not mean that they could
15 not have been part of the process that Rogerson described, whereby senior officers gave evidence of confirming interviews that they said they conducted with suspects, whereas in fact nothing of the sort had taken place. Can I give your Honour a further illustration of this? The Inquiry knows the state that Mr Brajkovic was in immediately before he left the interview room at
20 CIB and was taken to Central Police Station. The people at Central Police Station, I say, "the people", the accused, including Mr Stipich, who were at Central Police Station described how bad Brajkovic looked. He looked beaten up. Hudlin saw blood on his right ear, which is consistent with the medical - with the opinion given by the Ear, Nose and Throat Surgeon who
25 subsequently examined him. That it was consistent with Brajkovic's account of having been kicked in the head on the right-hand side.

Yet, Inspector Morey gave evidence that he performed the senior officer role with Vjekoslav Brajkovic and he saw no injuries on the man and there were no
30 complaints given by Mr Brajkovic. Plainly, that evidence was a pack of lies, and if the man who was running the operation at CIB can so blatantly lie to a Court in confirmation of evidence that other detectives had given that admissions had been made by an accused, when nothing of the sort happened, must leave a considerable amount of doubt over the evidence of
35 other police who say they performed the same service, in the context of Rogerson describing that that concept of a senior officer confirming the verification of records of interview was a joke.

I turn to another submission made today by Counsel Assisting where they
40 referred to the police having found the list of weapons written by Mr Zvirotic. Your Honour will recall this, Exhibit 4.1-WWW, red pages 159 to 160. The submission was made that on Zvirotic's version, this list was fabricated, and I with respect submit that that isn't what the evidence is. We provide chapter and verse as to the evidence at paragraph 1730 of our written
45 submissions. Zvirotic acknowledged that he wrote that list. He said that it was written on a page in one of his notebooks. Somehow, the page was removed from his notebook and he couldn't explain how it got to Lithgow. That's the state of the evidence in terms of Mr Zvirotic's association with that document. He didn't deny it.

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HIS HONOUR: I thought that's what Ms Melis told us the evidence was?

BUCHANAN: In that case, I apologise. I might've misheard.

5 HIS HONOUR: She was describing how there's this whole story of the piece of paper being taken out of the notebook and taken up to Lithgow was a bit farfetched or something to that effect.

10 BUCHANAN: Yes, but he wasn't saying it wasn't his.

HIS HONOUR: Yes, that's right.

15 BUCHANAN: Can I take your Honour to another aspect in Counsel Assisting's submissions today. In relation to Mr Stipich, I hope I didn't mishear the submission, but as I heard it, it was that Mr Stipich said that police found detonators in his room. We would submit that that's not quite right. If his statement to the enquiry is read, it's Exhibit 8.5, red page 37 at paragraph 30. There's no need to go to it. It can be seen that Mr Stipich said that the police started searching his room and that one of them he saw had
20 wires and a coil and he put it under the nose of Stipich and essentially said, "What does this say?" and Stipich read the word, "Detonator", but Stipich says that he went on to say, "I don't know anything about that. It's not mine" and Stipich affirmed in his evidence to the Inquiry the truth of that statement.

25 Whilst police might've said they found detonators in his room, nine to be precise, Stipich's evidence was not that police found the detonators there. Can I take the Inquiry to some submissions I prepared in relation to the evidence of explosives in Sydney. There was usually, although not always, a significant contrast between the features of the police dealing with the
30 explosives said to have been found in Sydney and the features of the police dealing with the explosives which we know were found in Lithgow.

Firstly, photographs. Police made, we would submit, extraordinary efforts to obtain the services of a civilian photographer, Mr Ashworth, to have
35 photographs taken of the explosives police found at Lithgow in situ. Police made no efforts to have photographs taken of explosives in situ allegedly found in the Sydney raids. This, your Honour, was consistent with the denials by the accused that there were any explosives. Obviously, police would not make any effort to obtain a photograph where there were in fact no explosives
40 found on site in Sydney.

Secondly, despite it being a requirement of the Police Emergency Manual, despite it being New South Wales Police practice, Detective Grady and the evidence given by Mr Barkley in the Inquiry, and despite this being done in
45 Lithgow, in respect of the explosives allegedly found in Sydney, police did not call in the Army Explosive Ordnance Disposal Team. The clear evidence from former Captain Barkley is that where component parts of a bomb were found, it was New South Wales Police practice to call in that team, at our submissions paragraph 275.

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Nor did CIB call in the Bomb Appraisal Squad, a specific division within the New South Wales Police with additional training in dealing with explosives, Mr Grady's evidence to the Inquiry, day 17, page 1228. These omissions were consistent, your Honour, with the denials by the Sydney accused and Mr Stipich that they had any explosives. They were also consistent with knowledge on the part of New South Wales Police that no explosives were found in Sydney. In addition, given the information on which police acted at Lithgow in putting the Army Explosive Ordnance Disposable Team on standby, given the explosives found in Lithgow and that they were made up into four potential bombs, given the admissions attributed to Mr Bebic by police that a man known to Zvirotic had "maybe 30 to 50 kilograms" of explosives, Detective Turner, Exhibit 2.1, day 4 red page 135. It is particularly striking, we submit, that the CIB failed to at least put the Army Explosive Ordnance Disposal Team on standby for the Sydney raids. The failure to call in the Army cannot be dismissed, as Counsel Assisting and the DPP submit, as just "a product of a cavalier attitude that prevailed at the time", Counsel Assisting reply submissions, paragraph 45.

It flies in the face of what detectives, drawn from the same CIB, did in Lithgow earlier in the day. In addition, on 24 January 1979, 15 days beforehand - 24 January 1979 - police had called in the Army in the Spring Street fruit market incident where intact explosives had been found, and that matter also involved detectives from the Special Breaking Squad. That's in our submissions at paragraphs 276 and 494. The fact that the Army was brought in only 15 days beforehand in another incident where explosives were found, the fact that the Army was called in at Lithgow, but the fact that the army wasn't even put on standby in Sydney, raises serious questions. We submit that it also suggests two things. It suggests that Mr Bebic did not say to police that a man known to Zvirotic had maybe 30 to 50 kilograms of explosives, and it suggests that CIB did not consider the planned Sydney raids to be genuine exercises in explosives recovery or bomb detection, but rather an exercise in rounding up the men identified by Virkez in Lithgow, Zvirotic and Brajkovic, and Croatian activists selected by Special Branch for the purpose.

Thirdly, New South Wales Police, especially equipped and trained a Special Weapons and Operations Squad, the abbreviation of SWOS. SWOS was designed to be used where there was a danger of weapons being used in a situation to which police were responding. An example of how serious the existence of SWOS and its availability and the need for its preparedness is to be found in Milroy's duty books, Exhibits 11.71A and 11.71B, which show that in the nine-month period between 8 February and 17 October 1979, he attended SWOS training on 20 occasions. The Lithgow operation was a SWOS operation. Apart from the weapons they drew, the photographs taken at Macaulay Street showed detectives wearing SWOS overalls.

HIS HONOUR: There's mention of this in your submissions, and I looked at the photographs and I was not clear that it showed multiple officers in SWOS overalls. Can you help me with that?

BUCHANAN: I am thinking of a photograph - I don't know if your Honour can

recall it - it is looking down at the open boot of Virkez's car.

HIS HONOUR: Yes.

5 BUCHANAN: And it has officers around it. I'm thinking of that photo.

HIS HONOUR: Yes, I couldn't make out multiple officers in SWOS overalls or whatever. Maybe take it on board and show me it tomorrow morning to satisfy me of that point, if you would.

10

BUCHANAN: Thank you, your Honour. The fact remained though that the Lithgow operation was a SWOS operation. That's what the evidence was, and we've set that out in our submissions. Mr Morey gave very clear evidence about that in the trial, so the decision to make it a SWOS operation was in response to the report of Virkez's information that Bebic was to come to his home with 50 kilos of explosives, which would be made into bombs to be used in Sydney, including to destroy the Sydney water lines, Exhibit 4.2-95. Then during the operation in Lithgow, police found in Virkez's car four sets of gelignite sticks bound together, plus detonators and batteries.

20

In Sydney the briefing document, for the teams that were sent out on the various raids, seems to have been Inspector Morey's first screed, which is Exhibit 11.36. In that, Zvirotic was alleged to have in the vicinity of 30 to 50 kilos of explosives, and all persons targeted, identified in the screed, may have firearms and bombs or explosives. Yet, by contrast with the SWOS operation mounted in Lithgow, no SWOS operation was mounted in Sydney. Instead, detectives went out to the various Sydney homes, clad, it seems, mainly in suits.

25

30 The nature of the police response in Sydney was undoubtedly the result of decisions made by Inspector Morey and Inspector Perrin. The failure to mount a SWOS-style operation in Sydney, notwithstanding the information on which police were allegedly acting, raises a question of whether the Sydney operation was a genuine operation to combat a bomb plot, or instead an operation to sweep up the known and disliked members of the Croatian Republican Party, in addition to those identified in the report from Lithgow.

35

The failure to mount a SWOS operation in Sydney is consistent with the evidence, which is set out in our written submissions at page 387, that police went out on these raids with the primary purpose of arresting the men concerned and taking them into CIB, rather than arresting them for the purpose of putting them before a justice. This made the arrests unlawful for the reasons that we have given in our written submissions. It also made the evidence of admissions obtained by arresting those men unlawfully obtained.

45

Furthermore, the effect of the unlawful arrests was to leave the accused isolated from independent witnesses and vulnerable to the fabrication of evidence that, in custody, they each made confessions of guilt to the offences later charged. Both those considerations, in our submission, weigh heavily in favour of treating the evidence of the confessions made in custody as

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weightless.

5 HIS HONOUR: Mr Buchanan, I haven't come across the point that I can recall of there being no search warrants rendering the searches illegal having been raised. Was it raised at the trial?

BUCHANAN: If I can give evidence from the bar table, I don't think so.

10 HIS HONOUR: Yes. I'm wondering whether it's a point that's arisen now, 46 years later it's now a point.

BUCHANAN: Well, that doesn't make it any the less a cogent point in our respectful submission.

15 HIS HONOUR: Well, it could be that if the point wasn't taken at the trial, it was generally accepted by some very skilful lawyers on both sides that there was no problem with there being no search warrants because of the exigencies and the circumstances on the night.

20 BUCHANAN: Well, your Honour has our written submissions to the effect that the police were being put on standby from 3 o'clock in the afternoon onwards, and they didn't conduct the raids until 10 o'clock that night. There was abundant time to approach the Chamber Magistrate at Central Court of Petty Sessions and obtain a series of search warrants if they were so minded. But
25 plainly, they weren't.

HIS HONOUR: Were the Chamber Magistrates available out of hours in those days?

30 BUCHANAN: Well, after 4 o'clock.

HIS HONOUR: Well, say the Court office working day was 9 to 5. Would they have been available after 5?

35 BUCHANAN: There's no evidence of that, your Honour.

HIS HONOUR: No.

40 BUCHANAN: But in my respectful submission, that is an inference that your Honour should draw, that it would have been possible to contact a Magistrate or a Justice and obtain the issue of search warrants.

HIS HONOUR: I understand the point.

45 BUCHANAN: What had to be done, of course, was they had to persuade a Justice that it was appropriate that search warrants be issued. That was another matter. The evidence, I think, was that the first screed was brought into existence around 8.30, when it was dictated by Inspector Morey to
50 Detective Grady.

HIS HONOUR: Mr Buchanan, whilst I've interrupted you, can I take another point up with you? You referred a short time ago to paragraph 276 of your submissions, referring to the bomb at the Spring Street, Bondi Junction--

5 BUCHANAN: Yes, your Honour.

HIS HONOUR: --shop, I think it was. Fruit market. You said that was 15 days before 8 February 1979.

10 BUCHANAN: That was my fingers that I used to count back--

HIS HONOUR: No, no, no. I'm not quibbling with 15 days. But in your submissions, you refer to it as being 24 January 1980.

15 BUCHANAN: That's a typo.

HIS HONOUR: The transcript reference is Exhibit 2.1-50, red page 1651, about four questions from the bottom of the page. It's 15 May 1980. The point might be the same, I'm not sure, given that incident was 15 months after the event, not 15 days before. Maybe it's the same point.

20 BUCHANAN: Obviously, I have to stand by the evidence, such as it is, as to what the occasion of the date was. The date of 24 January came from the exhibit book entry that was made by Detective Sergeant Waddell in relation to the explosives said to have been found at the fruit market. That is where I took that date from at the end of the day, your Honour.

HIS HONOUR: There were two instances there, according to the transcript. The officer Counsel, it is, says, "I'm not sure of the date. There were two instances out there. I'm not sure which one you are referring to". The questioner was taking him to 15 May. Anyway, that can perhaps be looked at, and you come back to me in the morning if you wish.

25 BUCHANAN: Certainly, your Honour.

30 WOODS: Your Honour, can I just briefly just point out that in my friend's paragraph 276, he refers to it after an explosion at the fruit store. The date doesn't really matter, but if it was after an explosion, it's obviously a different matter.

35 HIS HONOUR: Yes.

40 BUCHANAN: Your Honour, if it's after an explosion and there's nothing to be dealt with as potentially dangerous, then there's no need to call in the Army. But there were intact explosives--

45 HIS HONOUR: No, but your submission says, "An explosion, and police found two intact sticks of gelignite".

50 BUCHANAN: Correct, your Honour. With respect, yes, your Honour. I'll

5 certainly stand corrected on the date if I'm wrong, but I took the date from the oral evidence of that exhibit book entry, which was a photocopy that went into evidence in the defence case of Mr Joseph Kokotovic. Obviously, the Inquiry doesn't have that because there are no defence exhibits. But where that entry was discussed in the evidence was the source for the date, and I'll happily stand corrected if I'm wrong.

10 HIS HONOUR: Footnoted as just the police evidence in your submissions, so maybe you could have a look at that overnight.

15 BUCHANAN: Thank you, your Honour. Your Honour, the fourth matter in relation to explosives, if I can refer to it, despite this being done in respect of the explosives found at Lithgow, and despite it also being New South Wales Police practice, there is nothing to indicate that alleged finds of explosives in Sydney were reported to the Australian Bomb Data Centre. Now, the Australian Bomb Data Centre records are new evidence, although Mr Barkley spoke to them. What is striking is that those records, in relation to the Lithgow explosives, show that three different sets of explosives, that is to say, the three different explosives finds in relation to Lithgow were comprehensively assessed as connected incidents. Our written submissions, paragraph 290.

25 But despite their alleged connection with the explosives found in Lithgow, there is nothing to indicate that New South Wales Police followed the practice of notifying the ABDC of the recovery of gelignite, detonators and flares in Sydney. The ABDC records came to light late in the life of the Inquiry, so it hasn't been possible to obtain an explanation from the New South Wales Police involved. But the procedures to report bombs and potential bombs to the ABDC were not, in our submission, directly protective or in the interests of safety, like evacuation procedures or calling in the Army or the like. The failure of police to take, in Sydney, being dismissed by the DPP and the Counsel Assisting as, in all likelihood, a product of a cavalier attitude at the time and nothing more sinister.

35 Procedures to report bombs and potential bombs to the ABDC were to share information with other agencies and for the benefit of all Australian law enforcement. Yet it appears no such reporting occurred in respect of the explosives alleged to have been found in Sydney. This is despite the fact that New South Wales Police ensured that the Lithgow explosives were reported to the ABDC, Exhibit 20.53, red page 126.

40 The apparent failure of New South Wales Police to report the Sydney explosives is not consistent with a cavalier attitude at the time. The more plausible explanation is that it was the result of wanting to avoid external scrutiny for a stitch-up. As we submit in our written submissions, paragraphs 294 to 295, the inferences available from this omission all come down to an understanding on the part of New South Wales Police that no explosives were found in Sydney.

50 Next, no fingerprints. No evidence that fingerprints were found on any of the explosives or any of the alleged related items such as the modified alarm

clocks or tape said to have been found around gelignite sticks or attached to a modified clock, our written submissions paragraph 501, or in the case of Zvirotic, a torch battery, our written submissions, same paragraph.

5 This applied, we acknowledge, both in respect of the Lithgow explosives and the Sydney explosives, but we ask the Inquiry to include this as a matter which is a little surprising, given the number of items seized, and the variety, the diversity of the places raided, and the differences in the individuals involved in the raids that no fingerprints were found. No civilian saw any of the Sydney
10 explosives, although two non police witnesses saw the Macauley Street explosives in situ. There was a complete lack of independent witnesses to the existence of the explosives in the buildings, or in the places in which the explosives were allegedly found in Sydney, including after they were found.

15 It might have been expected that at least one of the four raids, there would have been one resident of a building concerned who witnessed either the alleged find, or the alleged explosives being taken away, but no one. It was a requirement - I turn to exhibit books - it was a requirement that police book up exhibits in an exhibit book, and recorded their movements thereafter. This did
20 not happen in Lithgow, it did not happen in Sydney. But the failure to log the items in Sydney in a police station exhibit book cannot be dismissed as Counsel Assisting, and the DPP submit just as police being cavalier in their compliance with procedures.

25 The story given by the Special Breaking Squad detectives, that they had been instructed not to put explosives through exhibit books because of a danger of them being mishandled, fell apart when it was shown that Breaking Squad Detective Sergeant Waddell had done just that in respect of the incident at Bondi Junction. The explosives there had comprised, we were told, two intact
30 sticks of gelignite, and a quantity of safety fuses. This is our written submissions, paragraph 276. And in addition, the lead Breaking Squad detective, who said in the trial that detectives had been instructed not to put explosives through exhibit books, Detective Grady, was involved in the Bondi Junction incident. That's evidence of Detective Counsel Exhibit 2.1, day 50,
35 red pages 1651 to 1652. And in addition, as we mentioned earlier, the Army was called in - sorry, the reference for the evidence of Grady being involved should be our submissions, paragraph 495.

40 The evidence that the Army was called in was from Detective Counsel, Exhibit 2.1, day 50, pages 1651 to 1652. Another feature: there was an absence of further or related explosive equipment and paraphernalia. Based on Virkez's alleged reporting to police, one might have expected further explosive equipment and paraphernalia to be found during the raids in Sydney, a bit like the loose piece of TNC explosive found in Virkez's car, or the plastic
45 bag containing numerous items found in the boot of Virkez's car. Yet, in Sydney, nothing of that sort was found, nothing at all. And this, in the case of Mr Brajkovic, was despite not one, not two, but three separate groups of police searching his house on the 8th and 9 February.

50 The omission of the police who conducted the raid on 30 Chandos Street,

Ashfield, to conduct a search of the house outside of Zvirotic's room, or to conduct a search of the grounds of the house, is inconsistent with the evidence that two half sticks of gelignite and a detonator were found in a search of Zvirotic's room. And this is because the allegation in Morey's first screed was that Zvirotic had "30 to 50 kilograms of explosives in an undisclosed location". There is no direct evidence that Webster or other members of the Ashfield raiding party saw the first screed, I concede that. But the likelihood is that at least Sergeant Webster saw it, and attended the briefing that was conducted by Inspector Morey, just like other detectives did, and in the case of Rogerson, for example, he took a copy of the screed, and briefed members of his team from it.

If explosives had actually been found in Mr Zvirotic's room, it is very difficult to understand why police would not have torn the house apart to look for the rest of the explosives that Zvirotic was said to have hidden away, but they simply seem to have given up the ghost, and taken Zvirotic back to CIB, consistent with there not having been found explosives in his room. There was no investigation conducted that night, on the 8th and 9 February, to check whether bombs had in fact been laid at the targets that police in Sydney had had reported to them from Lithgow, either via Ingram in the early afternoon or by McDonald in the early evening. There was no attempt to check whether bombs had been laid at any of the places that the accused allegedly volunteered to police when questioned at CIB were intended as targets.

Inspector Morey clocked off before 3am, the time on the 9 February when the bombs were allegedly timed to be exploded, and given the potential imminence of risk associated with bombs going off, we submit the Inquiry would find it surprising that valuable time was taken transporting the accused and other occupants of respective houses back to the CIB for questioning instead of interrogating the accused and the other occupants of the houses immediately to find out where any explosives were, what the places were that were to be bombed, who were the other members of this bomb plot.

But no, police don't seem to have been interested in those subjects. It's as if the exercise was simply one of taking the men back, questioning them and then giving them a bit of verbal if necessary. Isolating them from anyone who could corroborate the accuseds' version of events. Each of these matters is explicable, your Honour, if the police evidence of having found explosives in Sydney was fabricated. Each of these matters are inconsistent with the police evidence of actually having found explosives at the Sydney premises.

Mention was made today of Sergeant Wilson's list of seized property. Counsel Assisting referred to them in their reply submissions at paragraph 49 and submitted, as was orally submitted today, that supporting the police evidence of finding the alleged white plastic bag with explosives at Bossley Park is Wilson's typed written list of seized property, which did indeed itemise the explosives and the clock alleged to have been found by police at Bossley Park, but we submit that that property list is of dubious value.

Wilson claimed in the trial also to have found in Brajkovic's house a piece of

circuit board, or Veroboard it was called in the trial, V-E-R-O, to which electronic components were attached. That was Marked for Identification 13, Exhibit 2.1, day 21, red page 661, and ultimately admitted as Exhibit TTT, Exhibit 2.1, day 91, red page 3104, but the item is nowhere to be found in Wilson's property seizure list. The conclusion has to be either that Wilson didn't find the piece of Veroboard with electronic components attached to it in the house as he said he did at the trial, or that he made up the list, that it means nothing that it itemised explosives and a clock and batteries.

Your Honour, we turn to a fresh aspect, if I may, of what I might call the incongruity of the allegations against the Croatian Six with the civilian evidence obtained. There was a Crown case theory based in part on a snippet of the Helson/Krawczyk evidence against Mr Brajkovic. This was the conversation at around 6.30pm on 8 February at the house at Restwell Road and the verbal attributed to Mr Brajkovic that Mlinaric and Lovokovic were, "Old women" and were, "Traitors" and, "We not get blamed for bombs". I'm sorry, that was later in the Harding/Wilson Record of Interview.

There was a claim by Virkez that a motive for the bomb plot was that the Croatian leaders Fabian Lovokovic and Tomo Mlinaric were considered to be too passive in their quest for Croatian independence and accordingly they were to be murdered. However, that doesn't accord, your Honour, with the evidence of Yugoslav community member Mr Hamid Sumin. According to a note made by Virkez on 10 February 1979, Sumin was a target of the Croatian Six. Police conducted an interview of him, Exhibit 11.4. Sumin saw Lovokovic as, "The instigator of terrorists. Someone who would send terrorists to Yugoslavia". Sumin said Lovokovic was the editor of a Croatian paper and that he was involved in organising demonstrations against his, Sumin's country, and that Lovokovic was doing everything bad for his country. Lovokovic, he said, was talking about putting bombs in places and training men to go back to Yugoslavia and use bombs in Australia to make sabotage, that's answers 30 and 31 in that Record of Interview. Exhibit 11.4.

Interestingly, when interviewed by police, people like Sumin, who were alleged to have been subject to bombing and murder plots, as well as people working at the intended targets, did not have anything particularly adverse to say about the Croatian Six. Despite being shown a photo board with the photos of the Croatian Six and Virkez, many of the witnesses knew nothing about them. In the case of Sumin, he knew Virkez but not the Croatian Six. In other words, there was very little civilian evidence which supported the charges of the Croatian Six participating in a bomb plot.

We submit that there is an incongruity of the water pipes bombing allegation with known Croatian terrorism patterns. Former Director-General of Security, Harvey Barnett expressed his mystification about the alleged plot to blow up Sydney water supply lines. In his view, "It did not seem to square with the normal Croatian activity", to target an Australian landmark as opposed to a Yugoslav target, Exhibit 13.7. Similar remarks were made by Mr Cunliffe when, in 1980, he raised the impending Croatian Six trial with Mr St John, "To my knowledge, it is novel for Croats to direct their violence against

non-Yugoslav targets like the Sydney water pipeline". That is set out in detail, if I can refer to it, at the DPP submissions, paragraph 60 to 61.

5 There is nothing, we submit, that is independent of Virkez or the police to corroborate them. I here might be trespassing upon submissions which I foreshadow my learned friend, Mr Brennan, will make after I have sat down about Mr Virkez. But I just want to take a step back from the detail of the evidence and look at it more broadly. The DPP submits - sorry, paragraph 60 to 61 - that Virkez supported the police evidence and the police evidence
10 supported Virkez's evidence, but they were not interdependent, as might have been the case if there had been a pre-existing informant relationship between Virkez and the New South Wales Police.

15 In our reply submissions, paragraph 16 to 17, we submit that it should be concluded that there was, in fact, a rather strange pre-existing relationship between Virkez and New South Wales Police, and we rely upon those submissions. But the submission I make at this point is that if the Crown case was true, there was a really strange absence of the sort of evidence that might be expected if Virkez and/or the New South Wales Police were telling the truth,
20 so strange that it casts doubt on both the evidence of Virkez and the New South Wales Police.

Our primary submission here, your Honour, is that there is nothing of substance independent of the police or independent of Virkez which
25 corroborates them in their evidence that there was a conspiracy to cause explosions or in the claim made a couple of times by Virkez that he infiltrated the Croatian Republican Party or that he infiltrated the men comprising the Croatian Six.

30 Can I turn to an aspect of the case which might be referred to as the spelling of names, the forensic significance of the spelling of names which appear in the first screed, but also in earlier documents. Counsel Assisting point out, paragraph 3072 of their primary submissions, the spelling of Bebic's co-accuseds' names was correct in his first Record of Interview. In our
35 submission, your Honour has it, at paragraph 691 of our primary submissions, this overlooks Bebic's evidence that he was told by Turner to write down the names from a piece of paper which Turner showed him, and that Bebic did so on the sheet of paper on which he had already written the names of Mile Prpic, his employer, P-R-P-I-C, and Vito Virkez, as he wrote it. This is Exhibit 4.1-E,
40 red page 15.

Your Honour has our primary submissions, paragraph 692, that the order of the components, given name and surname, of the names of the men that he writes on the paper, change partway through. They change from given name
45 first and family name second, where he writes out the names of Prpic and Virkez, to the sequence of surname first and given name second, when writing out the names of Zvirotic, Brajkovic, Nekic and the Kokotovic brothers. We submit this is consistent with Bebic writing down the first two names, Prpic and Virkez, in the usual way he would write down the names of people when he is
50 supplying information. But that changes when, as Bebic claimed, he was

transcribing names as they appeared on a list that was put in front of him.

5 The fact that diacritical marks were added to those names only means that
Bebic wrote them out. It nevertheless does not explain why the sequence of
given name and family name changes when he is changing functions,
according to Mr Bebic, of transcribing a list of names that's put in front of
him. In our written submissions, our primary submissions, paragraph 693, your
Honour would be satisfied that the first two names were indeed written by a
10 person providing information in response to questions, but in the second
grouping, the names are written as if the writer was simply being asked to
transpose available information from one piece of paper in front of him to
another piece of paper on which he was writing.

15 Returning to the first Bebic Record of Interview, there is no forensic
significance in the correct spelling of the co-accused's names
there. Exhibit 4.1-D, red page 9, question 31, since on Bebic's account, Turner
already had the names of those men because he showed Bebic the list of
names that he wanted Bebic to write out for him. I turn to the question of the
misspelling of the names of the Burwood trio in the first half of Morey's first
20 screed. That document is Exhibit 11.36.

That misspelling does not necessarily mean, your Honour, that the police
evidence that Bebic supplied those names is reliable. The misspelling of the
names of the Burwood trio in the first half of that page is also consistent with
25 those names being misspelt, possibly when conveyed by police in Lithgow to
Morey in Sydney, or more likely when that half of the document was dictated
by Morey to Grady at a time when people are pouring into the room for him to
conduct a briefing and he is under a little bit of time pressure.

30 We would urge the Inquiry to prefer the latter explanation rather than one
reliant upon acceptance of police evidence of verbal admissions having been
freely and voluntarily made by Bebic, and a disregard or a discounting of the
evidence from Ingram corroborating Bebic's account of what he was saying at
the time he was bashed in the kitchen at the house. Returning to the subject,
35 your Honour, of the absence of evidence corroborating Virkez and the police,
there is nothing in this case by way of a writing or a media release indicating
that bombings were being planned, or a media release that might have been
used once the bombs had exploded, which your Honour would be aware was
alleged to have been found on Anderson in the Seary matter.

40 This, despite the searches and the taking away of documents in large bundles,
your Honour would conclude, indeed suitcases, so far as Zvirotic was
concerned, from the respective houses. Apart from Virkez's book Osvetnici
Bleiburg - I apologise for the pronunciation, O-S-V-E-T-N-I-C-I,
45 B-L-E-I-B-U-R-G, apart from that book and despite the feeble attempts of
police to allege otherwise, for example, McNamara's statement to the Inquiry
and the undated police dossier on the Croatian Six case and Exhibit 11.35, red
pages 128 to 129, no literature relating to the construction of bombs was
found, except Virkez's book. Unless it was contained in the electronic
50 components in the plastic bag in the boot of Virkez's car, no timer for the

bomb, which was alleged to be set on the night - was alleged on the night of 8/9 February, to be set that night in the Elizabethan Theatre to go off during the dancing performance on the night of Saturday, 10 February, was found.

5 There was nothing found that corroborated Virkez or the verbals that the
plotters had met to plan the bombings, first at Brajkovic's house on 26 January,
then at Zvirotic's room on 27 January. Indeed, your Honour, it appears that the
residents of Zvirotic's boarding house were not even canvassed to see what
they could say about any happenings with Mr Zvirotic. As already submitted,
10 no one connected with the alleged bombing targets indicated that anything
was known about the Croatian Six. Nothing to indicate why, as Virkez alleged,
the alleged plotters would want to be blowing up Croatian social clubs like the
King Tomislav, T-O-M-I-S-L-A-V, club or Sloga, S-L-O-G-A.

15 I'll turn to the Stipich case, your Honour. In my submission, the account given
by Mr Stipich's solicitor in his hearing, Mr McCrudden, that police alleged that
the detonators were found in a drawer in a desk in Mr Stipich's room whilst the
defence was able to demonstrate to the Magistrate that there was no desk with
a drawer in it in Stipich's bedroom was consistently given. It is unlikely that, as
20 former Sergeant Wick suggested, the charge was dismissed because of an
inability to prove exclusive physical control, given the evidence to which we
point in our principal written submissions, paragraph 651, where what we
submit was a verbal of Mr Stipich excluded anyone else from the use of his
bedroom.

25 There was no reason, your Honour, for Mr McCrudden to have given a
completely false account of how the case went. Given his standing as an
officer of the Court, when he first gave that account to Four Corners,
Mr McCrudden's version of the basis for the dismissal of the charge should be
30 accepted. In addition, independently Mr McCrudden's account is supported by
the record of how an ASIO informant from the Croatian community described
the charge being dismissed, our written submissions paragraph 657.

35 This can't be treated as just a coincidence. It is an independent account which
is on all fours with McCrudden's account. There can't be any suggestion that
they put their heads together, and although undated, that informant's account
is likely to have been given in the early 1980s, markedly earlier than the year
of the Four Corners program in 1991 which had Mr McCrudden explaining
what happened. The significance of Mr Stipich's case is this, your
40 Honour. Certainly, there are differences, major differences, and Counsel
Assisting have identified them, but there are striking similarities between the
Stipich case and those of the Sydney accused.

45 The major differences, obviously, Stipich was loaded up with detonators rather
than gelignite and detonators. He was not charged with conspiracy to explode
bombs. However, his case can't be so easily dismissed as having no bearing
on the question of whether there is a doubt about the convictions of the
Sydney accused, but importantly, the police were detectives from the Armed
Hold Up Squad and they were sent to Wilmot in the same way as their
50 colleagues from the Armed Hold Up Squad and Breaking Squad were sent to

the other Sydney residences.

5 There's no reason in the wide world for Stipich to have had nine detonators in his possession, yet that was what three of the Armed Hold Up Squad
10 detectives who went to Wilmot alleged. We submit your Honour would have a serious doubt that Stipich ever had the detonators in his possession. We submit that there would have to be a high likelihood he was loaded up and given a few words of soft verbal such as to imply he knew he had the detonators and he was the only one to use his room and that he had the detonators probably from somebody else.

15 Your Honour, I circle back to the evidence of admissions. The Inquiry has the evidence of the findings in the Final Report of the Wood Royal Commission about the form of noble cause or process corruption entailed in the fabrication of evidence by police and the use of violence by police against suspects. The Inquiry has the situation that not one of the former CIB detectives who gave evidence to the Inquiry have admitted knowledge or an awareness that such process corruption occurred.

20 This Inquiry has no evidence which would permit it to take a less sceptical approach generally to the evidence of admissions in this case than was taken by his Honour Justice Wood to the same sort of evidence in the Inquiry into the convictions of Anderson, Alister and Dunn, reporting in 1985. That approach was that there is a doubt which attaches to evidence of oral admissions by
25 their very nature and this doubt is well recognised by the courts and judicial inquiries.

30 Rather than evidence permitting the Inquiry to take a less sceptical approach, your Honour also has the evidence of Mr McCrudden about the prevalence of verbals, a solicitor from that era, the evidence of explanations by Rogerson, the team leader of the Burwood raid, and the evidence of commentary by Mr Hidden QC before he was elevated to the Bench. All of which speak of the prevalence of police verbals in the era concerned. In his interviews in 1991, Rogerson gave a quantity of detail as to how police fabricated evidence.

35 Counsel Assisting's approach, with the greatest of respect, of rejecting anything Rogerson said because he is a proclaimed corrupt police officer should not be accepted given the confirmation of his evidence about those practises which emerged from the Wood Royal Commission. In addition, if I
40 can take your Honour to it, also in 1991, Petitioners' written submissions paragraph 1070, Hidden QC told Four Corners of:

45 "A danger in major cases, particularly newsworthy cases, involving serious crime with multiple defendants that you'll get a team of police dedicated to getting people before a Court and convicted and prepared to engage in quite a complex conspiracy to fabricate confessions."

50 The doubtful character of police evidence from this era covers not just the evidence of confessions, but also the practices of loading up suspects, and

5 that follows from the Wood Royal Commission which reported on evidence of
the prevalence of police fabrication of evidence. One witness was quoted in
the Royal Commission's Report as saying, "Manipulation of evidence was
something he learned on the job from others in the same way as an apprentice
10 learns a trade". Another witness told the Royal Commission of the Armed Hold
Up Squad's substantial reputation for corrupt scrumdowns, our written
submissions paragraph 44. I note the time.

10 HIS HONOUR: All right, thank you, Mr Buchanan.

ADJOURNED